



# City of Glendale

5850 West Glendale Avenue  
Glendale, AZ 85301

## Voting Meeting Agenda City Council

*Mayor Jerry Weiers*  
*Vice Mayor Ian Hugh*  
*Councilmember Jamie Aldama*  
*Councilmember Joyce Clark*  
*Councilmember Ray Malnar*  
*Councilmember Lauren Tolmachoff*  
*Councilmember Bart Turner*

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Tuesday, December 20, 2016

11:00 AM

Council Chambers

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### VOTING MEETING DATE/TIME CHANGE

One or more members of the City Council may be unable to attend the Council Meeting in person and may participate telephonically, pursuant to A.R.S. § 38-431(4).

#### CALL TO ORDER

#### POSTING OF COLORS

#### PLEDGE OF ALLEGIANCE

#### PRAYER/INVOCATION

Any prayer/invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the prayer/invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker. A list of volunteers is maintained by the Mayor's Office and interested persons should contact the Mayor's Office for further information.

#### CITIZEN COMMENTS

If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a Citizen Comments Card located in the back of the Council Chambers and give it to the City Clerk before the meeting starts. The City Council can only act on matters that are on the printed agenda, but may refer the matter to the City Manager for follow up. When your name is called by the Mayor, please proceed to the podium. State your name and the city in which you reside for the record. If you reside in the City of Glendale, please state the Council District you live in (if known) and begin speaking. Please limit your comments to a period of three minutes or less.

#### APPROVAL OF THE MINUTES OF DECEMBER 6, 2016

1. 16-642 APPROVAL OF THE MINUTES OF DECEMBER 6, 2016  
Staff Contact: Julie K. Bower, City Clerk

**Attachments:** Meeting Minutes of December 6, 2016

## CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. Items on the consent agenda are intended to be acted upon in one motion unless the Council wishes to hear any of the items separately.

- 2. 16-623** RECOMMEND APPROVAL OF TWO SPECIAL EVENT LIQUOR LICENSES, ARIZONA SPORTS FOUNDATION DBA FIESTA BOWL  
Staff Contact: Vicki Rios, Director, Budget and Finance

**Attachments:** Application  
Calls for Service
- 3. 16-628** RECOMMEND APPROVAL OF LIQUOR LICENSE NO. 5-21894, HOME2 SUITES BY HILTON  
Staff Contact: Vicki Rios, Director, Budget and Finance

**Attachments:** Map  
Calls for Service
- 4. 16-626** RECOMMEND APPROVAL OF LIQUOR LICENSE NO. 5-4682, WINCO FOODS #109  
Staff Contact: Vicki Rios, Director, Budget and Finance

**Attachments:** Map  
Calls for Service
- 5. 16-550** AUTHORIZATION TO APPROVE A SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT WITH N. HARRIS COMPUTER CORPORATION, A SOLE SOURCE PROVIDER  
Staff Contact: Vicki Rios, Director, Budget and Finance

**Attachments:** Agreement
- 6. 16-600** AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX TO ACCESS PHOENIX'S BUSINESS INTELLIGENCE SYSTEM FOR TRANSACTION PRIVILEGE TAX REMITTANCE ANALYTICS  
Staff Contact: Vicki Rios, Director, Budget and Finance

**Attachments:** Intergovernmental Agreement
- 7. 16-627** AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH HYAS GROUP, LLC, FOR DEFERRED COMPENSATION PLAN CONSULTING SERVICES  
Staff Contact: Jim Brown, Director, Human Resources and Risk Management

**Attachments:** Agreement
- 8. 16-635** POSITION RECLASSIFICATIONS  
Staff Contact: Jim Brown, Director, Human Resources and Risk

Management

**Attachments:** Classification Study Status Report

9. **16-608** AUTHORIZATION FOR THE EXPENDITURE OF FUNDS AND TO ENTER INTO A LINKING AGREEMENT WITH CDW GOVERNMENT, LLC, FOR SOFTWARE  
Staff Contact: Chuck Murphy, Chief Information Officer, Innovation and Technology

**Attachments:** Linking Agreement

10. **16-647** AUTHORIZATION TO ELIMINATE A POSITION IN THE COMMUNITY SERVICES DEPARTMENT AND CREATE A POSITION IN THE INNOVATION AND TECHNOLOGY DEPARTMENT  
Staff Contact: Chuck Murphy, Director, Innovation and Technology

11. **16-632** AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH DICK AND FRITSCHER DESIGN GROUP, INC., TO PROVIDE ARCHITECTURAL AND DESIGN SERVICES FOR THE PROPOSED HEROES PARK BRANCH LIBRARY  
Staff Contact: Elaine Adamczyk, Interim Director, Community Services

**Attachments:** Professional Services Agreement

12. **16-587** AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH SUMMIT ELECTRIC SUPPLY CO., INC., A SOLE SOURCE PROVIDER, FOR SUPPORT SERVICES FOR SCHNEIDER ELECTRIC MODICON PLC SOFTWARE  
Staff Contact: Craig Johnson, P.E., Director, Water Services

**Attachments:** Professional Services Agreement

13. **16-624** AUTHORIZATION TO ENTER INTO A SERVICES AGREEMENT WITH ALTEC INDUSTRIES, INC., A SOLE SOURCE PROVIDER, FOR REPAIR OF HEAVY DUTY VEHICLES  
Staff Contact: Jack Friedline, Director, Public Works

**Attachments:** Services Agreement

14. **16-625** AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH COCHISE PETROLEUM EQUIPMENT COMPANY, INC., FOR MAINTENANCE AND REPAIR SERVICES TO BULK FUELING AND LUBRICATION SYSTEMS  
Staff Contact: Jack Friedline, Director, Public Works

**Attachments:** Linking Agreement

15. **16-631** AUTHORIZATION TO ENTER INTO AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH GAVAN & BARKER, INC., FOR 2014-2015 DRAINAGE STUDIES  
Staff Contact: Jack Friedline, Director, Public Works

**Attachments:** Amendment No. 3

16.    **16-633**           AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH HOLBROOK ASPHALT, LLC, FOR THE HA5 SURFACE PRESERVATION PROJECT  
Staff Contact: Jack Friedline, Director, Public Works  
**Attachments:**       Linking Agreement
17.    **16-634**           AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH CALIENTE CONSTRUCTION, INC., FOR GENERAL MAINTENANCE AND REPAIR SERVICES  
Staff Contact: Jack Friedline, Director, Public Works  
**Attachments:**       Linking Agreement
18.    **16-636**           AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH CACTUS ASPHALT, A DIVISION OF CACTUS TRANSPORT, INC., FOR PUBLIC HOUSING PARKING LOT IMPROVEMENTS  
Staff Contract: Jack Friedline, Director, Public Works  
**Attachments:**       Construction Agreement  
                            Bid Tabulation
19.    **16-637**           AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH DWL ARCHITECTS + PLANNERS, INC., FOR THE FIELD OPERATIONS COMPLEX MASTER PLAN UPDATE  
Staff Contact: Jack Friedline, Director, Public Works  
**Attachments:**       Professional Services Agreement
20.    **16-638**           AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH PROJECT ENGINEERING CONSULTANTS, LTD., FOR THE 91ST AVENUE IMPROVEMENTS PROJECT  
Staff Contact: Jack Friedline, Director, Public Works  
**Attachments:**       Professional Services Agreement
21.    **16-639**           AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION OF SRP FACILITIES WITH SALT RIVER VALLEY WATER USERS' ASSOCIATION AND APPROVAL OF A BUDGET APPROPRIATION TRANSFER FOR THE RELOCATION OF IRRIGATION FACILITIES IN THE INTERSECTION OF 59TH AND OLIVE AVENUES  
Staff Contact: Jack Friedline, Director, Public Works  
**Attachments:**       Construction Agreement
22.    **16-604**           AUTHORIZATION TO ENTER INTO A MONTH-TO-MONTH BANKING AGREEMENT WITH BANK OF AMERICA CORPORATION  
Staff Contact: Vicki Rios, Director, Budget and Finance  
**Attachments:**       Agreement

**CONSENT RESOLUTIONS**

**23. 16-629 RESOLUTION NO. 5189 NEW SERIES**

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTED THE ENTERING INTO OF A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF PEORIA TO PARTICIPATE IN A REGIONAL FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ASSISTANCE TO FIREFIGHTERS GRANT (AFG) BY THE GLENDALE FIRE DEPARTMENT.

Staff Contact: Terry Garrison, Fire Chief

**Attachments:**

Resolution No. 5189

Memorandum of Understanding

Appendix A

**24. 16-620 RESOLUTION NO. 5190 NEW SERIES**

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REQUESTING EXEMPTION FROM THE REQUIREMENT BY THE INDUSTRIAL COMMISSION OF ARIZONA TO POST SECURITY FOR THE CITY OF GLENDALE'S SELF-INSURED WORKERS' COMPENSATION CLAIMS.

Staff Contact: Jim Brown, Director, Human Resources and Risk Management

**Attachments:**

Resolution No. 5190

Self-Insured Packet - Draft

**25. 16-622 RESOLUTION NO. 5191 NEW SERIES**

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY, ADMINISTERED BY ITS HUMAN SERVICES DEPARTMENT, FOR THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM.

Staff Contact: Elaine Adamczyk, Interim Director, Community Services

**Attachments:**

Resolution No. 5191

Intergovernmental Agreement

**26. 16-645 RESOLUTION NO. 5192 NEW SERIES**

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF GRANT AGREEMENT NO. 2014-280; ACCEPTANCE OF A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF CRIME ACT (VOCA); AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE GRANT PROGRAM FOR FISCAL YEAR 2016-17.

Staff Contact: Rick St. John, Police Chief

**Attachments:**

Resolution No. 5192

VOCA Grant Agreement No. 2014-280

**27. 16-646 RESOLUTION NO. 5193 NEW SERIES**

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF GRANT AGREEMENT NO. 2014-281; ACCEPTANCE OF A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF CRIME ACT (VOCA); AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE PROGRAM IN FISCAL YEAR 2016-17.

Staff Contact: Rick St. John, Police Chief

**Attachments:**

Resolution No. 5193

VOCA Grant Agreement No. 2014-281

## ORDINANCES

**28. 16-654 ORDINANCE NO. 3033 NEW SERIES**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING AND REPLACING GLENDALE CITY CODE, CHAPTER 2, ARTICLE II, SECTIONS 31-33, PRESCRIBING STANDARDS OF FINANCIAL DISCLOSURE FOR LOCAL ELECTED OFFICIALS; AND DECLARING AN EMERGENCY.

Staff Contact: Michael Bailey, City Attorney, and Julie K. Bower, City Clerk

**Attachments:**

Ordinance No. 3033

## NEW BUSINESS

**29. 16-650 AUTHORIZATION TO UTILIZE A FORM LICENSE AGREEMENT AS NEEDED TO FACILITATE THE USE OF CITY PROPERTY FOR FIESTA BOWL AND NCAA MEN'S FINAL FOUR**

Staff Contact: Jean Moreno, Executive Officer Strategic Initiatives and Special Projects

**Attachments:**

Form License Agreement

## REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

## COUNCIL COMMENTS AND SUGGESTIONS

## ADJOURNMENT

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) discussion or consideration of personnel matters (A.R.S. § 38-431.03(A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. § 38-431.03(A)(2));
- (iii) discussion or consultation for legal advice with the city's attorneys (A.R.S. § 38-431.03(A)(3));
- (iv) discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. § 38-431.03(A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. § 38-431.03(A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.03(A)(7)).



# City of Glendale

5850 West Glendale Avenue  
Glendale, AZ 85301

## Legislation Description

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**File #: 16-642, Version: 1**

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APPROVAL OF THE MINUTES OF DECEMBER 6, 2016

Staff Contact: Julie K. Bower, City Clerk



# City of Glendale

5850 West Glendale Avenue  
Glendale, AZ 85301



## Meeting Minutes - Draft

Tuesday, December 6, 2016

11:00 AM

**VOTING MEETING DATE/TIME CHANGE**

**Council Chambers**

### **City Council**

*Mayor Jerry Weiers*

*Vice Mayor Ian Hugh*

*Councilmember Jamie Aldama*

*Councilmember Samuel Chavira*

*Councilmember Ray Malnar*

*Councilmember Lauren Tolmachoff*

*Councilmember Bart Turner*

**CALL TO ORDER**

**Present:** 6 - Mayor Jerry Weiers, Vice Mayor Ian Hugh, Councilmember Jamie Aldama, Councilmember Ray Malnar, Councilmember Lauren Tolmachoff, and Councilmember Bart Turner

Also present were Kevin Phelps, City Manager; Tom Duensing, Assistant City Manager; Michael Bailey, City Attorney; Julie Bower, City Clerk; and Darcie McCracken, Deputy City Clerk.

**PLEDGE OF ALLEGIANCE**

**PRAYER/INVOCATION**

The invocation was offered by Chaplain Raul Ochoa from the Glendale Fire Department.

Mayor Weiers said it was the 75th anniversary of the Civil Air Patrol. He introduced special guest, Klara Alcott, the Civil Air Patrol's National Cadet of the Year. She was chosen as the top cadet out of 24,000 cadets nationwide. He congratulated her and said she would do many great things in the future.

**CITIZEN COMMENTS**

James Deibler, a Phoenix resident, spoke about the safety hazard caused by stray cats living in south Glendale. The Code Compliance Department should take care of the problem. He said a playground needed to be installed that met ADA requirements. Mr. Deibler would miss Councilmember Chavira but Councilmember-elect Joyce Clark had more experience and would do a good job. He also spoke about the presidential election.

**APPROVAL OF THE MINUTES OF NOVEMBER 22, 2016**

- 1. [16-606](#) APPROVAL OF THE MINUTES OF NOVEMBER 22, 2016

Staff Contact: Julie K. Bower, City Clerk

**A motion was made by Councilmember Malnar, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

**CONSENT AGENDA**

- 2. [16-535](#) RECOMMEND APPROVAL OF LIQUOR LICENSE NO. 5-21725, COCO LOCO LOUNGE

Staff Contact: Vicki Rios, Director, Budget and Finance

Staff Contact: Vicki Rios, Director, Budget and Finance

- 3. [16-561](#) AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH HUNTER CONTRACTING CO., TO ASSESS AND REPAIR PIPELINES AT THE CHOLLA WATER TREATMENT PLANT

Staff Contact: Craig Johnson, P.E., Director, Water Services

4. [16-585](#) AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH MGC CONTRACTORS, INC., AND APPROVE THE EXPENDITURE OF FUNDS FOR THE REPLACEMENT OF FILTER EQUIPMENT AND INSTALLATION OF CHLORINE CYLINDER VALVE ACTUATORS AT THE CHOLLA WATER TREATMENT PLANT  
Staff Contact: Craig Johnson, P.E., Director, Water Services
5. [16-586](#) AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH PRECISION ELECTRIC COMPANY, INC., FOR EQUIPMENT REPAIR AND MAINTENANCE  
Staff Contact: Craig Johnson, P.E., Director, Water Services
6. [16-588](#) AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH FOSTER ELECTRIC MOTOR SERVICE, INC., FOR EQUIPMENT REPAIR AND MAINTENANCE  
Staff Contact: Craig Johnson, P.E., Director, Water Services
7. [16-596](#) AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH BLACK & VEATCH CORPORATION FOR PHASE 2 DESIGN SERVICES FOR THE CHOLLA WATER TREATMENT PLANT IMPROVEMENTS  
Staff Contact: Craig Johnson, P.E., Director, Water Services
8. [16-599](#) AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC., FOR PHASE 2 DESIGN SERVICES FOR THE BOOSTER PUMP STATIONS AND ADMINISTRATION BUILDING IMPROVEMENTS AT THE CHOLLA WATER TREATMENT PLANT  
Staff Contact: Craig Johnson, P.E., Director, Water Services
9. [16-619](#) AUTHORIZATION TO ELIMINATE POSITIONS IN THE COMMUNITY SERVICES DEPARTMENT AND CREATE POSITIONS IN THE PUBLIC WORKS DEPARTMENT  
Staff Contact: Jack Friedline, Director, Public Works

Mr. Friedline said Item 9 was a request to eliminate two vacant positions in the Community Services Department and create two positions in the Public Works Department Engineering Division. He explained the two positions in Community Services had been grant-funded many years ago but were now unfunded and vacant. They would be used to fill two very important positions in the Engineering Division that would assist with Water Services Department capital projects that would improve and upgrade City plants. The two positions, a principal engineer and a senior civil engineer, would move projects through the design, bid and build phases. The costs for these employees would be covered through enterprise funds with no impact to the general fund.

Councilmember Tolmachoff wanted to clarify, for the sake of transparency, that these positions were currently vacant.

Councilmember Aldama asked if funding for the positions was requested in July of 2014.

Mr. Friedline was not sure about the history of the positions. He had had conversations with Elaine Adamczyk, Housing Services Administrator, regarding the responsibilities of the positions and how those responsibilities were divided up among existing staff to continue to provide services.

Councilmember Aldama asked if there had been a loss of services because of those vacancies and asked how that program had continued without those positions.

Ms. Adamczyk said the positions had been vacant for a number of years.

Councilmember Aldama said in 2014, Neighborhood Services was established and the positions were necessary at that time. He asked how they were continuing without the positions now.

Ms. Adamczyk explained those were two different positions. She said the two positions being transferred to Public Works were from the old Neighborhood Partnerships Department. That Department ceased to exist around 2010 or 2011. The positions were temporarily given to her department to fill a need at that time for a maintenance supervisor. Since then, that position had been filled and there was no need for the position in Housing any longer. The second vacant position was a housing assistance representative position that had been vacant since about 2007.

Ms. Adamczyk said the department was dependent on federal funds and those funds had continued to decrease. Staff duties had been reorganized and there was no shortage of services. Community Housing continued to be a high performer with the current staffing levels. There was no need to keep the positions on the books and they would like to transfer the positions to Public Works.

Councilmember Turner asked if one of the positions being transferred was in Neighborhood Partnerships.

Ms. Adamczyk said the position was a neighborhood coordinator from the Neighborhood Partnerships Department.

Councilmember Turner asked if the position interacted internally with the Housing Department or interacted externally with neighborhoods.

Ms. Adamczyk said the Neighborhood Partnerships Department interacted externally with the neighborhoods and all Councilmembers. When that department was dissolved, that position came to her department temporarily to assist with the Public Housing Maintenance services. The maintenance supervisor position was subsequently filled and the person who was in that position retired. The position had remained vacant since 2011-2012.

Councilmember Turner asked if the position became necessary again, that reinstatement of the position could be made through the regular budget process.

Ms. Adamczyk said that was correct but wanted to make sure the Council was not confusing the old Neighborhood Partnerships Department with the current Neighborhood Services Department. She explained the Neighborhood Services program continued strongly serving the community and the volunteer program.

Mr. Deibler, a Phoenix resident, said it was a good idea to create jobs in the Public

Works Department so the City could have more workers to fix the streets and sidewalks.

Mayor Weiers asked Mr. Deibler to speak on Item 8 since he submitted a card on that item as well.

Mr. Deibler, a Phoenix resident, said it was a good idea for the City to fix up the Cholla Water Treatment Plant to make sure the plants were working properly so staff could provide the best possible customer service and water to the public.

10. [16-597](#) AUTHORIZATION TO ENTER INTO A SERVICES AGREEMENT WITH THE PENCHANT GROUP, LLC AND APPROVE THE EXPENDITURE OF FUNDS  
Staff Contact: Rick St. John, Police Chief

#### CONSENT RESOLUTIONS

Ms. Julie Bower, City Clerk, read consent resolution item numbers 11 through 13 by number and title. Ms. Bower read consent resolution item number 14 in its entirety.

11. [16-526](#) RESOLUTION NO. 5185 NEW SERIES  
  
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A DELEGATION AGREEMENT WITH THE COUNTY OF MARICOPA.  
Staff Contact: Elaine Adamczyk, Interim Community Services Director
12. [16-592](#) RESOLUTION NO. 5186 NEW SERIES  
  
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND ENTERING INTO AMENDMENT NO. TWO (2) TO THE FY 2016-17 INDEPENDENT CONTRACTOR AGREEMENT WITH ARIZONA COMMUNITY ACTION ASSOCIATION.  
Staff Contact: Elaine Adamczyk, Interim Director, Community Services
13. [16-593](#) RESOLUTION NO. 5187 NEW SERIES  
  
A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NO. 5 TO THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING.  
Staff Contact: Elaine Adamczyk, Interim Community Services Director
14. [16-602](#) RESOLUTION NO. 5188 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH ARIZONA HISTORICAL SOCIETY FOR THE USE OF CITY PROPERTY LOCATED AT 9802 NORTH 59TH AVENUE, GLENDALE, ARIZONA.

Staff Contact: Erik Strunk, Director, Public Facilities, Recreation and Special Events

Approval of the Consent Agenda

**A motion was made by Turner, seconded by Aldama, to approve the recommended actions on Consent Agenda Item Numbers 2 through 10 and Consent Resolution Item Numbers 11 through 14. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

## ORDINANCES

Mayor Weiers said he would like to hear all the Ordinance items at one time.

Councilmember Turner had no objection to having the Ordinance items presented all at once, but for the record, wanted to vote on each item separately.

### 15. [16-601](#) ORDINANCE NO. 3023 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A REAL PROPERTY EXCHANGE AGREEMENT WITH FARM 101, LLC, FOR THE EXCHANGE OF REAL PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 91ST AVENUE AND BETHANY HOME ROAD FOR REAL PROPERTY LOCATED AT THE NORTHWEST CORNER OF 95TH AVENUE AND THE MISSOURI AVENUE ALIGNMENT; AND ORDERING THAT A CERTIFIED COPY OF THIS ORDINANCE BE RECORDED.

Staff Contact: Kevin R. Phelps, City Manager

Ms. Bower read Ordinance No. 3023.

Mr. Phelps said the item was a request to enter into a real property exchange agreement with Farm 101, LLC for exchange of property at the southwest corner of 91st Avenue and Bethany Home Road for real property located at the northwest corner of 95th Avenue and the Missouri Avenue alignment. The exchange memorialized the agreement within the Stadium Parking Agreement entered into on November 14, 2016.

**A motion was made by Councilmember Tolmachoff, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion passed by the following vote:**

**Aye:** 6 - Mayor Weiers, Vice Mayor Hugh, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

**Nay:** 1 - Councilmember Aldama

16. [16-595](#) ORDINANCE NO. 3024 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A FOOD BANK LEASE AGREEMENT WITH HOPE FOR HUNGER CORPORATION, FOR THE PURPOSE OF WAREHOUSING AND DISTRIBUTING FOOD TO LOW AND MODERATE INCOME PERSONS; AND ORDERING THAT A CERTIFIED COPY OF THE FOOD BANK LEASE AGREEMENT AND THIS ORDINANCE BE RECORDED.

Staff Contact: Elaine Adamczyk, Interim Community Services Director

Ms. Bower read Ordinance No. 3024.

Ms. Adamczyk said the request was to enter into a food bank lease agreement with Hope For Hunger Corporation, for the purpose of warehousing and distributing food to low and moderate income persons. The lease agreement was for a five-year period and addressed a need for food distribution services. Hope for Hunger would be responsible for the cost of electricity and the City would be responsible for repair of major exterior portions of the premises. The lease was originally entered into in 2011 and a two-year renewal was signed in 2015, retroactive to December 2014. The lease provided for payment to the City by Hope for Hunger of \$1 per year for each of the five years of the lease.

**A motion was made by Councilmember Aldama, seconded by Councilmember Chavira, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

17. [16-609](#) ORDINANCE NO. 3025 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A WATER LINE EASEMENT LOCATED AT WESTGATE HEALTHCARE CAMPUS; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

Mayor Weiers said Items 17 through 24 were all related and asked if Councilmember Turner wanted to hear all of the items separately.

Councilmember Turner did not object to hearing all the items presented and discussed together but would like to vote on each item separately.

Ms. Bower read Ordinance Nos. 3025-3032.

Mr. Friedline provided an aerial photograph of the site and information regarding the irrigation easements which fell within the property. He said there were five easements, two warranty deeds for rights-of-way and a land use license and companion piece for land use between the City and Westgate Healthcare Campus. He explained the land use

license was between the City and Salt River Project (SRP). The companion piece would allow Westgate Healthcare to use that land.

Mr. Friedline said Item 17 was a request to accept a new waterline easement at Westgate Healthcare Campus located at 9950 West Glendale Avenue and declared an emergency to provide for the changes, effective December 7, 2016. Mr. Friedline said the emergency regarding these documents had to do with getting the documents completed and recorded in order to meet the dry up season for SRP for construction of the irrigation lines.

Mr. Bailey said this was a perfect example of how staff took feedback from Council when facing a similar situation a few months ago and resolved the issue based on that feedback. He wanted to make sure Council was aware of that.

**A motion was made by Councilmember Turner, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

18. [16-611](#) ORDINANCE NO. 3026 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A WATER LINE AND SEWERLINE EASEMENT LOCATED AT WESTGATE HEALTHCARE CAMPUS; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Councilmember Aldama, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

19. [16-612](#) ORDINANCE NO. 3027 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A SIDEWALK EASEMENT LOCATED AT WESTGATE HEALTHCARE CAMPUS; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

20. [16-614](#) ORDINANCE NO. 3028 NEW SERIES



AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AN IRRIGATION EASEMENT IN FAVOR OF SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT LOCATED ON WESTBOUND GLENDALE AVENUE 571 FEET WEST OF 99TH AVENUE; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

21. [16-615](#) ORDINANCE NO. 3029 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AN IRRIGATION EASEMENT IN FAVOR OF SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT LOCATED ON SOUTHBOUND 99TH AVENUE 1010 FEET NORTH OF GLENDALE AVENUE; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Councilmember Tolmachoff, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

22. [16-616](#) ORDINANCE NO. 3030 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A WARRANTY DEED FOR RIGHT OF WAY LOCATED AT WESTGATE HEALTHCARE CAMPUS; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Councilmember Tolmachoff, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

23. [16-617](#) ORDINANCE NO. 3031 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A WARRANTY DEED FOR RIGHT OF WAY LOCATED AT WESTGATE HEALTHCARE CAMPUS; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

**24. [16-621](#) ORDINANCE NO. 3032 NEW SERIES**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF A LAND USE LICENSE IN FAVOR OF THE CITY OF GLENDALE FROM THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT LOCATED ON THE NORTHWEST QUADRANT OF 99TH AVENUE AND WESTBOUND GLENDALE; AUTHORIZING THE EXECUTION OF A COMPANION PROPERTY USE AGREEMENT WITH 101 W HEALTHCARE, LLC; DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

Staff Contact: Jack Friedline, Director, Public Works

**A motion was made by Councilmember Turner, seconded by Councilmember Aldama, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

**REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION**

**A motion was made by Vice Mayor Hugh, seconded by Councilmember Tolmachoff, to reschedule the Voting Meeting of Tuesday, December 27, 2016, to Tuesday, December 20, 2016 at 11:00 a.m. in City Council Chambers and moved to hold a regularly scheduled City Council Workshop on Tuesday, December 20, 2016 at 1:30 p.m. in City Council Chambers, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. The motion carried by the following vote:**

**Aye:** 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

**COUNCIL COMMENTS AND SUGGESTIONS**

Councilmember Aldama reminded residents of Winter Wonderland Weekend on December 9-10, 2016 from 6 p.m. to 10 p.m. in downtown Glendale.

Councilmember Tolmachoff reminded Cholla residents of the 2nd Annual Cholla Holiday Mixer to be held on Thursday, December 7, 2016 at the Foothills Recreation and

Aquatics Center from 6 p.m. to 8 p.m.

Councilmember Turner reminded everyone to come enjoy downtown on the weekends, but wanted to let everyone know they could avoid the big crowds and enjoy Glendale Glitters during the week.

Vice Mayor Hugh asked everyone to come to the Annual Christmas Parade to see Rotary Club win first prize for its float this year.

Mayor Weiers invited everyone 4th Annual Christmas Parade December 10, 2016 at 11 a.m. The parade runs from 51st Avenue to 59th Avenue along Glendale Avenue. He said Jordin Sparks would be the grand marshal. He also invited everyone to a free pop up concert by Sounds of the Southwest Singers at Arrowhead Mall, on December 11, 2016 at 1 p.m. He said the concert would move outside after the first few songs.

## **ADJOURNMENT**

The City Council adjourned at 11:45 a.m.



## Legislation Description

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**File #:** 16-623, **Version:** 1

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**RECOMMEND APPROVAL OF TWO SPECIAL EVENT LIQUOR LICENSES, ARIZONA SPORTS FOUNDATION DBA FIESTA BOWL**

Staff Contact: Vicki Rios, Director, Budget and Finance

**Purpose and Recommended Action**

This is a request for City Council to recommend approval to the Arizona Department of Liquor Licenses and Control of two special event liquor licenses for the Arizona Sports Foundation dba Fiesta Bowl, submitted by Nathaniel Trevor Hayden. These events will be held on the Great Lawn, W2 Parking Lot, and Lawn B at the University of Phoenix Stadium located at 1 North Cardinals Drive on Saturday, December 31, 2016. The purpose of these special event liquor licenses is for the Fiesta Bowl Fan Fest and the Alumni Party.

**Background Summary**

The University of Phoenix Stadium is zoned PAD (Planned Area Development) and located in the Yucca District. Under the provisions of A.R.S. § 4-203.02, it allows for an unlimited number of special event liquor licenses to be issued at locations controlled by the state, therefore, the allowed 12 events per calendar year does not apply to these special event liquor license applications. Under the provisions of A.R.S. § 4-203.02, the Arizona Department of Liquor Licenses and Control may issue a special event liquor license only if the Council recommends approval of such license.

The City of Glendale Development Services, Police, and Fire Departments have reviewed these applications and determined that they meet all technical requirements.



Arizona Department of Liquor Licenses and Control  
 800 W Washington 5th Floor  
 Phoenix, AZ 85007-2934  
 www.azliquor.gov  
 (602) 542-5141

FOR DLIC USE ONLY	
Event Date(s):	
Event time start/end:	
CSR:	
License:	

**APPLICATION FOR SPECIAL EVENT LICENSE**  
 Fee= \$25.00 per day for 1-10 days (consecutive)  
 A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

**IMPORTANT INFORMATION: This document must be fully completed or it will be returned.**

The Department of Liquor Licenses and Control must receive this application ten (10) business days prior to the event. If the special event will be held at a location without a permanent liquor license or if the event will be on any portion of a location that is not covered by the existing liquor license, this application must be approved by the local government before submission to the Department of Liquor Licenses and Control (see Section 15).

**SECTION 1** Name of Organization: Arizona Sports Foundation dba Fiesta Bowl

**SECTION 2** Non-Profit/IRS Tax Exempt Number: [REDACTED]

**SECTION 3** The organization is a: (check one box only)

- Charitable  Fraternal (must have regular membership and have been in existence for over five (5) years)  
 Religious  Civic (Rotary, College Scholarship)  Political Party, Ballot Measure or Campaign Committee

**SECTION 4** Will this event be held on a currently licensed premise and within the already approved premises?  Yes  No

\_\_\_\_\_  
 Name of Business License Number Phone (include Area Code)

**SECTION 5** How is this special event going to conduct all dispensing, serving, and selling of spirituous liquors? Please read R-19-318 for explanation (look in special event planning guide) and check one of the following boxes.

- Place license in non-use  
 Dispense and serve all spirituous liquors under retailer's license  
 Dispense and serve all spirituous liquors under special event  
 Split premise between special event and retail location

(If not using retail license, submit a letter of agreement from the agent/owner of the licensed premise to suspend the license during the event. If the special event is only using a portion of premise, agent/owner will need to suspend that portion of the premise.)

**SECTION 6** What is the purpose of this event?  On-site consumption  Off-site (auction)  Both

**SECTION 7** Location of the Event: University of Phoenix Stadium - Great Lawn and W2 parking lot

Address of Location: 1 West Cardinals Drive (The Great Lawn) Glendale, AZ 85305  
 Street City COUNTY State Zip

**SECTION 8** Will this be stacked with a wine festival/craft distiller festival?  Yes  No

**SECTION 9** Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Section 1. (Authorizing signature is required in Section 13.)

1. Applicant: Hayden Nathaniel Trevor [REDACTED]  
 Last First Middle Date of Birth

2. Applicant's mailing address: 7135 East Camelback Road Suite Ste#190 Scottsdale, AZ 85251  
 Street City State Zip

3. Applicant's home/cell phone: [REDACTED] Applicant's business phone: (480) 736-3917

4. Applicant's email address: [REDACTED]

**SECTION 10**

- Has the applicant been convicted of a felony, or had a liquor license revoked within the last five (5) years?  
 Yes  No (If yes, attach explanation.)
- How many special event licenses have been issued to this location this year? 1  
 (The number cannot exceed 12 events per year; exceptions under A.R.S. §4-203.02(D).)
- Is the organization using the services of a promoter or other person to manage the event?  Yes  No  
 (If yes, attach a copy of the agreement.)
- List all people and organizations who will receive the proceeds. Account for 100% of the proceeds. The organization applying must receive 25% of the gross revenues of the special event liquor sales. Attach an additional page if necessary.

Name Arizona Sports Foundation dba Fiesta Bowl Percentage: 100%  
 Address 7135 East Camelback Road Suite #190 Scottsdale AZ 85251  
Street City State Zip

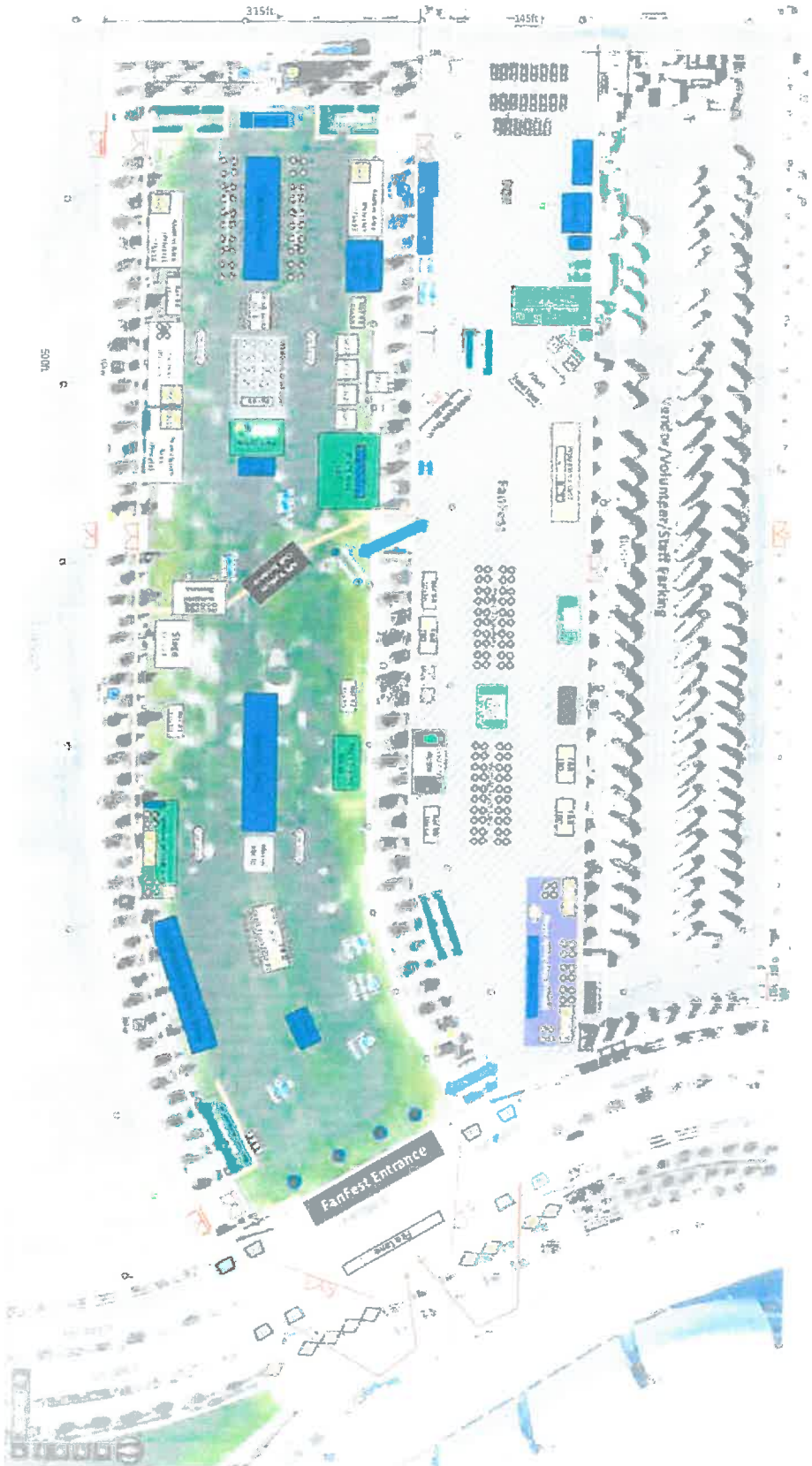
Name \_\_\_\_\_ Percentage: \_\_\_\_\_  
 Address \_\_\_\_\_  
Street City State Zip

5. Please read A.R.S. § 4-203.02 Special event license; rules and R19-1-205 Requirements for a Special Event License.  
**Note: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.**  
"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT UNLESS THEY ARE IN AUCTION SEALED CONTAINERS OR THE SPECIAL EVENT LICENSE IS STACKED WITH WINE /CRAFT DISTILLERY FESTIVAL LICENSE"

6. What type of security and control measures will you take to prevent violations of liquor laws at this event?  
 (List type and number of police/security personnel and type of fencing or control barriers, if applicable.)  
20 Number of Police 60 Number of Security Personnel  Fencing  Barriers  
 Explanation: Glendale Police Department to coordinate Police personnel and SAFE Security to coordinate Private Security personnel including Liquor Control Specialists with ID verification devices along with age verification wristbands and licensed bartenders and beverage management.

**SECTION 11** Date(s) and Hours of Event. May not exceed 10 consecutive days.  
 See A.R.S. § 4-244(15) and (17) for legal hours of service.

	Date	Day of Week	Event Start Time AM/PM	License End Time AM/PM
DAY 1:	<u>12/31/2016</u>	<u>Saturday</u>	<u>(A)7:30 AM (B)11:30 AM</u>	<u>(A)12:30 PM (B) 4:30 PM</u>
DAY 2:	_____	_____	<small>Bowl game start time TBD per ESPN</small>	<small>Time announced on Dec. 4, 2016</small>
DAY 3:	_____	_____	_____	_____
DAY 4:	_____	_____	_____	_____
DAY 5:	_____	_____	_____	_____
DAY 6:	_____	_____	_____	_____
DAY 7:	_____	_____	_____	_____
DAY 8:	_____	_____	_____	_____
DAY 9:	_____	_____	_____	_____
DAY 10:	_____	_____	_____	_____



**Key**

	Restrooms (Portable/Accessible)
	Operational
	EBB
	Merch
	First Aid/Security
	Sponsor Activation
	Tent (Only Club/)
	S&E (S 20)
	Generator
	USAT 7-24
	Light Tower

# Fiesta Bowl Fan Fest APS Stadium Club

December 31, 2016

Time TBD ( 9AM-12:30PM or 11:30AM-4:30PM)

Grand Canyon University of Phoenix Stadium, Glendale, AZ  
 17th Ave SW, Phoenix, AZ 85007  
 Phone: 602.417.5000 ext. 4111 | Fax: 602.417.5000  
 Website: www.gcu.edu | www.gcu.edu

Draw date: 10-27-16



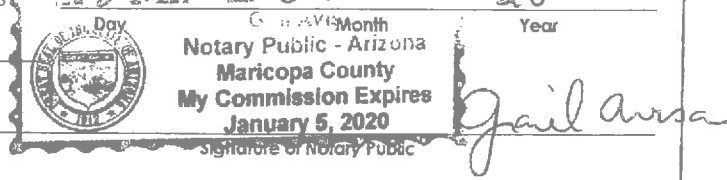
**SECTION 13** To be completed only by an Officer, Director or Chairperson of the organization named in Section 1.

I, Curtis J. Krizan declare that I am an OFFICER, DIRECTOR, or CHAIRPERSON  
(Print Full Name)  
appointing the applicant listed in Section 9, to apply on behalf of the foregoing organization for a Special Event  
Liquor License.

X Curtis J. Krizan CFO 10/27/16 480-350-0921  
(Signature) Title/ Position Date Phone #

The foregoing instrument was acknowledged before me this 27th October 2016  
Day Month Year

State Arizona County of Maricopa  
My Commission Expires on: 01/05/20 Date



**SECTION 14** This section is to be completed only by the applicant named in Section 9.

I, Nathaniel Trevor Hayden declare that I am the APPLICANT filing this application as  
(Print Full Name)  
listed in Section 9. I have read the application and the contents and all statements are true, correct and  
complete.

X NTHayden Director of Operations 10/20/16  
(Signature) Title/ Position Date Phone #

The foregoing instrument was acknowledged before me this 26th October 2016  
Day Month Year

State Arizona County of Maricopa  
My Commission Expires on: 01/05/20 Date



Please contact the local governing board for additional application requirements and submission deadlines. Additional  
licensing fees may also be required before approval may be granted. For more information, please contact your local  
jurisdiction: [http://www.azliquor.gov/assets/documents/homepage\\_docs/spec\\_event\\_links.pdf](http://www.azliquor.gov/assets/documents/homepage_docs/spec_event_links.pdf).

**SECTION 15** Local Governing Body Approval Section

I, \_\_\_\_\_ recommend  APPROVAL  DISAPPROVAL  
(Government Official) (Title)

on behalf of \_\_\_\_\_  
(City, Town, County) Signature Date Phone

FOR DEPARTMENT OF LIQUOR LICENSES AND CONTROL USE ONLY

APPROVAL  DISAPPROVAL BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**A.R.S. § 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice**

B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE. THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.

E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.

F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.





Arizona Department of Liquor Licenses and Control  
 800 W Washington 5th Floor  
 Phoenix, AZ 85007-2934  
 www.azliquor.gov  
 (602) 542-5141

<b>FOR DLIC USE ONLY</b>	
Event Date(s):	
Event time start/end:	
CSR:	
License:	

**APPLICATION FOR SPECIAL EVENT LICENSE**  
 Fee= \$25.00 per day for 1-10 days (consecutive)  
 A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

**IMPORTANT INFORMATION: This document must be fully completed or it will be returned.**

The Department of Liquor Licenses and Control must receive this application ten (10) business days prior to the event. If the special event will be held at a location without a permanent liquor license or if the event will be on any portion of a location that is not covered by the existing liquor license, this application must be approved by the local government before submission to the Department of Liquor Licenses and Control (see Section 15).

**SECTION 1** Name of Organization: Arizona Sports Foundation dba Fiesta Bowl

**SECTION 2** Non-Profit/IRS Tax Exempt Number: [REDACTED]

**SECTION 3** The organization is a: (check one box only)

- Charitable  Fraternal (must have regular membership and have been in existence for over five (5) years)  
 Religious  Civic (Rotary, College Scholarship)  Political Party, Ballot Measure or Campaign Committee

**SECTION 4** Will this event be held on a currently licensed premise and within the already approved premises?  Yes  No

Name of Business	License Number	Phone (include Area Code)
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**SECTION 5** How is this special event going to conduct all dispensing, serving, and selling of spirituous liquors? Please read R-19-318 for explanation (look in special event planning guide) and check one of the following boxes.

- Place license in non-use  
 Dispense and serve all spirituous liquors under retailer's license  
 Dispense and serve all spirituous liquors under special event  
 Split premise between special event and retail location

(If not using retail license, submit a letter of agreement from the agent/owner of the licensed premise to suspend the license during the event. If the special event is only using a portion of premise, agent/owner will need to suspend that portion of the premise.)

**SECTION 6** What is the purpose of this event?  On-site consumption  Off-site (auction)  Both

**SECTION 7** Location of the Event: University of Phoenix Stadium - Lawn B

Address of Location: 1 West Cardinals Drive (Lawn B) Glendale, AZ 85305

Street	City	COUNTY	State	Zip
--------	------	--------	-------	-----

**SECTION 8** Will this be stacked with a wine festival/craft distiller festival?  Yes  No

**SECTION 9** Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Section 1. (Authorizing signature is required in Section 13.)

1. Applicant: Hayden Nathaniel Trevor [REDACTED]

Last	First	Middle	Date of Birth
------	-------	--------	---------------

2. Applicant's mailing address: 7135 East Camelback Road Suite Ste#190 Scottsdale, AZ 85251

Street	City	State	Zip
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3. Applicant's home/cell phone: [REDACTED] Applicant's business phone: (480) 736-3917

4. Applicant's email address: [REDACTED]

**SECTION 10**

- Has the applicant been convicted of a felony, or had a liquor license revoked within the last five (5) years?  
 Yes  No (If yes, attach explanation.)
- How many special event licenses have been issued to this location this year? 1  
 (The number cannot exceed 12 events per year; exceptions under A.R.S. §4-203.02(D).)
- Is the organization using the services of a promoter or other person to manage the event?  Yes  No  
 (If yes, attach a copy of the agreement.)
- List all people and organizations who will receive the proceeds. Account for 100% of the proceeds. The organization applying must receive 25% of the gross revenues of the special event liquor sales. Attach an additional page if necessary.

Name Arizona Sports Foundation dba Fiesta Bowl Percentage: 100%  
 Address 7135 East Camelback Road Suite #190 Scottsdale AZ 85251  
Street City State Zip

Name \_\_\_\_\_ Percentage: \_\_\_\_\_  
 Address \_\_\_\_\_  
Street City State Zip

5. Please read A.R.S. § 4-203.02 Special event license; rules and R19-1-205 Requirements for a Special Event License.

**Note: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.**

**"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT UNLESS THEY ARE IN AUCTION SEALED CONTAINERS OR THE SPECIAL EVENT LICENSE IS STACKED WITH WINE /CRAFT DISTILLERY FESTIVAL LICENSE"**

- What type of security and control measures will you take to prevent violations of liquor laws at this event?  
 (List type and number of police/security personnel and type of fencing or control barriers, if applicable.)

8-12 Number of Police 30 Number of Security Personnel  Fencing  Barriers

Explanation: Glendale Police Department to coordinate Police personnel and SAFE Security to coordinate Private Security personnel including Liquor Control Specialists with ID verification devices along with age verification wristbands and licensed bartenders and beverage management.

**SECTION 11** Date(s) and Hours of Event. May not exceed 10 consecutive days.  
 See A.R.S. § 4-244(15) and (17) for legal hours of service.

	Date	Day of Week	Event Start Time AM/PM	License End Time AM/PM
DAY 1:	<u>12/31/2016</u>	<u>Saturday</u>	(A)7:30AM (B)11:30 AM	(A)12:30PM (B) 4:30 PM
DAY 2:	_____	_____	<small>Bowl game start time TBD per ESPN</small>	<small>Time announced on Dec. 4, 2016</small>
DAY 3:	_____	_____	_____	_____
DAY 4:	_____	_____	_____	_____
DAY 5:	_____	_____	_____	_____
DAY 6:	_____	_____	_____	_____
DAY 7:	_____	_____	_____	_____
DAY 8:	_____	_____	_____	_____
DAY 9:	_____	_____	_____	_____
DAY 10:	_____	_____	_____	_____

# Fiesta Bowl Fan Fest Lawn B Alumni/Private Parties

December 31, 2016  
Time TBD (8-12:30/11:30-4:30)  
University of Phoenix Stadium  
Total Sq. Footage: ~208,000  
Max capacity 12,500 | Expected 8,500

- ### Key
- Tent
  - Restroom
  - 20 Ft. Exit
  - Generator
  - 20 Ft. Fire Lane
  - Light Tower



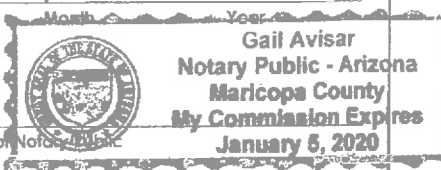
**SECTION 13** To be completed only by an Officer, Director or Chairperson of the organization named in Section 1.

I, Robert Douglas Whitehouse declare that I am an OFFICER, DIRECTOR, or CHAIRPERSON  
(Print Full Name)  
appointing the applicant listed in Section 9, to apply on behalf of the foregoing organization for a Special Event  
Liquor License.

X Robert Douglas Whitehouse VP of Operations 11/10/16 480 350 844  
(Signature) Title/ Position Date Phone #

The foregoing instrument was acknowledged before me this 10 11 16  
Day Month Year  
State Arizona County of Maricopa

My Commission Expires on: 01/05/20 Gail Avisar  
Date Signature of Notary Public



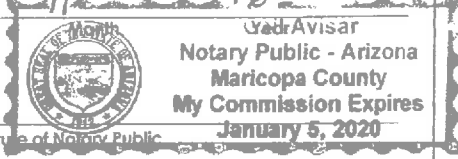
**SECTION 14** This section is to be completed only by the applicant named in Section 9.

I, Nathaniel Trevor Hayden declare that I am the APPLICANT filing this application as  
(Print Full Name)  
listed in Section 9. I have read the application and the contents and all statements are true, correct and  
complete.

X NTHayden Director of Event Operations 11/10/16 480 736-3917  
(Signature) Title/ Position Date Phone #

The foregoing instrument was acknowledged before me this 10 11 16  
Day Month Year  
State Arizona County of Maricopa

My Commission Expires on: 01/05/20 Gail Avisar  
Date Signature of Notary Public



Please contact the local governing board for additional application requirements and submission deadlines. Additional licensing fees may also be required before approval may be granted. For more information, please contact your local jurisdiction: [http://www.azliquor.gov/assets/documents/homepage\\_docs/spec\\_event\\_links.pdf](http://www.azliquor.gov/assets/documents/homepage_docs/spec_event_links.pdf).

**SECTION 15** Local Governing Body Approval Section

I, \_\_\_\_\_ recommend  APPROVAL  DISAPPROVAL  
(Government Official) (Title)

on behalf of \_\_\_\_\_  
(City, Town, County) Signature Date Phone

FOR DEPARTMENT OF LIQUOR LICENSES AND CONTROL USE ONLY

APPROVAL  DISAPPROVAL BY: \_\_\_\_\_ DATE: \_\_\_\_\_

A.R.S. § 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice  
B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.  
D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE. THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.  
E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.  
F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.

16152

**GLENDALE POLICE DEPARTMENT**  
Liquor Application Worksheet

Date: 11-08-16

License Type: **Series 15 Special Event (Temporary License)**

Definition: Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

Application Type: **New License**

Definition: New license

Business Name: **Arizona Sports Foundation dba Fiesta Bowl**

Business Address: **7135 E. Camelback Rd. Suite 190 (Event at U of P Stadium - Great Lawn)**

**Applicant/s Information**

Name: **Hayden, Nathaniel T.**

Name:

Name:

Name:

**Background investigation of applicant/s completed.**

Calls for Service History:	Call history for location beginning: 11/8/2015	Other Suites	New ownership call history beginning:
Liquor Related	7		
Vice Related			
Drug Related	3		
Fights / Assaults	58		
Robberies			
Burglary / Theft	6		
911 calls			
Trespassing	22		
Accidents	21		
Fraud / Forgery	35		
Threats	1		
Criminal damage	12		
Other non-criminal*	56		
Other criminal	27		
<b>Total calls for service</b>	<b>248</b>	<b>N/A</b>	<b>N/A</b>

\* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

**GLENDALE POLICE DEPARTMENT**  
Liquor Application Worksheet

**Applicant Background Synopsis:**

All proceeds from this event go to the Arizona Sports Foundation (dba Fiesta Bowl).

Event is scheduled for 12-31-16 (Sat) Fiesta Bowl Fan Fest - Great Lawn.

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

**Current License Holder:**

N/A

**Location History:**

No significant Calls for Service history at this location.

**Special Concerns:**

None found

**Background investigation complete:**

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-8-16</u>
CID Lieutenant or Commander	<u>A. Adler #668</u>	<u>12-8-16</u>
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>C. [Signature]</u>	<u>11/9/16</u>

16-150

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Date: 11-21-16

License Type: **Series 15 Special Event (Temporary License)**

Definition: Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

Application Type: **New License**

Definition: New license

Business Name: **Arizona Sports Foundation dba Fiesta Bowl**

Business Address: **7135 E. Camelback Rd. Suite 190 (Event at U of P Stadium - Lawn B)**

### Applicant/s Information

Name: **Hayden, Nathaniel T.**

Name:

Name:

Name:

### Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 11/8/2015	Other Suites	New ownership call history beginning:
Liquor Related	7		
Vice Related			
Drug Related	3		
Fights / Assaults	58		
Robberies			
Burglary / Theft	6		
911 calls			
Trespassing	22		
Accidents	21		
Fraud / Forgery	35		
Threats	1		
Criminal damage	12		
Other non-criminal*	56		
Other criminal	27		
Total calls for service	248	N/A	N/A

\* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

**GLENDALE POLICE DEPARTMENT**  
Liquor Application Worksheet

**Applicant Background Synopsis:**

All proceeds from this event go to the Arizona Sports Foundation (dba Fiesta Bowl).

Event is scheduled for 12-31-16 (Sat) Fiesta Bowl Fan Fest - Lawn B.

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

**Current License Holder:**

N/A

**Location History:**

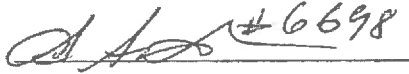


No significant Calls for Service history at this location.

**Special Concerns:**

None found

**Background investigation complete:**

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-21-16</u>
CID Lieutenant or Commander	<u> #6698</u>	<u>11-22-16</u>
Deputy City Attorney	<u></u>	<u>                    </u>
Chief of Police or designee	<u></u>	<u>11-23-16</u>





Legislation Description

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**File #:** 16-628, **Version:** 1

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**RECOMMEND APPROVAL OF LIQUOR LICENSE NO. 5-21894, HOME2 SUITES BY HILTON**

Staff Contact: Vicki Rios, Director, Budget and Finance

**Purpose and Recommended Action**

This is a request for City Council to recommend approval to the Arizona Department of Liquor Licenses and Control of a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Home2 Suites by Hilton located at 6620 North 95<sup>th</sup> Avenue. The Arizona Department of Liquor Licenses and Control application (No. 10076828) was submitted by Trent Charles Johnson.

**Background Summary**

The location of the establishment is in the Yucca District and is over 300 feet from any church or school. The property is zoned PAD (Planned Area Development). The population density within a one-mile radius is 3,252. This series 10 is a new license to this location, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

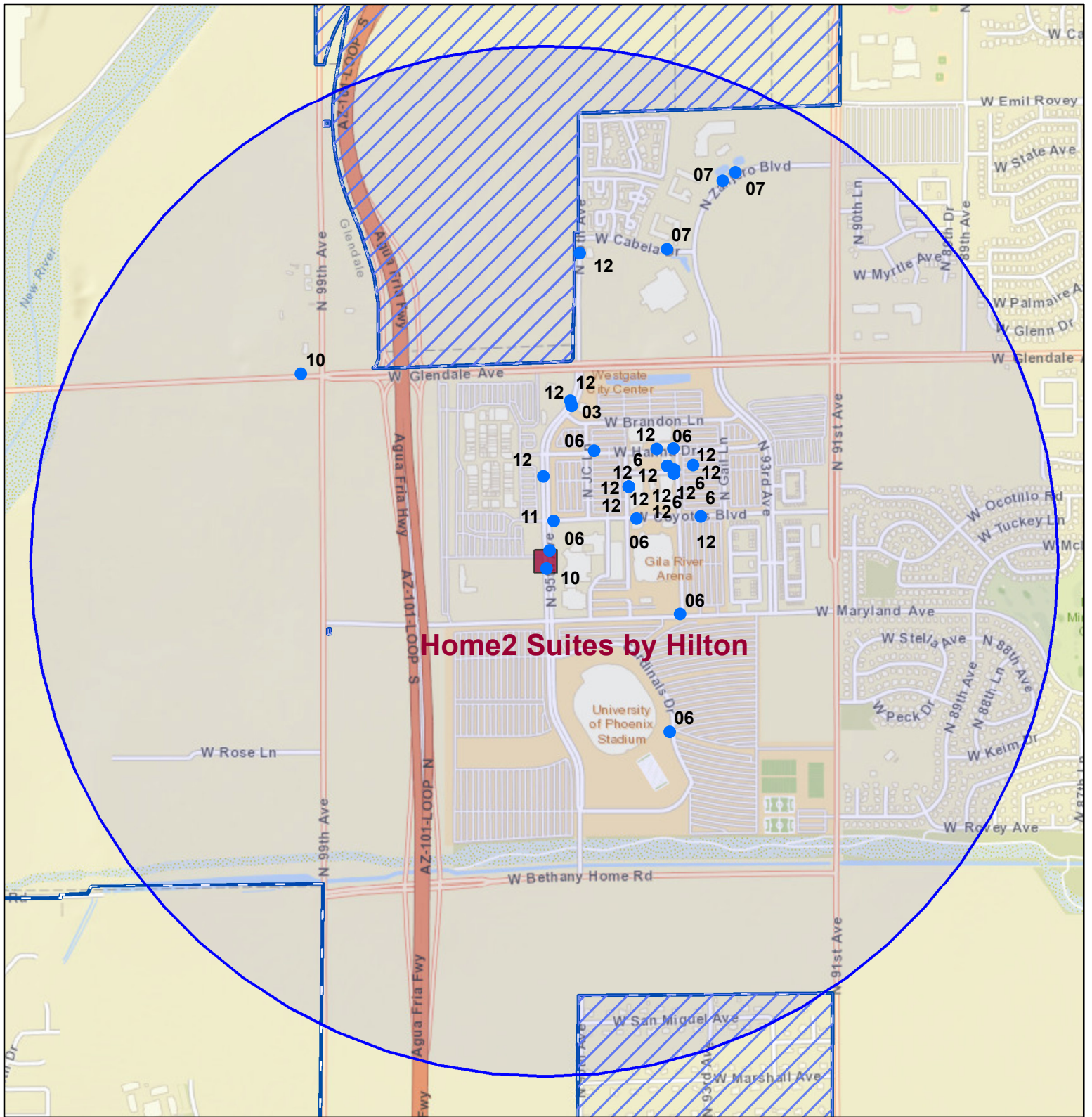
<b>Series</b>	<b>Type</b>	<b>Quantity</b>
03	Domestic Microbrewery	1
06	Bar - All Liquor	10
07	Bar - Beer and Wine	3
10	Liquor Store - Beer and Wine	2
11	Hotel/Motel	1
12	Restaurant	<u>16</u>
	<b>Total</b>	<b>33</b>

Pursuant to A.R.S. § 4-203(A), when considering this new, non-transferable series 10 license, Council may take into consideration the location, as well as the applicant's capability, qualifications, and reliability.

The City of Glendale Development Services, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

**Community Benefit/Public Involvement**

No public protests were received during the 20-day posting period, November 7 thru November 27, 2016.



**BUSINESS NAME:** Home2 Suites by Hilton

**LOCATION:** 6620 N. 95th Avenue

**APPLICANT:** Trent Charles Johnson

**ZONING:** PAD

**APPLICATION NO:** 5-21894

**SALES TAX AND LICENSE DIVISION  
CITY OF GLENDALE, AZ**



Ke-154

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Date: 11-22-16

License Type: **Series 10 Beer and Wine Store (Beer and Wine only)**

Definition: Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

Application Type: **New License**

Definition: New license

Business Name: **Home2 Suites by Hilton**

Business Address: **6620 N. 95<sup>th</sup> Ave**

### Applicant/s Information

Name: **Johnson, Trent Charles (Agent)**

Name: **Lenz, David Alan**

Name: **Bogatay, Jonathan David**

Name: **Lenz, Jeffrey Scott**

### Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning:	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft			
911 calls			
Trespassing			
Accidents			
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*			
Total calls for service	N/A	N/A	N/A

\* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

**GLENDALE POLICE DEPARTMENT**  
Liquor Application Worksheet

**Applicant Background Synopsis:**

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

**Current License Holder:**

N/A

**Location History:**

N/A

**Special Concerns:**

None found

**Background investigation complete:**

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-22-16</u>
CID Lieutenant or Commander	<u>A. Anderson #6698</u>	<u>11-22-16</u>
Deputy City Attorney	<u></u>	<u></u>
Chief of Police or designee	<u>[Signature]</u>	<u>11-23-16</u>



Legislation Description

**File #:** 16-626, **Version:** 1

**RECOMMEND APPROVAL OF LIQUOR LICENSE NO. 5-4682, WINCO FOODS #109**

Staff Contact: Vicki Rios, Director, Budget and Finance

**Purpose and Recommended Action**

This is a request for City Council to recommend approval to the Arizona Department of Liquor Licenses and Control of adding Sampling Privileges to an active series 9 (Liquor Store) license for WinCo Foods #109 located at 5850 West Bell Road. The Arizona Department of Liquor Licenses and Control application (No. 09070122 S) was submitted by Nicholas Guttilla.

**Background Summary**

The location of the establishment is in the Sahuaro District and is over 300 feet from any church or school. The property is zoned C-2(General Commercial). The population density within a one-mile radius is 12,132. Approval of this application will add sampling privileges to WinCo Foods' existing series 9 (Liquor Store) license and will not increase the number of liquor licenses in the area. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	6
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	5
12	Restaurant	<u>22</u>
	<b>Total</b>	<b>38</b>

Sampling privileges are subject to the following rules which are regulated by the Arizona Department of Liquor Licenses and Control pursuant to A.R.S. § 4-206.01(J):

1. Any open product shall be kept locked by the licensee when the sampling area is not staffed.
2. The licensee is otherwise subject to all other provisions of this title. The licensee is liable for any violation of this title committed in connection with the sampling.
3. The licensed retailer shall make sales of sampled products from the licensed retail premises.
4. The licensee shall not charge any customer for the sampling of any products.
5. The sampling shall be conducted under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee.
6. Accurate records of sampling products dispensed shall be retained by the licensee.
7. Sampling shall be limited to three ounces of beer or cooler-type products, one and one-half ounces of wine

and one ounce of distilled spirits per person, per brand, per day.

8. The sampling shall be conducted only on the licensed premise.

The City of Glendale Development Services, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

**Community Benefit/Public Involvement**

No public protests were received during the 20-day posting period, November 2 thru November 22, 2016.



16-153

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Date: 11-21-16

License Type: **Series 9 - Sampling Privileges**

Definition: Allows a spirituous liquor store retailer to provide samples of spirituous liquors to customers, only under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee, in the original unbroken package, to be consumed on the premises.

Application Type: **Sampling Privileges**

Definition: Add "Sampling Privileges" to an existing Series 9 - Liquor Store (All spirituous liquor) license.

Business Name: **WinCo Foods #109**

Business Address: **5850 W. Bell Rd.**

### Applicant/s Information

Name: **Guttilla, Nicholas Carl**

Name:

Name:

Name:

### Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 11/21/2015	Other Suites	New ownership call history beginning:
Liquor Related	1		
Vice Related			
Drug Related	1		
Fights / Assaults	3		
Robberies			
Burglary / Theft	25		
911 calls			
Trespassing	1		
Accidents	7		
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*	37		
Other criminal	2		
Total calls for service	77	N/A	N/A

\* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.



**GLENDALE POLICE DEPARTMENT**  
Liquor Application Worksheet

**Applicant Background Synopsis:**

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

**Current License Holder:**

Nicholas Carl Guttilla (Agent)  
WinCo Foods LLC (Owner)

There are no known concerns with the current license holder.

**Location History:**

No significant Calls for Service history at this location.

**Special Concerns:**

None found

**Background investigation complete:**

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-21-16</u>
CID Lieutenant or Commander	<u>A. Anderson #6698</u>	<u>11-22-16</u>
Deputy City Attorney	<u>[Signature]</u>	<u>                    </u>
Chief of Police or designee	<u>[Signature] 11/21/16</u>	<u>11-23-16</u>



## Legislation Description

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**File #:** 16-550, **Version:** 1

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**AUTHORIZATION TO APPROVE A SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT WITH N. HARRIS COMPUTER CORPORATION, A SOLE SOURCE PROVIDER**

Staff Contact: Vicki Rios, Director, Budget and Finance

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to execute any and all necessary documents to enter into a software maintenance and support agreement with N. Harris Computer Corporation for the iNovah centralized cashiering system for three years and to approve funding in an amount not to exceed \$128,138.89 over the three year period.

**Background**

On May 27, 2008, City Council awarded Request for Proposal (RFP) 07-69 to N. Harris Computer Corporation for the municipal billing software system and centralized cashiering system. The cashiering system is used to process transactions from various departments. The cashiering system also interfaces with the utility billing and tax & license systems to allow for daily uploading of payment information.

**Analysis**

The Materials Manager may procure and contract for supplies and services without competition when there has been a written determination that competition is not available and there is only one known source for the supply or service.

This agreement is based upon a sole source determination compliant with the City of Glendale Code of Ordinances, Chapter 2, Article V, Section 2-148. System Innovators, a Division of N. Harris Computer Corporation, is the only provider of maintenance and support for the iNovah system. It is common in the software industry for the software maintenance to be provided by the creator of the proprietary system. The current maintenance agreement expires on December 31, 2016, and a new software maintenance agreement is necessary in order to keep the software operational, troubleshoot any problems, and receive any updates during the three year period. The cost of the software maintenance will be \$40,701.90 in year 1, \$42,680 in year 2, and \$44,756.99 in year 3 for a total of \$128,138.89 over the three year period.

**Previous Related Council Action**

On April 22, 2014, City Council approved the entering into of a maintenance and support agreement for the City's centralized cashiering system for three years.

On May 27, 2008, City Council awarded Request for Proposals 07-69 (Contract C-6423) to N. Harris Computer

Corporation for the municipal billing software system and centralized cashiering system.

**Community Benefit/Public Involvement**

The cashiering system interfaces with both the sales tax and utility billing systems which allows for daily upload of payment information directly to a customer's account.

**Budget and Financial Impacts**

The annual maintenance and support cost is budgeted in the Solid Waste Admin budget.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$128,138.89</b>	<b>2440-17730-522700, Solid Waste Admin</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

## SUPPORT AND MAINTENANCE AGREEMENT

THIS SUPPORT AND MAINTENANCE AGREEMENT (the “Agreement”) made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”).

**BETWEEN:**

**N. HARRIS COMPUTER CORPORATION**  
(“Harris”)

- and -

**CITY OF GLENDALE**  
(“Organization”)

### RECITALS

1. Harris has licensed Software to Organization pursuant to a software license agreement entered into between the parties on the same date as the Effective Date (the “**Software License Agreement**”) and shall provide related services pursuant to a software implementation services agreement dated the same date as the Effective Date (the “**Software Implementation Services Agreement**”);
2. The Organization wishes to receive support and maintenance services related to the Software; and

Harris has agreed to provide the support and maintenance services related to the Software on the terms and conditions set out in this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. **Definitions.** Throughout this Agreement, the following words and expressions shall have the following meanings. All defined terms not otherwise defined herein shall have the meaning ascribed to them in the Software License Agreement.
  - (a) “**Update**” means a minor release of the Software which includes minor published modifications or enhancements to the Software related to a bug fix, minor additional functionality or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
  - (b) “**Upgrade**” means a major release of the Software which is a complete new published version of the Software that [significantly] modifies, revises or alters the

Software and adds features, functionality or enhancement to such Software. An Upgrade is designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).

- (c) **“Release”** means Updates and Upgrades. All Releases are provided in object code.
2. **Entire Agreement.** This Agreement (including the Change Order document referred to herein and the schedules and exhibits hereto) supersedes all prior representations, arrangements, negotiations, understandings and agreements between the parties, both written and oral, including without limitation, the Software License Agreement, relating to the subject matter hereof and sets forth the entire and exclusive agreement and understanding between Harris and Organization relating to the subject matter hereof. The terms of this Agreement may not be changed except by an amendment signed by the authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by Harris, with such provisions being deemed deleted.
  3. **Support Services.** Harris shall provide support services in accordance with the Standard Support and Maintenance Services – Harris Standard Guidelines, as may be modified or supplemented from time to time by Harris in its sole discretion, a current copy of which as of the Effective Date is attached to this Agreement as Exhibit 2 (the **“Support and Maintenance Services”**). Support and Maintenance Services shall be provided primarily via telephone and electronic mail, and Harris will provide site visits at Customer’s request subject to additional fees or when deemed necessary by Harris, in its sole discretion, to resolve an issue. The Support Services will be provided only during the hours of operation as described in Exhibit 2 hereto and which are in effect as of the Start Date (as defined below). To enable Harris to provide effective Support and Maintenance Services, the Organization will establish auto remote access procedures compatible with Harris’s then current practices which may be revised over time.
  4. **Support and Maintenance Fee.** In consideration for the Support and Maintenance Services, Organization shall pay the **“Support and Maintenance Fee”** as detailed in Exhibit 1 below. The Support and Maintenance Fee will be billed annually in advance. The first billing date shall be the pro rata amount for the period beginning on the date the Software is installed (the **“Start Date”**) to the **“Renewal Date”**, which is defined as being either January 1 or July 1 as chosen by the Organization in the applicable order form. Thereafter, the Support and Maintenance Fee shall be paid for the period beginning on each subsequent Renewal Date and ending at 23:59 eastern time, the day preceding the Renewal Date. Harris may change the Support and Maintenance Fee from time to time in relation to each renewal term but Organization shall only be billed once per year. The Support and Maintenance Fees shall increase where a reorganization occurs or due to any additional Licenses or other growth of Organization during the term based upon Harris’s then current billing practices.
  5. **Billable Fees.** In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for fees related to support and maintenance services for Third Party

Software and for Harris's direct expenses in providing support services pursuant to this Agreement for services that are not included in this Agreement ("Billable Fees"). The Billable Fees will cover expenses related to the installation/implementation of an Upgrade, any necessary services provided at Organization's premises, and at any other time when the parties may agree that additional services are required. The Billable Fees include as of the Start Date:

- (a) courier services, photocopying, faxing, long distance phone calls and reproduction services,
- (b) all direct travel expenses including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees; each individual's travel time billing rate of \$75.00/hour; a per diem rate of \$70.00 for week days and a \$125.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); and a mileage charge consistent with the Internal Revenue Service recommended rate per mile,
- (c) and all other reasonable expenses incurred in the performance of Harris's duties hereunder.

Third Party Software will be separately billed on each invoice. Harris may update its reimbursement policies from time to time, in which case such updated policies shall apply for purposes of this Agreement. The Billable Fees and Third Party Maintenance Fees shall automatically increase for each renewal period based on Harris's then current rates.

6. **Upgrades.** Conditional upon Organization paying the Support and Maintenance Fee, the Billable Fees, and any other additional amounts applicable to such Upgrades, Harris shall supply Upgrades to Organization. Upgrades may require additional services to be performed by Harris outside of the scope of the Support and Maintenance Services including additional training not covered by the Software Implementation Services Agreement and professional services for the installation and implementation of the Upgrade that will be subject to Harris's then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. The City's approval will be necessary before Harris can perform the work.
7. **Updates.** All Updates of the Software and all those services listed in Exhibit 2 which are included as part of the Support and Maintenance Services will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee, the Billable Fees, and any other amounts payable under this Agreement.
8. **Compliance with Laws.** The Organization shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its configuration and use of the Software, including without limitation those related to privacy, electronic communications and anti-spam legislation. Organization is responsible for ensuring that its configuration and use of the Software to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") and The Fair and Accurate

**Credit Transactions Act (“FACTA”) requirements and shall not store credit card and social security data in the system except in the designated encrypted fields for such data. Organization is solely responsible for re-validating the configuration settings used with the Software following the installation of any Updates or Upgrades prior to using such Update or Upgrade in a production environment.**

9. **Payments.** All payments hereunder shall be in U.S. dollars and shall be net of any taxes, tariffs or other governmental charges. Organization agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on Harris’ net income) on the Support and Maintenance Fee, the Billable Fees and any other fees set out in this Agreement.
10. **Term.** Unless terminated earlier in accordance with this Agreement, the initial term of this Agreement shall be for the 3 year period that begins on the Start Date of January 1, 2017 and ending December 31, 2019. Thereafter, this Agreement shall be effective for ongoing one year terms that shall automatically renew on an annual basis on the Renewal Date, unless terminated by either party upon giving to the other not less than three (3) month notice in writing prior to the end of any subsequent renewal term (such notice to be received by Harris no later than October 1<sup>st</sup> of the year preceding the date on which such renewal term is not being renewed) (a “**Renewal Term**”). Organization shall pay the then prevailing Support and Maintenance Fee (including any Third Party Software related fees) in advance for each term of this Agreement and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the next applicable Renewal Term.
11. **Ownership.** Title to and ownership of all copyright, trademarks, trade secrets, patents and all other intellectual property and proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the Support and Maintenance Services shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Agreement. Any updates related to Third Party Software shall be subject to the applicable Third Party Software licensor’s agreement.
12. **Termination.**
  - (a) Harris shall have the right to terminate this Agreement and/or suspend the provision of Support and Maintenance Services immediately if:
    - (i) Organization attempts to assign this Agreement or any of its rights hereunder, or undergoes a reorganization, without complying with the Software License Agreement;
    - (ii) Organization has not paid an invoice within ninety (90) days of the start of a Renewal Term;
    - (iii) Organization (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether

voluntary or involuntary, which has not been resolved within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court injunction or other court order which has a material adverse effect on its ability to make payments when due hereunder; or

(iv) Organization has breached or violated any obligations of confidentiality or any intellectual property or proprietary right of Harris.

(b) This Agreement shall automatically terminate in the event that the Software License Agreement expires or is terminated, or in the event that the Software Implementation Services Agreement is terminated prior to the Completion of Services, as that term is defined therein.

13. **Effects of Termination.** The termination or expiration of this Support and Maintenance Agreement shall result in the concurrent termination of the Software License Agreement and Software Implementation Services Agreement. Harris shall neither refund any Support and Maintenance Fees nor any Billable Fees if this Support and Maintenance Agreement is terminated.

14. **Disclaimer of Warranty.** TO THE GREATEST EXTENT PERMITTED BY LAW, THE SUPPORT AND MAINTENANCE SERVICES PROVIDED BY HARRIS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THE SUPPORT AND MAINTENANCE SERVICES OR ANY OTHER PRODUCT OR SERVICE PROVIDED HEREUNDER OR IN CONNECTION HERewith. HARRIS DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, QUALITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. HARRIS DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL MEET ANY OR ALL OF ORGANIZATION'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

Organization acknowledges and agrees that the Support and Maintenance Services are not designed nor intended to be used to maintain or manage any products requiring fail-safe operation and where the failure of the products or Support Services could lead to death, personal injury or environmental damage. HARRIS DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY WITH RESPECT TO THE USE OF THE SUPPORT AND MAINTENANCE SERVICES IN SUCH HIGH RISK ACTIVITIES.

15. **Notice.** Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the License Agreement.

16. **Waiver.** Either party's lack of enforcement of any provision in this Agreement in the event of a breach by the other shall not be construed to be a waiver of any such provision and the non-breaching party may elect to enforce any such provision in the event of any repeated



or continuing breach by the other.

17. **Confidentiality.** The particular provisions of this Agreement shall be deemed confidential in nature and neither Organization nor Harris shall divulge any of its provisions as set forth herein to any third party except as may be required by law and the provisions related to Confidential Information as detailed in the Software License Agreement shall apply equally to this Agreement.

18. **Limitation of Liability.**

- (a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination, expiration or other discharge of the obligations of the parties under this Agreement.
- (c) THE AGGREGATE LIABILITY OF HARRIS, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS AND ORGANIZATION'S EXCLUSIVE REMEDY WITH RESPECT TO THE SUPPORT SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY HARRIS IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE CAUSE OF ACTION, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF SUPPORT AND MAINTENANCE FEES ACTUALLY PAID BY THE ORGANIZATION TO HARRIS UNDER THIS AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION.
- (d) IN ADDITION TO THE FOREGOING, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HARRIS, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS BE LIABLE TO ORGANIZATION FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT DAMAGES, EXEMPLARY, PUNITIVE, SPECIAL, OR AGGRAVATED DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, COSTS OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- (e) CLAUSES (c) AND (d) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND, ACTION, OR PROCEEDING HOWSOEVER ARISING BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION

UNDERLYING SUCH CLAIM, DEMAND, ACTION, OR PROCEEDING INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY, EVEN IF HARRIS HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES OR SUCH LOSS OR DAMAGE IS FORSEEABLE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- (f) **Remedies.** Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of the Harris arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.
19. **Allocation of Risk.** The parties agree that the limited warranties, disclaimers and limitation of liability as set out in in this Agreement are fundamental elements of the basis of bargain between Harris and Organization and set forth an allocation of risk reflected in the fees and payments hereunder.
20. **Governing Law.** This Agreement shall be governed by the laws of the State of Arizona and the federal laws of the United States of America applicable therein. This Agreement excludes the Uniform Commercial Code and the United Nations Convention on Contracts for the International Sale of Goods (UNCCISG and any legislation implementing such Convention), if otherwise applicable.
21. **Assignment.** This Agreement may not be assigned by the Organization (including by way of Reorganization) unless, concurrently with any such assignment, the Organization assigns its rights under, and complies with the provisions of the License Agreement. This Agreement shall be binding upon and enure to the benefit of the parties, their successors and permitted assigns.
22. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, then such provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.
23. **Counterparts.** This Agreement may be executed in counterparts (whether by facsimile signature or in PDF format via e-mail or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.
24. **Mediation.** The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than

ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

25. **Survival**. Sections 1, 2, 4, 5, 8, 9, 11, 13-27, and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their obligations hereunder shall survive any termination or expiration unless and until waived expressly in writing by the party to whom they are of benefit.
26. **Relationship**. The parties are and shall at all times be independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the Parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose.
27. **Force Majeure**. No default, delay or failure on the part of Harris shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, acts or omissions on the part of the School, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier, the Internet or other electronic communications outside the control of Harris, or other disasters or events.

**IN WITNESS WHEREOF**, the Parties have executed this Support and Maintenance Agreement to be effective as of the date first written above.

**N. HARRIS COMPUTER CORPORATION**

Per: \_\_\_\_\_



Name: JEFFREY SUMNER  
Title: Executive Vice President

**CITY OF GLENDALE**

Per: \_\_\_\_\_

Name:  
Title:

Per: \_\_\_\_\_

Name:  
Title:

**Exhibit 1**  
**Annual Support and Maintenance Fee**

<u>Qty</u>	<u>Software Support</u>	<u>Unit Price</u>	<u>Extended</u>
1	iNovah- SWS Up to 300,000 Receipts (Includes Tax Mantra and iCapture)	\$ 40,315.00	\$ 40,315.00
	<b><u>Hardware Support</u></b>		
4	TPG A776 Printer - HWX	210.00	\$ 840.00
4	APG Cash Drawer - HWX	75.00	\$ 300.00
<b>Total for Term 1/1/2017-12/31/2017</b>			<b>\$ 41,455.00</b>
<u>Qty</u>	<u>Software Support</u>	<u>Unit Price</u>	<u>Extended</u>
1	iNovah- SWS Up to 300,000 Receipts (Includes Tax Mantra and iCapture)	\$ 42,330.75	\$ 42,330.75
	<b><u>Hardware Support</u></b>		
4	TPG A776 Printer - HWX	210.00	\$ 840.00
4	APG Cash Drawer - HWX	75.00	\$ 300.00
<b>Total for Term 1/1/2018-12/31/2018</b>			<b>\$ 43,470.75</b>
<u>Qty</u>	<u>Software Support</u>	<u>Unit Price</u>	<u>Extended</u>
1	iNovah- SWS Up to 300,000 Receipts (Includes Tax Mantra and iCapture)	\$ 44,447.29	\$ 44,447.29
	<b><u>Hardware Support</u></b>		
4	TPG A776 Printer - HWX	210.00	\$ 840.00
4	APG Cash Drawer - HWX	75.00	\$ 300.00
<b>Total for Term 1/1/2019-12/31/2019</b>			<b>\$ 45,587.29</b>
<b>3 YEAR TERM TOTAL</b>			<b>\$130,513.04</b>

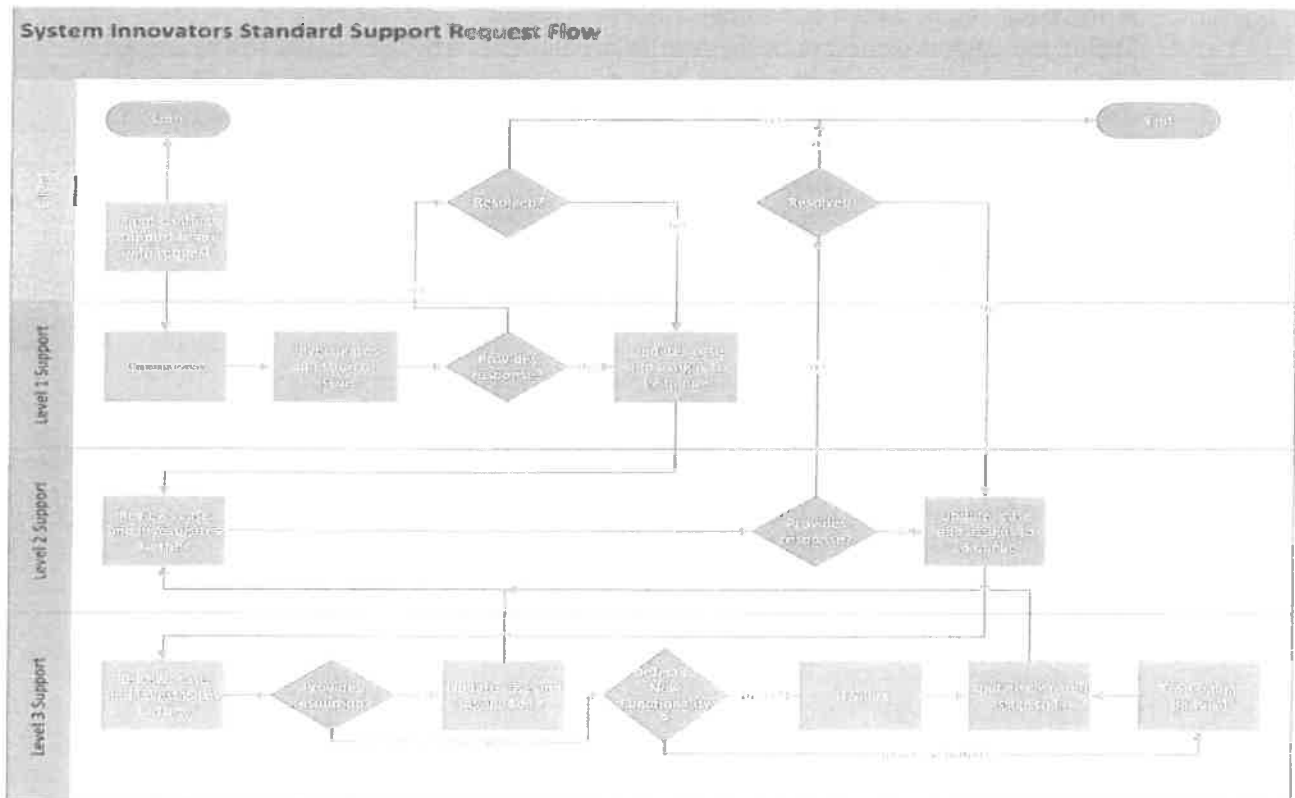
**Exhibit 2**  
**Standard Support and Maintenance Services – Standard Guidelines**

The purpose of this Exhibit 2 is to provide our customers with information on our standard coverage, the services which are included as part of the annual software support and maintenance services, a listing of call severities, an outline of our escalation procedures and other important details.

Consultant reserves the right to make modifications to this document as required; provided, however, Consultant shall not reduce the scope of support provided hereunder without the prior consent of the Organization.

**1 Description of Support Services**

**1.1 Support Request Flow**



**1.2 Support Request Process**

In order to initiate the support process, the client is required to notify System Innovators Client Services of a support request by phoning support or by sending an email. In the future a Web Portal

Ticketing Tool will be available. In either case the client will receive a case reference number for tracking the progress of the support request.

- All client support requests must include at a minimum: organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of the question or issue and any other information believed to be pertinent.
- A support analyst will record the request into the support tracking system. The client will receive a case number for issue tracking.
- The request will be logged to a queue and the first available support analyst will be assigned to work the support request with the client.
- While the support analyst investigates the issue, the client will be contacted for additional information, advised of issue status, and course of action for resolution.
- Should the support request uncover a product defect, the issue will also be logged into the development tracking system. Now, along with the case number, the client will also receive a bug number. At this time, the support case will be placed in a deferred state. The case will reference the bug number. Issues escalated to development will be scheduled for resolution in a future software maintenance release. The resolution timeline is dependent on the nature and complexity of the defect.
- Should the support request uncover new feature/functionality, the request will be logged into the development tracking system. Now, along with the case number, the client will also receive a change request number. At this time, the support case will be placed in a deferred state. The case will reference the change request number. Clients may be charged for new feature/ functionality requests.
- Contact the support department at your convenience for a status update on any and all support requests.

### **1.3 Standard Support Services and Activities**

The support services listed below are included as part of annual software support and maintenance:

- 800 toll free telephone support
- E-mail support call logging and notification
- Technical troubleshooting and issue resolution
- Periodic software maintenance updates that incorporate new product features/functionality
- Periodic maintenance updates of the software that incorporate corrections of defects, fixes of minor bugs
- Product release notes
- Product manuals
- Training guides
- Installation documentation
- New software release notifications
- Technical service bulletins
- Peripheral device support; drivers, firmware
- Technical support bulletins
- New software release notifications

- State and/or Federal mandated changes (charges may apply)
- Scheduled assistance for installations, upgrades and other special projects (charges may apply)
- Design review for potential enhancements or custom modifications (charges may apply)
- Limited training consultation (15 minute guideline)
- Attendance at the annual customer conference (attendance fees apply)

#### **1.4 Out of Scope Services and Activities**

- Extended training consultation
- Setup of peripheral devices; printers, scanners, barcode readers, imagers, cash drawers
- Custom software modifications
  - Source system interfaces
  - File imports and exports
  - Bills/scanlines/barcodes
  - Cashiering customizations
  - Reversal of customizations
- Data conversions / global modification to setup table data
- Database maintenance, repairs and optimization
- Database refreshes, backups, restores
- Operating system installation/upgrades of servers/workstations
- iNovah Public API consulting (billable service)
- Custom report development (billable service)
- Form creation or re-design (billable service)
- On-site installation, upgrade or troubleshooting
- Reconfiguration of hardware, file servers, and virtual environments
- Hardware system upgrades
- Third party software upgrades
- Assistance with creation of backup scripts / backup recovery
- Assistance with database installation, configuration and updating
- Preventative maintenance monitoring or other services
- Recommending or assisting with disaster recovery plans
- Assistance with recovering data resulting from system crashes (charges may apply)

#### **1.5 Third Party Support**

The purpose of this section is to provide our clients with information on the standard coverage and the services which are included in annual maintenance with regard to third party software support (if applicable). This section serves as a guideline for the support department but is superseded by any existing third party or other agreement.

- 800 telephone support – first line phone support for troubleshooting (more complex issues will be escalated to the actual third party vendor of the product)



- “On call” after hours support (scheduled assistance for installations, upgrades and other special projects – there may be charges depending on the scope of work)
- Technical troubleshooting
- Limited training questions (15 minute guideline)
- Support provided for installed database issues (30 minute guideline)
- Web Service installation and connection to database assistance
- Updating system to support new versions of licensed applications

## **2 Severity Levels**

### **2.1 Definitions**

In an effort to assign resources to incoming calls as effectively as possible, we have identified four types of call severities, 1, 2, 3, and 4. A Severity 1 call is deemed as an Urgent Priority call, Severity 2 is classified as a High Priority, Severity 3 is Medium Priority, and Severity 4 is Low Priority. The criteria used to establish guidelines for these calls are as follows:

Severity Levels	Definition
Severity 1	<p>The total unavailability of the production application, or a repeatable malfunction within the production application causing impact to business operation if not promptly restored.</p> <ul style="list-style-type: none"> <li>▪ System Down (Software Application)</li> <li>▪ Inability to process payments</li> <li>▪ Program errors without workarounds</li> <li>▪ Incorrect calculation errors impacting a majority of records</li> <li>▪ Aborted postings or error messages preventing data integration and update</li> <li>▪ Performance issues of severe nature impacting critical processes</li> </ul>
Severity 2	<p>Reproducible issues that affect the functioning of components within the application, or data inconsistencies with no work around available.</p> <ul style="list-style-type: none"> <li>▪ Calculation errors impacting a minority of records</li> <li>▪ Report calculation issues</li> <li>▪ Printer related issues (related to interfaces with our software and not the printer itself)</li> <li>▪ User Security/Permission issues</li> <li>▪ Workstation connectivity issues (Workstation specific)</li> </ul>
Severity 3	<p>Reproducible or intermittent Issues that affect the functioning of components within the application, or data inconsistencies. Workaround available.</p> <ul style="list-style-type: none"> <li>▪ Usability Issues</li> <li>▪ Performance issues not impacting critical processes</li> <li>▪ Report formatting Issues</li> <li>▪ Training questions, how to, or implementing new processes</li> <li>▪ Recommendations for enhancements on system changes</li> </ul>
Severity 4	<p>Requests for information, assistance on application capabilities, and other requests that do not fit the criteria for Severity 1, Severity2, or Severity 3.</p> <ul style="list-style-type: none"> <li>▪ Questions about documentation</li> <li>▪ Requests for documentation or information</li> <li>▪ Questions about products</li> <li>▪ Aesthetic issues</li> </ul>

### 3 Service Levels

#### 3.1 Response Time

Severity Levels	Response Time
Severity 1	1 - 24 Business Hours
Severity 2	1 - 2 Business Days
Severity 3	1 - 5 Business Days
Severity 4	1 - 10 Business Days

- Response times are not applicable during office closure for published holidays, or natural disasters, and/or other exceptional unplanned events.
- System Innovators does not guarantee case resolution during the response time, only acknowledgement of the support request.

#### **4 Client Designated Support Contacts**

The client will assign two (2) named resources, a primary and a backup, to be client designated support contacts responsible for:

1. Assisting with the support relationship between System Innovators and the client
2. Initiating and managing the priority case handling process
3. Distributing proactive notifications to the client's end users (as applicable)
4. Ensuring appropriate follow up and feedback from the client's end user
5. Ensuring that a communication link is operational for remote troubleshooting purposes; direct internet, virtual private network (VPN), remote access server (RAS)

#### **5 Contact Information and Support Hours**

##### **5.1 Contact Information**

Phone 800.963.5000 x2

Email [clientservices@systeminnovators.com](mailto:clientservices@systeminnovators.com)

##### **5.2 Support Hours**

Monday thru Friday 8am – 8pm Eastern Time

### **5.3 Holiday Schedule**

Please note that support services will be closed on designated days as outlined below. An asterisk \* next to the holiday indicates that the System Innovators office is closed, however, client support is available.

New Year's Day	Closed
President's Day (Observed)	Closed
Memorial Day (Observed)	Closed
4 <sup>th</sup> of July (Observed)	Closed
Labor Day	Closed
Columbus Day *	Closed
Thanksgiving Day	Closed
Day after Thanksgiving *	Closed
Christmas Day (Observed)	Closed
Day after Christmas *	Closed

## **6 Support Request Escalation**

### **6.1 Process**

This escalation process was implemented to ensure that client issues are handled in an efficient and timely manner. If at any time you are not completely satisfied with the handling of the support request, escalate with the support department as follows:

- Contact the analyst working the issue
- Contact the Manager of Support
- Contact the Vice President of Support
- Contact the Executive Vice President of System Innovators





## Legislation Description

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**File #:** 16-600, **Version:** 1

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX TO ACCESS PHOENIX'S BUSINESS INTELLIGENCE SYSTEM FOR TRANSACTION PRIVILEGE TAX REMITTANCE ANALYTICS**

Staff Contact: Vicki Rios, Director, Budget and Finance

### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into an intergovernmental agreement (IGA) with the City of Phoenix. The IGA will allow staff to access City of Glendale transaction privilege tax information using Phoenix's Business Intelligence system. The city's cost to use the system is a one-time fee of \$10,000 and an annual maintenance fee of \$1,800.

### **Background**

Chapter 255, Laws of Arizona 2013 (commonly referred to by its original bill number, HB2111), made changes to the administration process for Transaction Privilege Taxes. The law calls for the Arizona Department of Revenue (ADOR) to become the single point of administration for licensing, filing and payment of all state, county and municipal transaction privilege taxes. The transition is scheduled to occur January 2017.

The City of Phoenix, in anticipation of the transition to the ADOR, developed a Business Intelligence (BI) system to capture taxpayer reported data which will be collected by the ADOR. The system provides dashboards and tools the city can use to access detailed information about money distributed to the city including the taxpayer, business code, tax period, demographic information, deductions taken by a taxpayer, taxpayers that have filed a zero return, taxpayers that have not filed a return, and taxpayers that have filed a return but failed to remit payment.

### **Analysis**

The use of the City of Phoenix BI system is a short term relatively low cost solution which will allow the city to monitor revenues collected by the ADOR until the city is able to obtain and build its own BI system. Staff participated in a demonstration of the system and found it to be very useful. Staff will be able to use the system to identify taxpayers who may have inadvertently reported to an incorrect jurisdiction or ceased reporting or claimed invalid deductions resulting in a loss of revenue to the city. The City of Phoenix is making their BI system available to the cities who were previously non-program or self-collecting but will become program cities effective in January 2017. Currently, the cities of Apache Junction, Chandler, Douglas, Flagstaff, Nogales, Peoria, Prescott, Surprise, Tempe, and Tucson are also entering into IGA's with the City of Phoenix to take advantage of this resource.

The City of Glendale will pay Phoenix an initial one-time cost of \$10,000 and an annual maintenance fee of

\$1,800 for operating costs and underlying infrastructure. This agreement can be terminated by mutual agreement or by either party giving the other at least thirty (30) calendar days advance written notice of termination of the agreement.

**Previous Related Council Action**

On March 17, 2015 and December 6, 2016, City Council was updated on the transition of the City's tax administration to the ADOR.

On May 6, 2014, City Council was provided a brief overview on HB2111.

**Community Benefit/Public Involvement**

The community benefits from tax simplification by establishing a single point of administration and collection so that taxpayers can pay all state, county or municipal transaction privilege taxes.

**Budget and Financial Impacts**

Funding for the one-time cost of \$10,000 will be absorbed by the Finance Administration Budget. For FY17, the annual fee of \$1,800 will be absorbed by the License/Collections budget. For subsequent fiscal years a supplemental request for the annual fee will be made through the budget process.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$10,000</b>	<b>1000-11310-522700, Finance Administration</b>
<b>\$1,800</b>	<b>1000-11340-518200, License/Collection</b>

Capital Expense? No

Budgeted? No

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**THE CITY OF GLENDALE**  
**AND**  
**THE CITY OF PHOENIX**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, pursuant to Arizona Revised Statutes (ARS) §11-952, between the **City of Glendale** (“**Glendale**”) acting by and through its city council and the **CITY OF PHOENIX** (“**PHOENIX**”), acting by and through its City Council. ARS. §42-6001 establishes that the Arizona Department of Revenue (DOR) will collect and administer municipal privilege, transaction and use taxes (“Taxes”) for all Arizona cities and towns. As part of their administration of the Taxes, DOR shall provide each city or town access to data covering the amount of Taxes reported and the amount of Taxes distributed to that specific city and town. The purpose of this Agreement is to provide PHOENIX the mechanism to allow other cities and towns to cooperatively use the PHOENIX hosted and developed municipal tax dashboards on the PHOENIX Business Intelligence system (“System”).

**RECITALS**

1. Glendale is authorized to enter into intergovernmental agreements by Arizona Revised Statutes § 11-951, *et seq.*, and to share taxpayer information under the Glendale Tax Code Section 21.1-510.



2. PHOENIX is authorized by City Charter, Chapter 2, Section 2, and PHOENIX Tax Code Sec. 14-510 to enter into this Agreement.

3. This Agreement establishes the structure whereby other cities and towns access the System, reimburse PHOENIX for its cost of investment in the System, and share the costs of future continued cooperative use of the System.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

#### **I. SCOPE OF AGREEMENT**

1. System is already in place with dashboards providing municipal tax data furnished by DOR.

2. Glendale agrees that PHOENIX will maintain and administer the System.

3. PHOENIX will provide System availability during the hours of 7 a.m. – 5 p.m. (MST), Monday-Friday, excluding holidays.

4. External users will have a City of Phoenix Active Directory and VPN account created for access to the dashboards. This requires that external users have the appropriate background checks from their organizations that meet or exceed screening requirements established by ARS §41-4401.

5. Support services will be provided via telephone helpline during the hours

of 7 a.m. – 5 p.m. (MST), Monday-Friday, excluding holidays. Users will report system errors to Support Services.

6. Outages due to scheduled or emergency network, software and/or hardware maintenance will be broadcast to authorized users when possible in advance via email. All reasonable attempts will be made to get the System diagnosed and operational within twenty-four (24) hours.

7. PHOENIX will allow Glendale to only use System to access Glendale Taxes data supplied by DOR.

8. Glendale will be billed by and shall reimburse PHOENIX, in advance of its access to Glendale data, the sum of \$10,000.00 as its share of the cost for the System.

9. Glendale will be billed \$1,800.00 annually as its share for the operational cost of cooperative use of the System, which shall be due thirty (30) days from the invoice date.

10. All activities relating to the provisions set forth in this Agreement are to be coordinated between the municipal tax officers or their designees.

11. Any failure of the System resulting from negligence by Glendale is a breach this Agreement.

12. Municipal tax data hosted by PHOENIX and presented in the System is

confidential information and may not be distributed or copied except as permitted by

ARS §42-2003. The data sources are furnished by the DOR and are considered confidential information as defined in ARS §42-2001. PHOENIX does not control and cannot guarantee the relevance, timeliness, or accuracy of this data and provides no warranty, expressed or implied, as to the accuracy, reliability or completeness of furnished data. Sample data types include, but may not be limited to:

<b>Reports</b>	<b>Description</b>
<b>New License Report</b>	Demographic information about taxpayers that have completed a Joint Tax Application with DOR, that have a location or expect to have taxable activity within that city/town.
<b>License Update Report</b>	Demographic information for Taxpayers that have had a change made to their account and have a location or have that city's/town's region code on their profile.
<b>City Payment Journal Detail Report</b>	Detailed information about money that is distributed to the city/town, including the taxpayer, business code and period covered for each distribution.
<b>No Money Report</b>	Detailed information about a taxpayer that has filed a net zero return for that city/town or has not paid any money for the return for the period covered by GL Accounting month.
<b>Deduction Report</b>	Detailed information about deductions that taxpayers have taken for activity within the city/town. The report will reflect the deductions taken for each location and each business code for the city.
<b>Fund Distribution Report</b>	Detailed information about money that is distributed to the city/town at the Fund Level, including the taxpayer, location code, business code and tax period covered for

each distribution.

13. The System supports five TPT Simplification dashboards listed below:

	<b>Dashboard Description</b>
<b>Centralized Payment Analysis</b>	This dashboard provides visualization and detailed information about money that is distributed to a city/town (City Payment Journal Detail from DOR) by DOR, including the taxpayer, business code and tax period covered for each distribution.
<b>Centralized License Analysis</b>	This dashboard provides visualization and detailed demographic information (License Update Report and New License Report from DOR) for taxpayers that have a taxable location in Arizona.
<b>Centralized Fund Analysis</b>	This dashboard provides visualization and detailed information about money that is distributed to a city/town at the Fund Level (Fund Distribution Report from DOR), including the taxpayer, location code, business code and period covered for each distribution.
<b>Centralized Deduction Analysis</b>	This dashboard provides visualization and detailed information about deductions (Deduction Report from DOR) that taxpayers have taken on their returns. The report reflects deductions taken for each location and each business code by jurisdiction.
<b>Centralized No Payment Analysis</b>	This dashboard provides visualization and detailed information about a) taxpayers that have filed a no activity/zero return b) taxpayers that have not filed a return for a location for a city and c) taxpayers that have filed a return but failed to remit payment. The source is the No Money Report from DOR.

14. The System supports the three user security models listed below. Each city/town will select one of the three security profiles below for each user that they designate for System access. Glendale acknowledges that each individual user should be assigned the lowest level of security needed depending on their job duties. Glendale also

acknowledges that information obtained from DOR, and displayed by Phoenix, is confidential information and may only be disclosed as authorized by ARS§ 42-2003. Should PHOENIX become aware of unauthorized use or disclosure of confidential information, all users shall be revoked and this agreement shall terminate upon notice to Glendale.

<b>Security Model</b>	<b>Security Model Description</b>
<b>Restricted</b>	This role for management staff allows access to the summary level data view for financial dashboards (Centralized Payment Analysis and Centralized Fund Analysis) for the user's jurisdiction.
<b>Mid-Level</b>	This role for accounting staff allows access to the summary and detail level data views for financial dashboards (Centralized Payment Analysis and Centralized Fund Analysis) for the user's jurisdiction.
<b>Full Access</b>	This role for audit/enforcement/supervisory user staff allows access to the summary and detail level data views for financial dashboards (Centralized Fund Analysis) for the user's jurisdiction and access to the Centralized Payment Analysis, Centralized License Analysis, Centralized Deduction Analysis, and No Payment Analysis dashboards for any jurisdiction, subject to pre-existing limitations outside of this Agreement.

**II. MISCELLANEOUS PROVISIONS**

1. This Agreement shall become effective on the date of execution and shall continue in full force and effect until it is terminated either by mutual agreement of the parties or by either party giving the other at least ninety (90) calendar days advance

written notice of termination of the Agreement, which notice shall specify the date of termination.

2. Glendale or PHOENIX may cancel this Agreement at any time without penalty or further obligation. No pro-rata refund will be returned.

3. This Agreement is subject to the cancellation provisions of ARS §38-511.

4. Cancellation pursuant to either Paragraphs 2 or 3 above shall be effective when written notice from the chief executive officer of one city/town is received by the other party to this Agreement, unless the notice specifies a later time.

5. To the extent permitted by law, each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) whether direct or indirect (hereinafter collectively referred to as "Claims") arising out of System use, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

6. Glendale and PHOENIX both have an intergovernmental agreement with the State of Arizona whereby each obtains taxpayer information from the State subject to the conditions set forth in the intergovernmental agreement, including those

pertaining to confidentiality as defined in ARS §42-2001, and that confidential information may not be disclosed except as provided by statute, ARS §42-2001(B). To the extent that information being utilized by Glendale and hosted by PHOENIX may have been obtained initially from the State, each agrees to abide by the terms and conditions set forth in their respective intergovernmental agreements with the State of Arizona.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

CITY OF GLENDALE  
Budget and Finance Department, Tax & License Division  
Attn: Tax and License Manager  
5850 W. Glendale Avenue, Suite 104  
Glendale, AZ 85301

CITY OF PHOENIX  
Finance Department, Tax Division  
Attn: Tax Administrator  
251 W. Washington Street, 3rd Floor  
Phoenix, AZ 85003

8. This Agreement contains the entire understanding between the parties, and no statements, promises or inducements made by either party, their agents or employees that are not contained herein shall be valid or binding. This Agreement may not be altered except in writing and signed by each party hereto.

9. The failure to exercise any right, power or privilege under this Agreement shall not constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any right, power or privilege.

10. In the event that any provision, or any portion of any provision, of this Agreement is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision which can be given effect without the invalid provision and to this end the provisions of this Agreement shall be deemed to be severable.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PHOENIX  
a municipal corporation  
ED ZUERCHER, City Manager

City Of Glendale  
a municipal corporation  
KEVIN PHELPS, City Manager

By \_\_\_\_\_  
ED ZUERCHER

By \_\_\_\_\_  
KEVIN PHELPS

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk



APPROVED AS TO FORM AND  
WITHIN THE POWER AND  
AUTHORITY GRANTED UNDER  
THE LAWS OF THE STATE OF  
ARIZONA TO THE CITY OF PHOENIX

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City Attorney

APPROVED AS TO FORM AND  
WITHIN THE POWER AND  
AUTHORITY GRANTED UNDER  
THE LAWS OF THE STATE OF  
ARIZONA TO THE CITY OF  
GLENDALE

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City Attorney



## Legislation Description

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**File #: 16-627, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH HYAS GROUP, LLC, FOR DEFERRED COMPENSATION PLAN CONSULTING SERVICES**

Staff Contact: Jim Brown, Director, Human Resources and Risk Management

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into an agreement with The Hyas Group, LLC for Deferred Compensation Plan Consulting Services for one (1) year with the option to renew four (4) additional years in one year increments.

**Background**

During FY2015-2016, the City had been utilizing SST Benefits Consulting and Insurance Services, Inc. for deferred compensation plan consulting services. That agreement was set to expire on October 1, 2016. In August 2016, we began the RFP process for a deferred compensation plan consulting firm. The evaluation committee comprised of employees from Human Resources and the Deferred Compensation Committee reviewed the proposals for a deferred compensation plan consultant. The Hyas Group, LLC was ultimately selected as the vendor that best matched the needs of the City.

**Analysis**

It is critical that the City obtain the services of a deferred compensation consultant due to the fiduciary responsibilities of the City's Deferred Compensation Committee to have the investments reviewed on an ongoing basis. The consultant reviews and revises our investment policy as needed, monitors vendor performance, monitors investment performance and assists with selecting/deselecting investment funds when appropriate. Providing these services ensures that our deferred compensation plan is being monitored to provide our employees with sound investment options. The consultant also conducts quarterly meetings to provide the Deferred Compensation Committee with ongoing education and training regarding the market and their fiduciary responsibilities.

**Community Benefit/Public Involvement**

Providing oversight of our deferred compensation plan investments is a fiduciary responsibility that ultimately assists in providing quality benefit options to employees and will allow the City to attract and retain a highly skilled and qualified workforce to insure quality services for the betterment of our community.

**Budget and Financial Impacts**

There is no cost to the City for these services. The fees are paid for through our deferred compensation plan

administrator Empower Retirement.

**AGREEMENT FOR  
DEFERRED COMPENSATION PLAN CONSULTING SERVICES**

**City of Glendale Solicitation No. RFP 17-02**

This Agreement for Deferred Compensation Plan Consulting Services ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Hyas Group, LLC., an Oregon Limited Liability Corporation, (the "Consultant"), as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**RECITALS**

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. RFP 17-02 (the "Project");
- B. City desires to retain the services of Consultant to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. City and Consultant desire to memorialize their agreement with this document.

**AGREEMENT**

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Consultant agree as follows:

**1. Key Personnel; Sub-contractors.**

- 1.1 Services. Consultant will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.

**2. Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

**3. Consultant's Work.**

- 3.1 Standard. Consultant must perform services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Consultant warrants that:

- a. Consultant and Sub-contractor will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Consultant nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Consultant's contracting ability.
  - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Consultant to notify City as required will constitute a material default under the Agreement.

- 3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination: Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for services furnished, Consultant grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

- 4.1 Compensation. Consultant will not receive compensation from the City for Services rendered in accordance with the Scope of Work. Consultant will be paid through the city's Deferred Compensation Plan, as specifically detailed in Exhibit B (the "Compensation").

- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
- a. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

**5. Billings and Payment.**

5.1 Applications.

- a. Consultant will submit quarterly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar quarter ending on the last day of the quarter or as specified in the solicitation.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Sub-contractors; and
  - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

**6. Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

- a. Consultant will be equitably compensated for Goods or Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than

the equitable amount due but not paid Consultant for Service and Repair furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of § 5.

- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 **Requirements.** Consultant must obtain and maintain the following insurance ("Required Insurance"):

- a. **Consultant and Sub-contractors.** Consultant, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed.
- b. **General Liability.**
  - (1) Consultant must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.
  - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
  - (3) This commercial general liability insurance must include independent consultants' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
  - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. **Auto.** A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- d. **Workers' Compensation and Employer's Liability.** A workers' compensation and employer's liability policy providing at least the minimum benefits required by Oregon law, as all work performed under this contract will be performed within the State of Oregon by Consultant, an Oregon limited liability corporation.
- e. **Professional Liability (Errors and Omissions) Insurance** appropriate to that Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. If the policy provided is on a claims-made basis, the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of the contract work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of two (2) years after the completion of contract work.

- f. Notice of Changes. Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:
  - (1) Cancellation or termination of Consultant or Sub-contractor's Policies;
  - (2) Reduction of the coverage limits of any of Consultant or and Sub-contractor's Policies; and
  - (3) Any other material modification of Consultant or Sub-contractor's Policies related to this Agreement.
- g. Certificates of Insurance.
  - (1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant and Sub-contractor's Policies, which will confirm the existence or issuance of Consultant and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Consultant and Sub-contractor's Policies in accordance with the provisions of this section.
  - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant and Sub-contractor's Policies, or to examine Consultant and Sub-contractor's Policies, or to inform Consultant or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
  - (3) Consultant's failure to secure and maintain Consultant Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.
- h. Other Consultants or Vendors.
  - (1) Other consultants or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
  - (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- i. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
  - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
  - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-contractors.

- a. Consultant must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Consultant and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.



8.3 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subcontractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. **Attestation of PCI Compliance.** When applicable, the Consultant will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Consultant with oversight responsibility.

12. **Notices.**

- 12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
  - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
  - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

- (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
- (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Hyas Group, LLC  
 c/o Dale Parker, COO  
 108 NW 9<sup>th</sup> Avenue, Suite 203  
 Portland, Oregon 97209  
 (971) 634-1500

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
 c/o Vicki Moss, HR Admin  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301  
 623-930-2297

With required copy to:

City Manager  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

City Attorney  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

- 13. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

**14. Entire Agreement; Survival; Counterparts; Signatures.**

- 14.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
  - b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
  - c. The solicitation, any addendums and the response submitted by the Consultant are incorporated into this Agreement as if attached hereto. Any Consultant response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.
- 14.2 **Interpretation.**
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
  - b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
  - c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 14.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 14.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.
- 14.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 14.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.
- 14.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

**15. Term.** The term of this Agreement commences upon the effective date and continues for a one (1)-year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and any such price adjustment will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

**16. Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

17. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A      Project

Exhibit B      Compensation

(Signatures appear on the following page.)

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,  
an Arizona municipal corporation

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By: Kevin R. Phelps  
Its: City Manager

ATTEST:

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Julie K. Bower  
City Clerk (SEAL)

APPROVED AS TO FORM:

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Michael D. Bailey  
City Attorney

Hyas Group, LLC,  
an Oregon limited liability corporation



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By: Dale Parker  
Its: Chief Operating Officer

**EXHIBIT A**  
**DEFERRED COMPENSATION PLAN CONSULTING SERVICES**  
**RFP 17-02**  
**PROJECT**

The Consultant shall perform professional, technical and specialized consulting services related to Deferred Compensation Plan administration in support of the City's Human Resources business activities.

Services may include, but are not limited to:

- Fiduciary Responsibilities
- Investment Performance Review
- Training
- Vendor Performance Review
- Comprehensive Compliance Audit



**CITY OF GLENDALE  
MATERIALS MANAGEMENT  
REQUEST FOR PROPOSAL  
EXHIBIT "A"**

**SOLICITATION NUMBER:** RFP 17-02

**DESCRIPTION:** DEFERRED COMPENSATION PLAN CONSULTING SERVICES

**PUBLISHED DATE:** AUGUST 18, 2016

**OFFER DUE DATE AND TIME:** SEPTEMBER 15, 2016, 2:00pm local time

**PRE-OFFER CONFERENCE:** AUGUST 29, 2016 AT 2:00 PM  
The pre-offer conference will be held at City of Glendale, 5850 W. Glendale Avenue, Municipal Building, Third Floor, Conference Room 3A, Glendale, AZ 85301  
Attendance is optional.

**SUBMITTAL LOCATION:** City of Glendale  
Materials Management  
5850 West Glendale Avenue, Suite 317  
Glendale, Arizona 85301

Proposals must be in the actual possession of Materials Management on or prior to the time and date, and at the location indicated. Materials Management is located on the third (3<sup>rd</sup>) floor of the Glendale Municipal Office Complex (City Hall) in the Engineering Department. Proposals are accepted from the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, unless otherwise indicated for a holiday. All proposals will be received and time/date stamped at the Engineering Department's window. Late proposals will not be considered.

Proposals must be submitted in a sealed envelope with the Solicitation Name and Number and the Offeror's name and address clearly indicated on the envelope. See Paragraph 2.3 for additional instructions for preparing an offer.

Proposals shall be opened publicly at the time, place and location designated on this page. Only the name of each Offeror shall be publicly read and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing Offerors.

**OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.**

For questions regarding this solicitation contact:

**Crista Clevenger**  
Contract Analyst  
(623) 930-2865  
[CClevenger@Glendaleaz.com](mailto:CClevenger@Glendaleaz.com)




**Solicitation Number: RFP 17-02**  
**DEFERRED COMPENSATION PLAN**  
**CONSULTING SERVICES**

**CITY OF GLENDALE**  
**Materials Management**  
**5850 West Glendale**  
**Avenue, Suite 317**  
**Glendale, Arizona 85301**

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 <p><b>GLENDALÉ</b></p>	<p><b>Solicitation Number: RFP 17-02</b></p> <p><b>DEFERRED COMPENSATION PLAN CONSULTING SERVICES</b></p>	<p><b>CITY OF GLENDALÉ</b>  Materials Management  5880 West Glendale  Avenue, Suite 317  Glendale, Arizona 85301</p>
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**1.0 SPECIFICATIONS**

**1.1 INTRODUCTION**

The City of Glendale (“City”) is soliciting Requests for Proposals from qualified firms to perform professional, technical and specialized Consulting services related to Deferred Compensation Plan administration in support of the City’s Human Resources business activities as specified within this solicitation.

**1.2 SCOPE**

Services to be provided by the Consultant may include, but are not limited to:

**1.2.1 Fiduciary Responsibilities**

- Investment Policy Statement Review
- Committee meetings to include legislative updates and ongoing educational sessions

**1.2.2 Investment Performance Review**

- Market Overview
- Executive Summary specific to the City’s combined plans
- Performance to peer-group and index benchmarking
- Watch list recommendations
- Assist with Investment Fund additions/deletions

**1.2.3 Training such as:**

- Basic fiduciary responsibility training
- Historical Public Sector characteristics
- Changing Employer responsibilities
- Employer trends in meeting new responsibilities
- Options and Trends

**1.2.4 Vendor Performance Review**

- Development of performance standards and financial guarantees
- Review of provider performance standards
- Determination of financial guarantees
- Addressing performance issues

**1.2.5 Comprehensive Compliance Audit**

- Comprehensive audit of additional areas likely to be examined in an IRS audit including, but not limited to, eligibility requirements, adherence to annual maximums, catch up provisions, hardship withdrawal, loan requirements and domestic relations orders

**1.2.6 Optional Tasks**

- The City may request services that are supplemental to those included in the scope of work. These services will be provided upon written authorization for the City.



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Avenue, Suite 317  
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**2.0 SPECIAL INSTRUCTIONS**

**2.1 PRE-OFFER CONFERENCE**

**2.1.1** A Pre-Offer Conference will be held on August 31, 2016 at 2:00 P.M, Local Time, located at 5850 W. Glendale Avenue, Room 3A. Attendance is optional. Copies of the Request for Proposal (RFP) will NOT be available.

**2.1.2** The purpose of the conference will be to clarify the contents of the solicitation in order to prevent any misunderstanding of the City of Glendale's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the City at the conference. The City will determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation.

**2.2 RETURN OF OFFER** The Offeror shall submit five (5) hardcopies AND a complete proposal on a CD or flash drive as one file folder. The folder shall be identified as "RFP 17-02 – 'Name of Offeror.'" (For example: RFP 17-02 – ABC Company.)

The proposal responses shall be submitted in a bound format (i.e. three (3) ring loose-leaf binders, spiral and/or report covers). Proposals should be divided by tab sections according to items listed in the **Preparation of Proposal Package Instructions section 2.3.** This will assist the evaluation panel in identifying items and information submitted within the proposal. Offerors may reproduce the forms and recreate information, but all of the required information must be presented in the order requested.

The Offeror shall complete all sections of the solicitation in the format given in the space provided. If additional space is needed than what is given, enter "See attachment for detail." Proposals that do not conform to the above format may be rejected.

The Offeror shall bear all costs associated with submitting the proposal, including proposal preparation, site visitation or any travel connected with submission of the proposal. The City shall have no liability whatsoever for such costs.

**2.3 PREPARATION OF OFFER PACKAGE** The following items shall be completed and returned including the written, narrative responses required in section 2.4 Submission Requirements. Failure to include all the items may result in an offer being rejected. Offer packages shall be submitted in the following order:

**2.3.1 COVER SHEET, Firm's name, address, solicitation number and title**

**2.3.2 OFFER SHEET, Section 4.0**

**2.3.3 PRICE SHEET, Section 5.0**

**2.3.4 ADDENDUM, Return all addenda if applicable**

**2.3.5 SUBMISSION REQUIREMENTS, Section 2.3**

**2.4 SUBMISSION REQUIREMENTS**

Offeror's should provide written, narrative responses for each item requested within the criteria below. When applicable, supporting documents should be attached and reference the appropriate criterion. Offeror's, at a minimum must submit the following information:

**2.4.1 FIRM'S EXPERIENCE, QUALIFICATIONS, AND PROPOSED STAFF**

**2.4.1.1** Offeror's proposal should include a Company profile that provides:



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- company history including number of years in business;
- a brief description of firm's qualifications and experience working with municipalities demonstrating firm's qualifications to provide the services described herein; and
- a narrative identifying key personnel performing the scope of work, including job title, length of service with firm, experience in performing specific task;

**2.4.1.2 Customer References shall include:**

- 3 – 5 from public entities of similar services and size
- Company Name, Contact Name, Address, Telephone Number and E-mail Address.

**2.4.2 METHOD OF APPROACH**

**2.4.2.1** Describe the firm's Method of Approach demonstrating an understanding of the requirements of this RFP. This should be accomplished by an explanation of the method of performing the Scope of Work requirements. Proposer may utilize a written narrative or other printed technique to demonstrate the ability to satisfy the Scope of Work.

**2.4.3 PRICING STRUCTURE** All fees shall be inclusive of personnel, benefits, technology, travel, housing and support expenses.

**2.4.3.1** Fees shall be provided for scope of services Section 1.2. Identified as:

- Fee per service
- Hourly Rates for additional services outside of Scope

**2.5 EVALUATION CRITERIA** The evaluation criteria is weighted in accordance with the Submission Requirements, section 2.3.

<b>2.5.1</b>	Experience and Qualifications	45%
<b>2.5.2</b>	Method of Approach	25%
<b>2.5.3</b>	Cost	35%

**2.6 ALTERNATE OFFERS/EXCEPTIONS** Offers submitted as alternates, or on the basis of exceptions to specific conditions of purchase and/or required specifications, must be submitted as an attachment referencing the specific paragraph number(s) and adequately defining the alternate or exception submitted. Offeror shall clearly and specifically detail all exceptions to the exact requirements imposed by this solicitation. Detailed product brochures and/or technical literature, suitable for evaluation, must be submitted with the Offer. If no exceptions are taken, City will expect and require complete compliance with the specifications and all conditions of purchase.

**2.7 SITE INSPECTION** Offeror shall visit the site(s) to become familiar with any conditions which may affect the performance and pricing. Submission of an Offer will be prima facie evidence that the Offeror did, in fact, make a site inspection and is aware of all conditions.

**2.8 INQUIRIES** Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An Offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any



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and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, no later than **five days** prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such; otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.

- 2.9 EVALUATION PANEL** Offeror submittals will be evaluated by an evaluation panel. Award shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the City.
- 2.10 PANEL CONTACT** Offerors shall have no exclusive meetings, conversations or communications with an individual evaluation panel member on any aspect of the RFP, after submittal.
- 2.11 INTERVIEWS** The City reserves the right to conduct interviews with some or all of the Offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the Offeror for the costs associated with the interview process.
- 2.12 ADDITIONAL INVESTIGATIONS** The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Offeror submitting a proposal.
- 2.13 DISCUSSIONS AND REVISIONS TO PROPOSAL** Discussions may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award; and may obtain pertinent information for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Should the City elect to call for 'best and final' offers, Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors. The purposes of such discussions shall be to:
- 2.13.1** Determine in greater detail such Offeror's qualifications, and
  - 2.13.2** Explore with the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;
  - 2.13.3** Determining that the Offeror will make available the necessary personnel and facilities to perform within the required time;
  - 2.13.4** Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.
- 2.14 BEST AND FINAL OFFERS** The City may request best and final offers if deemed necessary, and will determine the scope and subject of any best and final request.
- 2.15 PROPOSAL EVALUATION** The City reserves the right to secure additional information from the Offeror in various forms and or to award based on submitted information.



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- 2.16 NOTICE OF INTENT TO AWARD AND PROTEST PERIOD** Information about the recommended award for this solicitation will be posted on the Internet. The information will be available for review on the City's Materials Management Internet home page [www.glendaleaz.com/purchasing](http://www.glendaleaz.com/purchasing) immediately after the City has completed its evaluation process of the offers received. If you have any questions, or would like further information about an intended award, contact the contract analyst immediately. Any protest must be submitted to the Materials Manager no later than seven (7) calendar days from the date of posting on the Internet. Please go to: <http://www.glendaleaz.com/Purchasing/doingbusinesswithglendale.cfm> for information and instructions on how to file a protest with the City of Glendale.
- 2.17 WITHDRAWAL OF PROPOSAL** At any time prior to the specified solicitation due date and time, an Offeror may formally withdraw the proposal by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.
- 2.18 OFFER ERRORS OMISSIONS AND CORRECTIONS** The City will not be responsible for any offeror errors or omissions. All prices and notations shall be written in ink or typed. Changes or corrections made on the offer form must be initialed in ink by the individual signing the offer. No corrections will be permitted after the offers have been opened.
- 2.19 COMPETITIVE NEGOTIATIONS** Exclusive or concurrent negotiations may be conducted with responsible Offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful Offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified offeror(s).
- 2.20 NO CONTACT, NO INFLUENCE DURING THE RFP PROCESS** The City is conducting a competitive RFP process for the contract, free from improper influence or lobbying. There shall be no contact concerning this RFP from Offerors submitting a Proposal with any member of the City Council, RFP Evaluation Committee Members, or anyone connected with the process for or on behalf of the City. Contact includes direct or indirect contact by the Offeror, its employees, attorneys, lobbyists, surrogates, etc. in an attempt to influence the RFP process.

From the time the RFP is issued until the expiration of the protest period or the resolution of any protest, whichever is later (the "Black-Out Period"), Offerors, directly or indirectly through others, are restricted from attempting to influence in any manner the decision making process through, including but not limited to, the use of paid media; contacting or lobbying the City Council or City Manager or any other City employee (other than Material Management employees); the use of any media for the purpose of influencing the outcome; or in any other way that could be construed to influence any part of the decision-making process about this RFP. This provision shall not prohibit an Offeror from petitioning an elected official or engaging in any other protected first amendment activity after the protest period has run or any protest has been resolved, whichever is later.



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Violation of this provision will cause the proposal or offer of the Offeror to be found in violation and to be rejected.

- 2.21 PROPRIETARY INFORMATION** An Offeror shall clearly mark any proprietary information contained in its bid with the words "Proprietary Information." Offeror shall not mark any Solicitation Form as proprietary. Pricing data shall not be considered proprietary. Marking all, or nearly all, of a bid as proprietary may result in rejection of the bid.

Offeror's acknowledge that the City is required by law to make certain records available for public inspection. In the event that the City receives a request for disclosure of Proprietary Information by any person, court, agency or administrative body, or otherwise has a reasonable belief that it is obligated to disclose the Proprietary Information to any such person or authority, the City will provide Offeror with prompt written notice so that Offeror may seek a protective order or other appropriate remedy.

The Offeror, by submission of materials marked Proprietary Information, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Offeror in the event that the City must legally disclose the Proprietary Information.



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**3.0 SPECIAL TERMS AND CONDITIONS**

- 3.1 TERM OF AGREEMENT** The initial term of the contract shall be one (1) year upon approval by the City Council.
- 3.2 OPTION TO EXTEND** The City may, at its option and with the approval of the Consultant, extend the term of this agreement four (4) additional years in one (1) year increments based on satisfactory Consultant performance. Consultant shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during contract renewal.
- 3.3 INCORPORATION BY REFERENCE** All responses shall incorporate by reference the Scope/Specifications, terms and conditions, general instructions and conditions and any attachments or exhibits. The Standard Terms and Conditions applicable to this solicitation are posted on the Internet. They are available for review and download at the City's Materials Management Internet home page, [www.glendaleaz.com/purchasing](http://www.glendaleaz.com/purchasing). Offerors are advised to review all provisions of the General Instructions and Conditions for this solicitation.
- 3.4 INSURANCE** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or subcontractors.
- 3.4.1 MINIMUM SCOPE AND LIMIT OF INSURANCE**  
Coverage shall be at least as broad as:
- 3.4.1.1 Commercial General Liability (CGL):** Insurance covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 3.4.1.2 Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. If the policy provided is on a claims-made basis, the **Retroactive Date** must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for **at least two (2) years after completion of the contract work**. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **two (2) years** after the completion of contract work.
- 3.4.1.3 Automobile Liability:** Insurance covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.



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**3.4.1.4 Workers' Compensation:** as required by the State of Arizona, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

**Other Insurance Provisions** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status** The City, its officers, officials, employees, and volunteers are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.

**Primary Coverage** For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

**Notice of Cancellation** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

**Waiver of Subrogation** Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**Acceptability of Insurers** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

**Verification of Coverage** Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received by the Contract Administrator and approved by the City before work commences. **DO NOT SEND CERTIFICATES TO RISK MANAGEMENT.** However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**3.5 INDEMNIFICATION CLAUSE:**

To the extent allowed by law, Consultant shall defend, indemnify, and hold harmless the City of Glendale, and its departments, boards, commissions, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims")





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for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant agrees to waive all rights of subrogation against the City of Glendale, its officers, officials, agents, employees and volunteers for losses arising from the work performed by the Consultant for the City of Glendale.

- 3.6 CONFLICT OF INTEREST** Consultant shall disclose the following: 1) the name(s) and position(s) of each Consultant's employee or subcontractor that participated in the preparation of the submittal or who will be involved, directly or indirectly, with performing the contract, if awarded; 2) the name(s) of any City of Glendale employee who is a relative of persons identified pursuant to No. 1; 3) the name(s) and position(s) of Consultant's personnel that have a financial or proprietary interest in the contract; 4) the name(s) of any City of Glendale employee who is a relative of persons identified pursuant to No. 3.

Providing such disclosure will not necessarily disqualify a Consultant. Failure to disclose the requested information or any potential conflict of interest pursuant to A.R.S. § 38-501 et seq. may result in rejection of the proposal or bid or any contract being void or terminated.


For purposes of this provision, the following definitions apply:

"Employee" means all persons who are employed on a full-time, part-time or contract basis by the City of Glendale.

"Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

- 3.7 ESTIMATED QUANTITIES** The Quantities listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement as determined by actual needs and availability of appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirements for the contract period, except that the estimated quantity shown for each proposal item shall not be exceeded by 100% without the express written approval of the Materials Manager. Any demand or order made by any employee or officer of the City, other than the Materials Manager, for quantities in the excess of the estimated quantities shall be void if the written approval of the Materials Manager was not received prior to the Consultant's performance.

- 3.8 COOPERATIVE USE OF CONTRACT** This agreement may be extended for use by other governmental agencies and political subdivisions of the State, including all members of SAVE (Strategic Alliance for Volume Expenditures). Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Consultant and City.

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For a list of SAVE members, click on the following link:  
<http://www.maricopa.gov/procurement/Pubdocuments/SAVE-members.pdf>

- 3.9 PUBLIC RECORD** Consultant acknowledges that the City is a public agency and must comply with all Public Records laws. All proposals submitted in response to the Solicitation shall become the property of the City and, subsequent to award recommendation, become a matter of public record available for review pursuant to Arizona Public Records Law.

If a Consultant believes that a specific section of its Proposal response is confidential, that should be withheld from the public record, Consultant shall isolate the pages and mark each page confidential in a specific and clearly labeled section of its Proposal response. The Consultant shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed. The City Materials Management Division will review the material and make a determination as to the confidentiality of any of the information and/or material contained within the Submittal. In the event of a public records request for documents Consultant deems confidential, the City will notify Consultant of the request and if Consultant claims such documents are confidential, it shall be the Consultant's sole responsibility, including sole cost, to take appropriate action, including legal action, to protect such documents. Price is not confidential and will not be withheld.

- 3.10 PERMITS AND LICENSES** The Consultant and Subcontractors shall be responsible for determining and securing, at his/her expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing operations and maintenance of the facility. Such fees shall be included in and are part of the total proposal cost. During the term of the contract, the Consultant shall notify the City in writing, within two (2) working days, of any suspension, revocation or renewal.
- 3.11 CERTIFICATION** By signature on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Consultant certifies:

The submission of the offer did not involve collusion, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition or other anti-competitive practices. The Consultant shall not discriminate against any employee or applicant for employment in violation of Federal or State law. The Consultant has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer. The Consultant hereby certifies that the individual signing the submittal is an authorized agent for the Consultant and has the authority to bind the Consultant to the Contract.

- 3.12 KEY PERSONNEL** Consultant shall assign specific individuals to the key positions in support of the Contract. Once assigned to work under the Contract, key personnel shall not be removed or replaced without the prior written approval of the City. Upon the replacement of any key personnel, Consultant shall submit the name(s) and qualifications of any new key personnel to the City Contract Administrator or Designee. With the concurrence of the Contract Administrator or Designee, the City shall amend the Contract to reflect the name(s)



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of any replacement key personnel. Upon any unplanned departure of key personnel, Consultant shall immediately notify the Contract Administrator or Designee.

For this purpose, a primary and secondary emergency contact name and phone number are required from the Consultant. It is critical to the City that the contactor's emergency contact information remains current. The Materials Management staff member, identified on page 1, is to be contacted by E-mail with any change to a contact name or phone number.

All products or services provided to meet an emergency phone request are to be supplied as per the contract prices, terms and conditions. The Consultant may provide the fee (pricing) for an after-hours emergency opening of the business separate from the Price Sheet. In general, the order will be placed using a City Procurement Card. The billing is to include the emergency opening fee, if applicable.

- 3.13 PRICE & PRICE ADJUSTMENTS** All prices quoted shall be firm and fixed for the initial contract period. Price adjustments shall be addressed a minimum of sixty (60) days prior to the contract renewal date, shall be in writing and include supportive justification for the proposed increase. The rate increase shall only be considered at time of contract extension. The City will review the request and shall determine if the increase shall be granted or if an alternate option is in the best interest of the City. The price increase adjustment, if approved, will be effective and executed via a contract amendment.
- 3.14 ADDITIONS OF PRODUCTS OR SERVICES** The City reserves the right to add additional products or services to this contract when deemed necessary by the City. If this occurs, the Consultant will be requested to submit a negotiable quotation for the additions. Upon approval and authorization by the Materials Manager such additions will be added to and become a part of the contract through properly executed forms.
- 3.15 NON-DISCRIMINATION** By submitting this Offer, Consultant agrees not to discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.



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**4.0 OFFER SHEET**

**4.1 OFFER** Offeror certifies that they have read, understand, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror also certifies that the prices offered were independently developed without consultation with any of the other Offerors or potential Offerors.

<u></u> Authorized Signature	<u>Hyas Group, LLC</u> Company's Legal Name
<u>Dale Parker</u> Printed Name Address	<u>108 NW 9th Avenue</u>
<u>COO</u> Title	<u>Portland, OR 97209</u> City, State & Zip Code
<u>971-634-1500</u> Telephone Number	<u>971-275-1856</u> FAX Number
<u>dparker@hyasgroup.com</u> Authorized Signature Email Address	<u>8/29/2016</u> Date

**For questions regarding this offer: (If different from above)**

<u>Rasch Cousineau, Sr. Consultant</u> Contact Name	<u>971-634-1514</u> Phone Number	<u>971-275-1856</u> Fax Number
<u>rcousineau@hyasgroup.com</u> Email Address		

FEDERAL TAXPAYER ID NUMBER: 26-2924761

Arizona Sales Tax No. n/a Tax Rate \_\_\_\_\_

Offeror certifies it is a: Proprietorship \_\_\_\_\_ Partnership  Corporation \_\_\_\_\_

Minority or woman owned business: Yes \_\_\_\_\_ No



**ADDENDUM TO ORIGINAL CONSULTING SERVICES AGREEMENT**  
**City of Glendale, Arizona and Hyas Group, LLC**

**ADDITIONAL TERMS:**

Fiduciary Responsibility. Consultant acknowledges and agrees that in providing services described in the Scope of Work, it is acting as an investment advisor fiduciary as defined in ERISA § 3(21) in rendering investment advice to the Client based on the particular needs of the Client as stated herein.

Proxy Voting. Consultant does not exercise proxy voting authority over client securities. The obligation to vote client proxies at all times rests with Client. However, Client is not precluded from contacting Consultant for advice or information about a particular proxy vote. However, Consultant will not be deemed to have proxy voting authority as a result of providing such advice to Client.

Should Consultant inadvertently receive proxy information for a security held in the Plan's account, Consultant will immediately forward such information to Client, but will not take any further action with respect to the voting of such proxy. Upon termination of this Agreement, Consultant will make a good faith and reasonable attempt to forward proxy information inadvertently received by Consultant on Client's behalf to the forwarding address provided by Client.

Risk. Client recognizes that there may be loss or depreciation of the value of any investment due to the fluctuation of market values. Client represents that no party to this Agreement has made any guarantee, either oral or written, that the Plan's investment objectives will be achieved. Consultant will not be liable for any error in judgment and/or for any investment losses in the absence of malfeasance, negligence or violation of applicable law. Nothing in this Agreement will constitute a waiver or limitation of any rights which Client may have under applicable state or federal law, including without limitation state and federal securities laws.

Confidentiality. In connection with the performance of Consultant's services under this Agreement, Consultant will hold any confidential information received from Client in strict confidence. Consultant will not disclose such information to any third party, except in compliance with Consultant's privacy policy, as necessary to perform services on Client's behalf, or as required by law. Client also agrees to respect the proprietary nature of Consultant's work product, and only disclose Consultant's advice, reports and recommendations to others in a manner consistent with the intended purposes of this agreement.


No Waiver. No waiver of rights under this Agreement or the Scope of Work hereunder by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

Assignment. Neither this Agreement nor any rights under this Agreement (nor any Scope of Work hereunder), other than monies due or to become due, shall be assigned or otherwise transferred by Consultant (by operation of law or otherwise) without the prior written consent of Client.

Acknowledgement of Receipt of Part 2 Form ADV. Client acknowledges that it has received and has had an opportunity to read Consultant's firm brochure (Form ADV, Part 2A) and applicable brochure supplements (Form ADV, Part 2B) prior to, or at the time of, entering into this Agreement.

Acknowledgement of Receipt of Privacy Notice. Client acknowledges that it has received and has had an opportunity to read Consultant's privacy notice prior to, or at the time of, entering into this Agreement.

408(b)(2) Service Provider Disclosure. In compliance with the Department of Labor regulations under ERISA sec. 408(b)(2), concerning service provider fee disclosures, we believe the standard Hyas Group service agreement complies with said regulation. We are considered a "covered service provider" as we are providing services to the Plan as a registered investment advisor under the Investment Advisors Act of 1940. Our CRD number 149122 and our SEC File number is 801-69938.

<b>City of Glendale, AZ</b>	<b>Hyas Group, LLC</b>
Signature:	Signature: 
Name:	Name: Dale Parker
Title:	Title: Managing Partner, Chief Operating Officer
Date:	Date: 12-5-2016
Phone:	Phone: (971) 634-1502
Mobile:	Mobile: (503) 869-6081
Fax:	Fax: (971) 275-1856
Email:	Email: dparker@hyasgroup.com
Mailing Address:	Mailing Address: Hyas Group, LLC 108 NW 9 <sup>th</sup> Avenue, Suite #203 Portland, OR 97209



**SOLICITATION ADDENDUM**

CITY OF GLENDALE  
Materials Management  
5850 W. Glendale Avenue  
Suite 317  
Glendale, AZ 85304  
Phone: (623) 930-2865

Solicitation Number: RFP 17-02      Addendum #1      Page 1 of 1

Solicitation Due Date: September 15, 2016, 2:00 p.m. (Local Time)

**RFP 17-02**

**DEFERRED COMPENSATION PLAN CONSULTING SERVICES**


The following revision has been made to Request for Proposals No. 17-02:

**2.0 SPECIAL INSTRUCTIONS**

**2.1 PRE-OFFER CONFERENCE – Revised Pre-Offer Conference date.**

**2.1.1** A Pre-Offer Conference will be held on August 31-29, 2016 at 2:00 P.M. Local Time, located at 5850 W. Glendale Avenue, Room 3A. Attendance is optional. Copies of the Request for Proposal (RFP) will NOT be available.

The balance of the specifications and instructions remain the same. The Offeror must acknowledge receipt and acceptance of this addendum by returning the entire addendum with the proposal submittal.

Name of Company: Hyas Group, LLC  
Address: 108 NW 9th Avenue, Suite #203, Portland, Oregon 97209  
Authorized Signature:   
Print Name and Title: Dale Parker, COO



GLENDALE

### SOLICITATION ADDENDUM

Solicitation Number: RFP 17-02      Addendum #2      Page 1 of 3

Solicitation Due Date: September 15, 2016, 2:00 p.m. (Local Time)

CITY OF GLENDALE  
Materials Management  
5850 W. Glendale Avenue  
Suite 317  
Glendale, AZ 85301  
Phone: (623) 930-2865

#### RFP 17-02

#### DEFERRED COMPENSATION PLAN CONSULTING SERVICES

As a result of the pre-offer conference held on Monday, August 29, 2016, the following revisions have been made to Request for Proposals No. 17-02:

**DELETE:** Section 2.7 SITE INSPECTION in its entirety.

#### QUESTIONS:

1) What is the reason for the RFP?

A: The current incumbent's contract is expiring;

2) Who is the City's current Consultant?

A: SST is the current consultant;

3) What is the incumbent currently paid in fees?

A: SST's contract amount is \$26,000;

4) Could you please provide a list of the plan(s) and total assets as well as current vendors for these plan(s)?

A: Yes, provided below:

The plan assets are \$89,381,182.48, with 1491 participants;

Assets are held at Empower;

SST Benefits Consulting provides investment performance review and Provider reviews;

Galloway Asset Management provides participant level advice, marketing, enrollment and education;

Investment Name	Asset Class
Vanguard Target Retirement Income Inv	Asset Allocation
Vanguard Target Retirement 2010 Inv	Asset Allocation
Vanguard Target Retirement 2015 Inv	Asset Allocation
Vanguard Target Retirement 2020 Inv	Asset Allocation
Vanguard Target Retirement 2025 Inv	Asset Allocation
Vanguard Target Retirement 2030 Inv	Asset Allocation
Vanguard Target Retirement 2035 Inv	Asset Allocation
Vanguard Target Retirement 2040 Inv	Asset Allocation
Vanguard Target Retirement 2045 Inv	Asset Allocation
Vanguard Target Retirement 2050 Inv	Asset Allocation
Vanguard Target Retirement 2055 Inv	Asset Allocation
Vanguard Target Retirement 2060 Inv	Asset Allocation
Calamos Global Equity I	International
MFS International Value R4	International
Oppenheimer Developing Markets Y	International
Thornburg International Growth R5	International
Nuveen Real Estate Securities I	Specialty





**SOLICITATION ADDENDUM**

CITY OF GLENDALE  
Materials Management  
3850 W. Glendale Avenue  
Suite 317  
Glendale, AZ 85301  
Phone: (623) 938-2865

Solicitation Number: RFP 17-02      Addendum #2      Page 2 of 3

Solicitation Due Date: September 15, 2016, 2:00 p.m. (Local Time)

Columbia Small Cap Index R5	Small Cap
Janus Triton T	Small Cap
Victory Sycamore Small Co Opportunity I	Small Cap
Columbia Mid Cap Index R5	Mid Cap
JPMorgan Mid Cap Value Instl	Mid Cap
Prudential Jennison Mid Cap Growth Z	Mid Cap
Columbia Dividend Opportunity R4	Large Cap
Columbia Large Cap Index R5	Large Cap
Hartford Equity Income Y	Large Cap
JPMorgan Large Cap Growth R5	Large Cap
Parnassus Core Equity - Inst	Large Cap
Wells Fargo Large Cap Gr I	Large Cap
AB Global Bond I	Bond
Metropolitan West Total Return Bond I	Bond
PIMCO Income Adm	Bond
PIMCO Real Return Instl	Bond
Great-West Guaranteed Government Fund	Fixed
Schwab SDB Money Market	Brokerage
Schwab SDB Securities	Brokerage
Schwab SDB Money Market Roth	Brokerage
Schwab SDB Securities Roth	Brokerage
Monumental Life Insurance	Other

5) May we have a copy of the current Investment Policy Statement:

A: Yes, statement is provided below:



Investment  
Policy.pdf

The balance of the specifications and instructions remain the same. The Offeror must acknowledge receipt and acceptance of this addendum by returning the entire addendum with the proposal submittal.

Name of Company: Hyas Group, LLC

Address: 108 NW 9<sup>th</sup> Avenue, Suite #203, Portland, OR 97209

Authorized Signature:

Print Name and Title: Jayson Davidson, Managing Partner, Director of Consulting Services

**EXHIBIT B**  
**DEFERRED COMPENSATION PLAN CONSULTING SERVICES**  
**RFP 17-02**  
**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

The Consultant is not receiving Compensation from the City for the performance of the Scope of Work. City's Deferred Compensation Plan will compensate the Consultant for Services rendered, as provided in the City of Glendale Price Sheet and Best and Final Offer (BAFO) for RFP 17-02, which is attached to Exhibit B.

**DETAILED PROJECT COMPENSATION**

Consultant will submit invoices detailing Services performed in accordance with annual itemized fees for services including, but not limited to:

- Fiduciary Responsibilities            \$9,000
- Investment Performance Review    \$8,000
- Vendor Performance Review        \$3,000
- Comprehensive Compliance Audit   \$4,000

Hourly Rates are for reference only. The Hyas Group does not typically bill by the hour. Estimated staff rates have been provided as requested in the RFP relative to the proposed fee amounts for each task. All services to be rendered are included in the annual fee of \$24,000. Services will begin January 1, 2017 and shall be billed at \$6,000 per quarter.

Consultant	\$350
Analyst	\$250
Staff	\$175



**SOLICITATION NUMBER:** RFP 17-02  
**DESCRIPTION:** DEFERRED COMPENSATION PLAN  
CONSULTING SERVICES  
**DUE DATE AND TIME:** OCTOBER 31, 2016 @ 11:00 A.M. (Local Time)

**Best and Final Offers may be submitted in a sealed envelope with the Solicitation Number, Description and the Due Date clearly labeled, as cited above. Also included shall be the Offeror's name and address clearly indicated on the envelope. For the purposes of this solicitation, Best and Final Offers may be submitted via EMAIL in a pdf (ADOBE) format. Please label the file as "RFP 17-02 - 'Name of Offeror' - BAFO Deferred Compensation Plan Consulting Services.**

Please submit your response to: **Crista Clevenger at CClevenger@Glendaleaz.com**

Best and Final Offers must be in the actual possession of Materials Management on or prior to the time and date, and at the location indicated. Materials Management is located on the third (3<sup>rd</sup>) floor of the Glendale Municipal Office Complex (City Hall), 5850 West Glendale Avenue, Suite 317, Glendale, Arizona, 85301.

Best and Final Offers are accepted at the Engineering Department's front counter between the hours of 8:00 AM and 5:00 PM, Monday through Friday unless otherwise indicated for a Holiday. The Best and Final Offer submittals will be time stamped at the Engineering Department's front counter.

**BEST AND FINAL OFFEROR INFORMATION:**



Authorized Signature

Hyas Group  
Company's Legal Name

Rasch Cousineau  
Printed Name

108 NW 9<sup>th</sup> Ave.  
Address

Senior Consultant  
Title

Portland, OR 97229  
City, State & Zip Code

702-898-0441  
Telephone Number

971-275-1856  
FAX Number

October 28, 2016  
Date

RCousineau@hyasgroup.com  
E-mail Address

October 25, 2016

**BEST AND FINAL OFFER (BAFO)**

The City of Glendale evaluation committee has evaluated your proposal in response to **RFP 17-02 Deferred Compensation Plan Consulting Services**. This is to inform you that after a preliminary evaluation of your proposal, we have selected your company as one of the Offeror's to proceed to the "Best and Final Offer" phase of the evaluation process.

The City of Glendale ("City") is asking that Offeror's provide (no later than the due date and time indicated) a response to the following request. The BAFO will be evaluated as an adjustment to the Offeror's scores on their original proposal response. If an Offeror does not submit a Best and Final Offer, its previous offer will be considered as its Best and Final Offer.

**PROPOSAL FEE**

Submit a fee amount not to exceed for each task group listed in Section 1.2. All fees shall be inclusive of personnel, benefits, housing, technology, travel and support expenses.

	<b>SCOPE OF WORK</b>	<b>BAFO FEE AMOUNT</b>
1.2.1	<b>Fiduciary Responsibilities</b> <ul style="list-style-type: none"><li>• Investment Policy Statement Review - Annual</li></ul>	<b>\$ 0 (included)</b>
1.2.1	<b>Fiduciary Responsibilities</b> <ul style="list-style-type: none"><li>• Committee meetings - Quarterly</li></ul>	<b>\$ 9,000</b>
1.2.2	<b>Investment Performance Review - Annual</b>	<b>\$ 8,000</b>
1.2.3	<b>Training – Ad hoc</b>	<b>\$ 0 (included)</b>
1.2.4	<b>Vendor Performance Review - Annual</b>	<b>\$ 3,000</b>
1.2.5	<b>Comprehensive Compliance Audit - Annual</b>	<b>\$ 4,000</b>

**BAFO - ANNUAL FEE (year one)                      \$24,000**

We look forward to receiving your response by the time and date indicated on the previous page. Please notify me should you have any questions. Discussions with other City of Glendale staff regarding this solicitation are prohibited.

Regards,

*Crista Clevenger*

Crista Clevenger, Contract Analyst  
[CClevenger@Glendaleaz.com](mailto:CClevenger@Glendaleaz.com)  
Materials Management  
City of Glendale  
623-930-2865



**Solicitation Number: RFP 17-02**  
**DEFERRED COMPENSATION PLAN**  
**CONSULTING SERVICES**

CITY OF GLENDALE  
 Materials Management  
 8850 West Glendale  
 Avenue, Suite 317  
 Glendale, Arizona 85301

**5.1 PRICE SHEET ORIGINAL PRICE SHEET**

**5.2 PROPOSAL FEE**

Submit a fee amount not to exceed for each task group listed in Section 1.2. All fees shall be inclusive of personnel, benefits, housing, technology, travel and support expenses.

**5.3 Provide a schedule of hourly billing rates for each staff position.**

The Hyas Group does not typically bill by the hour. We have provided the following estimates of the staff rates relative to the proposed fee amounts for each task.

- Consultant – approximately \$350/hour
- Analyst – approximately \$250/hour
- Staff – approximately \$175/hour

	SCOPE OF WORK	FEE AMOUNT
1.2.1	<b>Fiduciary Responsibilities</b> • Investment Policy Statement Review - Annual	\$ 0 (included)
1.2.1	<b>Fiduciary Responsibilities</b> • Committee meetings - Quarterly	\$ 10,000
1.2.2	<b>Investment Performance Review - Annual</b>	\$ 8,000
1.2.3	<b>Training – Ad hoc</b>	\$ 0 (included)
1.2.4	<b>Vendor Performance Review - Annual</b>	\$ 3,000
1.2.5	<b>Comprehensive Compliance Audit - Annual</b>	\$ 4,000

**5.4 PAYMENT** The Consultant payment(s) shall be made from funds paid to the City by its Deferred Compensation provider.

**5.5 TAX AMOUNT** Do not include any use tax or federal tax in your proposal. The City is exempt from the payment of federal excise tax and will add use tax as applicable.

**OFFEROR NAME:** Hyas Group, LLC



## Legislation Description

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**File #: 16-635, Version: 1**

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### **POSITION RECLASSIFICATIONS**

Staff Contact: Jim Brown, Director, Human Resources and Risk Management

### **Purpose and Recommended Action**

This is a request for the City Council to authorize the City Manager to reclassify existing positions within the organization that have experienced a change in duties and/or responsibilities.

### **Background**

As the City seeks out ways to more innovatively provide city services, jobs must adapt to address those changes. Department Directors work closely with the Human Resources and Risk Management Department to conduct job studies and make these changes when necessary. At times this may require a change in job duties and/or responsibilities that places the job in a different job classification. When this occurs, a reclassification of the job is necessary. Reclassifications, while permitted under Human Resources Policy 301, do create a change to Schedule 9 of the Fiscal Year (FY) 2016-17 Budget. Human Resources Policy 301.II.A.4 states the following with regard to position reclassifications:

A position may be reclassified when the essential duties and responsibilities of the position change significantly through the addition or deletion of essential job functions. Positions may be reclassified to a higher or lower classification and pay range as a result of a job study. The recommendation made to the City Manager by the Human Resources & Risk Management Director and approved by the City Council is final. Classification decisions are not appealable or grievable.

- a. When a filled position is reclassified to a class in a higher pay range, the employee occupying the position may receive a salary adjustment for the reclassification as determined by Human Resources. If the employee's current salary is less than the minimum of the new range the employee will be placed at the minimum of the new range.
- b. If, at the time of the reclassification, an employee is receiving temporary assignment pay for performing additional duties that fall within the scope of the new classification, the employee's base salary will be adjusted accordingly but shall not exceed the maximum of the new grade and the temporary assignment pay shall cease.
- c. If a filled position is reclassified or reevaluated and assigned a lower pay range, the employee's pay will not be reduced. However, if the employee's current salary is above the maximum of the new pay range, the employee will not be eligible for any additional increase in salary until the pay range maximum is once again higher than the actual salary.

It is prudent to continually assess the current structure and opportunities for realignment to better prepare the city for the future.

Water Services has requested that a position (to be determined through a recruitment process) be reclassified to a Supervisor, Enterprise Asset Management. The Water Services Department's Asset Management Technology Team plays a critical role in the management and maintenance of over 300,000 distinct assets across the City. Due to the complex, highly technical nature of the work in the mission critical section, a dedicated Supervisor is necessary to manage the PC Operators and to provide operational and technical support of the asset management and reporting system. The Supervisor will also be in charge of managing the day to day activities of staff involved in the department's migration to a new CMMS database.

The Water Services Department has also requested that a vacant Customer Service Representative position be reclassified as a Water Services Plant Operator. This entry level position will allow Water Services to hire and develop Plant Operators. Currently plants are staffed by senior level Water Plant Operators, which are difficult to fill externally due to the minimum qualifications (including certifications) that are required. Having this entry level position will allow incumbents to obtain the experience, knowledge and skills required to move into senior level positions.

The Public Works department would like to reclassify a vacant Equipment Mechanic position to an Equipment Mechanic Specialist. The Fleet Management Division is in need of a tire specialist which would be part of the duties of the Equipment Mechanic Specialist job.

### **Analysis**

The Human Resources and Risk Management Department works closely with Department Directors in conducting job studies to determine whether a job requires reclassification. It is important that job descriptions accurately reflect the duties being performed by employees and that the job classification reflects the level of duties and responsibilities required of the position. This helps ensure that the City provides a clear understanding to employees of what their duties are, helps to identify the appropriate level within the organization the position holds and helps supervisors with directing and assessing the performance of employees. It also assists with any confusion that might arise between the City and employees as to the duties and responsibilities required of a position.

### **Previous Related Council Action**

On June 14, 2016, Council approved the FY 2016-17 Budget which includes a listing of all approved positions in Schedule 9 of the Budget Book.

Council approved position reclassifications at the September 13, 2016 Council meeting.

Council approved position reclassifications at the September 27, 2016 Council meeting.

Council approved position reclassifications at the October 25, 2016 Council meeting.

Council approved position reclassifications at the November 22, 2016 Council meeting.

**Community Benefit/Public Involvement**

Ensuring that job descriptions appropriately reflect the duties being performed protect the city from potential litigation and help ensure that the citizens are receiving the appropriate level of services necessary.

**Budget and Financial Impacts**

Based on salary savings, there is no budget impact this fiscal year. However, there will be an estimated budget impact of \$21,152 for next fiscal year which will be brought forward in the budget process.



Positions Recommended for Reclassification  
December 20, 2016

Position Number	Department	Fund #	Fund Name	Previous Title	New Title	Description of Request	Effective Date of Action	Estimated Budgetary Impact for Remainder of FY	Estimated Budgetary Impact FY 17-18 (Based on Midpoint of Salary Range)
TBD	Water Services	TBD	TBD	TBD	Supervisor, Enterprise Asset Management	Realign to better meet department needs	12/24/2016	\$0.00	TBD
1301	Water Services	2360	Water and Sewer	Customer Service Rep	Water Services Plant Operator	Realign to better meet department needs	12/24/2016	\$0.00	\$9,015.00
2469	Public Works	2590	Fleet Services	Equipment Mechanic	Equipment Mechanic Specialist	Realign to better meet department needs	12/24/2016	\$0.00	\$12,137.00



## Legislation Description

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**File #:** 16-608, **Version:** 1

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### **AUTHORIZATION FOR THE EXPENDITURE OF FUNDS AND TO ENTER INTO A LINKING AGREEMENT WITH CDW GOVERNMENT, LLC, FOR SOFTWARE**

Staff Contact: Chuck Murphy, Chief Information Officer, Innovation and Technology

#### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Linking Agreement with CDW Government, LLC, (CDW-G), for a term commencing upon approval of the agreement and ending on September 30<sup>th</sup>, 2018 and to authorize the City Manager, at their discretion, to renew the agreement for three additional one-year period until September 30<sup>th</sup>, 2021. CDW-G has been awarded the sole provider of software under the State's Software Value Added Reseller (SVAR) agreement, which was previously held by SHI International Corp. The termination of the SHI agreement by the State requires the City to enter into a new Linking Agreement with CDW-G to continue to take advantage of the SVAR pricing. This request also includes approval of expenditure authority in an amount not to exceed \$4,250,000 over the life of the agreement

#### **Background**

The City utilizes the State's SVAR vendor for the procurement of software license and maintenance and support from many vendors including but not limited to Adobe, Oracle, Microsoft, VMware, Sophos, and ManageEngine. The State's issuance of the SVAR agreement to a single reseller ensures competitive pricing for software and services from those companies.

Cooperative purchasing allows counties, municipalities, schools, colleges and universities in Arizona to use a contract that was competitively procured by another governmental entity or purchasing cooperative. Such purchasing helps reduce the cost of procurement, allows access to a multitude of competitively bid contracts, and provides the opportunity to take advantage of volume pricing. The Glendale City Code authorizes cooperative purchases when the solicitation process utilized complies with the intent of Glendale's procurement processes. This cooperative purchase is compliant with Chapter 2, Article V, Division 2, Section 2-149 of the Glendale City Code, per review by Purchasing.

#### **Analysis**

CDW-G was awarded the SVAR contract by the State of Arizona through a competitive bid process. While the SVAR pricing is anticipated to be the lowest cost available, the City will also be pursuing a Linking Agreement with the previous SVAR vendor (SHI International, INC.) utilizing a S.A.V.E. cooperative purchasing contract with Maricopa County. This will allow the City to evaluate the pricing and vendor services of the new SVAR vendor (CDW-G) while maintaining a relationship with the previous SVAR vendor (SHI). This will be beneficial to the City in the event that there are challenges migrating from one software vendor to another. The City

will ensure it can maintain support on critical enterprise software, and reduce the risk of experiencing any interruption in service.

**Community Benefit/Public Involvement**

The ability to obtain competitive pricing from multiple vendors provides a higher level of cost saving potential when acquiring products and services.

**Budget and Financial Impacts**

The amount budgeted in the Information Technology Fund will fluctuate based on annual budget capacity and replacement needs. It is estimated to be approximately \$850,000 per year.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$850,000</b>	<b>2591-18402-522700, Information Technology</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CDW GOVERNMENT, LLC**

THIS LINKING AGREEMENT (this "Agreement") is made to be effective the 10th day of January, 2017, between the City of Glendale, an Arizona municipal corporation (the "City"), and CDW Government, LLC, a Illinois corporation, authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On October 1, 2016, under the State of Arizona Cooperative Purchasing Agreement, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the Software Value Added Reseller (SVAR) Services Participating Addendum No. ADSPO17-149774 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was January 10, 2017, until the date the contract expires on September 30, 2018, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond September 30, 2021. The initial period of this

Agreement, therefore, is the period from the Effective Date of this Agreement until September 30, 2018. The City Manager or designee, however, may renew the term of this Agreement for three (3) additional one-year periods until the Cooperative Purchasing Agreement expires on September 30, 2021. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed four million two hundred and fifty thousand dollars (\$4,250,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale  
 c/o  
 Innovation & Technology  
 6835 N 57th Drive  
 Suite 100  
 Glendale, Arizona 85301  
 623-930-

and

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.


“City”

“Contractor”

City of Glendale, an Arizona  
 municipal corporation

CDW Government LLC, an Illinois  
 corporation

By: \_\_\_\_\_  
 Kevin R. Phelps  
 City Manager

By:   
 Name: **Dario J. Bertocchi**  
 Title: **Director, Program Sales**

ATTEST:

\_\_\_\_\_  
 Julie K. Bower (SEAL)  
 City Clerk

APPROVED AS TO FORM:

Reviewed  
 By: 

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Michael D. Bailey  
City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CDW GOVERNMENT, LLC**

**EXHIBIT A**

Software Value Added Reseller (SVAR) Services, Master Agreement No. ADSP017-149774



**PARTICIPATING ADDENDUM**

(hereinafter "Addendum")

**NASPO VALUEPOINT**

**Software Value Added Reseller (SVAR)**

**Administered by the State of Arizona (hereinafter "Lead State")**

MASTER AGREEMENT

CDW Government LLC

Master Agreement No: ADSPO16-130652

(hereinafter "Contractor")

And

State of Arizona

(hereinafter "Participating State/Entity")

1. **Scope:** This addendum covers the *Software Value Added Reseller* contract led by the State of Arizona for use by state agencies and other entities located in the Participating State [or State Entity] authorized by that state's statutes to utilize State contracts with the prior approval of the state's chief procurement official.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use State contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Participating State Modifications or Additions to Master Agreement:** *(These modifications or additions apply only to actions and relationships within the Participating Entity.)*

The following changes are modifying or supplementing the Master Agreement terms and conditions.

- 1. **Pricing:** Pricing associated with Markup/Markdowns for the resultant Addendum shall be in accordance with **Exhibit A**, Price List.
- 2. **Professional Services:** Shall be priced as follows:

Title	CDW•G Offering
Sr. Software Architect	No Cost
Solution Software Architect	No Cost

*Sr. Software Architect:* Provides analysis and in person recommendations on software infrastructure and how to maximize software spend through the appropriate licensing program and vendor selection.

*Solution Software Architect:* Provides remote customer support, explaining and helping determine the best acquisition method for their needs, including multi-program cost analysis comparisons.

- 3. **Direct Negotiations:** In the event that the Customer negotiates and agrees with a Publisher directly, CDW-G shall pass through the negotiated rates and terms to the customer through the resultant Addendum.

**PARTICIPATING ADDENDUM**

(hereinafter "Addendum")

**NASPO VALUEPOINT**

**Software Value Added Reseller (SVAR)**

**Administered by the State of Arizona (hereinafter "Lead State")**

MASTER AGREEMENT

CDW Government LLC

Master Agreement No: ADSPO16-130652

(hereinafter "Contractor")

And

State of Arizona

(hereinafter "Participating State/Entity")

- 4. **Purchasing Card (PCARD) Purchases:** The Contractor shall accept Purchasing Cards as a form of payment without charging a fee for the purchase.
- 5. **Master Exceptions:** Contractor agrees to remove original exceptions which were submitted to the Master for the sake of the State of Arizona's Addendum.
- 6. **Participating Addendum Order of Precedence:** The order of precedence is as follows:
  - 6.1 State of Arizona Participating Addendum;
  - 6.2 State of Arizona NASPO ValuePoint Master Agreement;
  - 6.3 The Solicitation including all Addendums; and
  - 6.4 Contract Vendors response to the Solicitation
- 7. **Exhibit B:** State of Arizona Special Terms and Conditions.
- 8. **Exhibit C:** State of Arizona Uniform Terms and Conditions.

4. **Reserved**

5. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	<b>Jason Schwartz</b>
Address	26125 North Riverwoods Blvd. Mettewa, IL 60045
Telephone	(847)419-7542
Fax	NA
E-mail	JasonS@cdw.com

Participating Entity

Name	<b>Charlotte Righetti, CPPB, CTNS</b>
Address	100 North 15 <sup>th</sup> Ave, Suite 201 Phoenix, AZ 85007
Telephone	(602)542-9127
Fax	NA
E-mail	Charlotte.righetti@azdoa.gov

6. **Reserved**

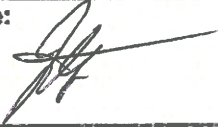
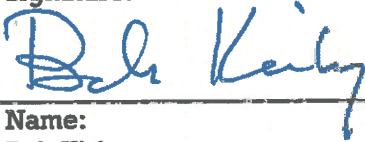
**PARTICIPATING ADDENDUM**  
(hereinafter "Addendum")

**NASPO VALUEPOINT**  
**Software Value Added Reseller (SVAR)**  
Administered by the State of Arizona (hereinafter "Lead State")

**MASTER AGREEMENT**  
**CDW Government LLC**  
Master Agreement No: ADSPO16-130652  
(hereinafter "Contractor")  
And  
State of Arizona  
(hereinafter "Participating State/Entity")

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: <b>State of Arizona</b>	Contractor: <b>CDW-G</b>
Signature: 	Signature: 
Name: <b>Jeff Stearns</b>	Name: <b>Bob Kirby</b>
Title: <b>State Procurement Manager</b>	Title: <b>Vice President</b>
Date: <b>9/28/16</b>	Date: <b>9/27/2016</b>

For questions on executing a participating addendum, please contact:

NASPO ValuePoint  
Cooperative Development Coordinator  
Telephone  
Email

Ted Fosket  
(907) 723-3360  
tfosket@naspovaluepoint.org

**PLEASE EMAIL FULLY EXECUTED PDF COPY OF THIS DOCUMENT TO**  
**PA@naspovaluepoint.org TO SUPPORT DOCUMENTATION OF PARTICIPATION AND**  
**POSTING IN APPROPRIATE DATA BASES**

**Exhibit A – Price Sheet**  
**PARTICIPATING ADDENDUM**  
 State of Arizona Contract Number: ADSP017-149774

**PUBLISHERS**

**MARKDOWN**

The price to Authorized Purchaser (AP) is calculated using the following formula: "Reseller Cost" + ("Reseller Cost" x "Markdown")

<b>KEY ITEMIZED</b>	ADOBE	0.25%
	CITRIX	0.25%
	IBM	0.25%
	LEXMARK INTERNATIONAL	0.25%
	MCAFEE	0.25%
	MICROSOFT	-1.26%
	OPEN FOX	0.25%
	ORACLE	0.25%
	SPILLMAN TECHNOLOGIES, INC.	0.25%
	SYMANTEC	0.25%
	VMWARE	0.25%

ACCELA, INC.	0.50%
ACCELERANDO	0.50%
AGATE SOFTWARE	0.50%
AM-MICROSOFT	0.50%
APPLE	0.50%
ATLASSIAN	0.50%
ATTACHMATE – MICROFOCUS	0.50%
AUTODESK	0.50%
B2Gnow	0.50%
BAKBONE COMMUNICATIONS – DELL	0.50%
BARRACUDA	0.50%
BMC Software	0.50%
CA TECHNOLOGIES	0.50%
CELLEBRITE	0.50%
CGI INTERACTIVE COMMUNICATIONS, INC.	0.50%
CHERWELL	0.50%
CISCO	0.50%
COMMVault SYSTEMS	0.50%
COMPUTRONIX USA	0.50%
COMPUWARE	0.50%
COREL	0.50%

**Exhibit A – Price Sheet**  
**PARTICIPATING ADDENDUM**  
 State of Arizona Contract Number: ADSP017-149774

<b>OTHER ITEMIZED</b>	DATABANK IMX	0.50%
	DELL	0.50%
	DOCUSIGN	0.50%
	DOCUWARE CORPORATION	0.50%
	eCivis	0.50%
	EMC	0.50%
	ENCHOICE	0.50%
	ESET	0.50%
	ESRI	0.50%
	FREEDOM SCIENTIFIC	0.50%
	GL SOLUTIONS	0.50%
	GPS INSIGHT	0.50%
	GUIDANCE SOFTWARE	0.50%
	GW MICRO	0.50%
	HeathLandscape	0.50%
	Hewlett Packard Enterprise	0.50%
	HostBridge Technology	0.50%
	HP	0.50%
	HUMANWARE	0.50%
	ICM CONVERSIONS	0.50%
	ICM Document Solutions	0.50%
	Identity Finder, LLC.	0.50%
	INFOR	0.50%
	Informatica Corporation	0.50%
	INFORMATION BUILDERS	0.50%
	Information Builders	0.50%
	INTERMEDIX EMSYSTEMS	0.50%
	JW Software	0.50%
	KRONOS SOFTWARE	0.50%
	LANDESK	0.50%
	LASERFISCHE	0.50%
	Levi, Ray & Shoup, Inc.	0.50%
	Libera	0.50%
	NCIRCLE	0.50%
NETOP	0.50%	
nFocus Solutions	0.50%	
NOVELL	0.50%	
NUANCE	0.50%	
OpenText	0.50%	

**Exhibit A – Price Sheet**  
**PARTICIPATING ADDENDUM**  
 State of Arizona Contract Number: ADSP017-149774

OSAM	0.50%
PASSPORT	0.50%
PATCHLINK	0.50%
Pen-Link	0.50%
Pluralsight	0.50%
Premirus Corporation	0.50%
PROOFPOINT	0.50%
Rapid7	0.50%
Red Hat	0.50%
REFERENCIA SYSTEMS	0.50%
Rocket Software, Inc.	0.50%
RSA SECURITY	0.50%
SafeNet	0.50%
Salesforce	0.50%
SAND Technology	0.50%
SAP	0.50%
SAS	0.50%
SolarWinds	0.50%
SOPHOS	0.50%
SPLUNK SOFTWARE	0.50%
Sprinklr	0.50%
SRA International, Inc.	0.50%
STASEEKER NETWORK INFRASTRUCTURE MONITORING	0.50%
STELLEMENT – ORACLE	0.50%
SUNGUARD	0.50%
SYBASE	0.50%
Tableau	0.50%
TECHSMITH	0.50%
Tenable Network Security	0.50%
The Security Awareness Company	0.50%
TREND MICRO	0.50%
TRUSTWARE	0.50%
ULTRABAC	0.50%
Vanguard Integrity Professionals	0.50%
Veeam Software	0.50%
Veritas Technologies LLC	0.50%
WEBSense	0.50%
ZOHO Corporation	0.50%
any other non-listed publisher	1.50%

**Exhibit B – Arizona Special Terms and Conditions**  
**PARTICIPATING ADDENDUM**  
State of Arizona Contract Number: ADSP017-149774

**A. Purpose**

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract (Participating Addendum, PA) for the materials or services as listed herein in service to the State.

**B. Term of Contract**

The term of this Contract shall commence on October 1, 2016 and shall be for an initial period of two (2) years, unless terminated, canceled or extended as otherwise provided herein.

**C. Contract Extensions**

The Contract term is for period stated in Item B. subject to additional successive periods with a maximum aggregate including all extensions not to exceed five (5) years.

**D. Contract Type – Fixed Price**

**E. Eligible Agencies (STATEWIDE)**

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion. In order to participate in this contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6).

**F. Licenses**

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

**G. Volume of Work**

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

**H. Key Personnel**

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions if required.

1. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.
2. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

**I. Changes**

**Exhibit B – Arizona Special Terms and Conditions**

**PARTICIPATING ADDENDUM**

State of Arizona Contract Number: ADSP017-149774

The State may at any time make changes within the general scope of this Contract. The Contractor shall respond to the Change Order with a proposal. If any such change causes an adjustment in the cost of, or the time required for the performance of any part of the work under this Contract, whether changed or not changed by the Change Order, the Procurement Officer shall modify the Contract in writing via a bilateral Contract Amendment.

**J. Price Adjustment**

Any price adjustment shall be within the confines of the awarded contract, or as negotiated in service to this Contract. Any negotiated price adjustments for this Contract shall be documented via a bilateral Contract Amendment.

**K. Payment Procedures**

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

**L. Information Disclosure**

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

**M. Employees of the Contractor**

All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times, and not employees of the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

**N. Warranty**

All services supplied under this Contract shall be fully guaranteed by the Contractor for a minimum period of ninety (90) days from the date of acceptance by the State. Any defects of design, workmanship, or delivered materials, that would result in non-compliance shall be fully corrected by the Contractor without cost to the State.

**O. Compliance with Applicable Laws**

The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed



## **Exhibit B – Arizona Special Terms and Conditions**

### **PARTICIPATING ADDENDUM**

State of Arizona Contract Number: ADSP017-149774

by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on Users or prevent the Materials from performing as required under the terms and conditions of this Contract.

#### **P. Non-Exclusive Contract**

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

#### **Q. Administrative Fee/Usage Reports**

1. In accordance with ARS § 41-2633 the Department of Administration, State Procurement Office includes an Administrative Fee, in the majority of its Statewide contracts – multiple agency, multiple government, cooperative contracts. The Administrative Fee is used by the State to defray the additional costs associated with soliciting, awarding and administering statewide contracts.

In addition to the State agencies, boards and commissions, statewide contracts are available to members of the State Purchasing Cooperative including cities, counties, school districts, special districts, other state governments, agencies of the federal government, tribal nations, schools, medical institutions, and nonprofit organizations.

The Administrative Fee is the responsibility of the contractor. The Administrative Fee is a part of the contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. In accordance with Section 26 of the NASPO ValuePoint Master Agreement Terms and Conditions, the 0.25% NASPO ValuePoint Administrative fee shall be incorporated into the Offerors base price. Other states, including the State of Arizona, may negotiate additional Administrative Fees in their Participating Addenda following award of a Master Agreement.

Further, Statewide contracts maintain one set of pricing for all customers and not separate prices for State agency customers and State Purchasing Cooperative customers.

2. **State of Arizona Fee Amount:**

Unless defined differently within the contract, the Statewide Contracts Administrative Fee shall be one percent (1.0%) of quarterly sales receipts under an active Statewide contract, transacted by only the members of the State Purchasing Cooperative, minus any taxes or regulatory fees, minus any returns or credits, and minus any shipping charges not already included in the unit prices. The Administrative Fee percentage is only applicable to amounts actually received by the contractor during the quarter and is not applicable to amounts ordered by customers but not yet paid for. The administrative fee is not paid on transactions with state agency customers.

3. **Method of Assessment**

At the completion of each quarter, the contractor reviews all sales under their contract in preparation for submission of their Usage Report. The contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: <https://spo.az.gov/state-purchasing-cooperative>. At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) written notice prior to exercising or changing this option. The contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- Total sales receipts from State agencies, boards and commissions;
- Total sales receipts from members of the State Purchasing Cooperative; and
- Total Administrative Fee amount based on one percent (1.0%) of the sales receipts

**Exhibit B – Arizona Special Terms and Conditions**

**PARTICIPATING ADDENDUM**

State of Arizona Contract Number: ADSP017-149774

from members of the State Purchasing Cooperative.

4. **Submission of Reports and Fees.** Within thirty (30) days following the end of the quarter, the contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office. Contractors are required to use the State's current report templates unless you have authorization from your contract officer to use a different format. You need to complete Form 799, which is a cover letter that gives the totals of your transactions; and Form 801, which is an Excel spreadsheet that details your transactions. Sales to state agencies and the cooperative members are to be totaled separately. The most current forms can be downloaded at <https://spo.az.gov/statewide-contracts-administrative-fee>.

- 4.1 The submission schedule for Administrative Fees and Usage reports shall be as follows:

FY Q1, July through September	Due October 31
FY Q2, October through December	Due January 31
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 31

- 4.2 Usage Reports and any questions are to be submitted by email to the state's designated usage report email address: [usage@azdoa.gov](mailto:usage@azdoa.gov)

- 4.3 Administrative Fees shall be made out to the "State Procurement Office" and mailed to:  
Department of Administration  
General Services Division  
ATTN: "Statewide Contracts Administrative Fee"  
100 N. 15th Avenue, Suite 202  
Phoenix, AZ 85007

5. The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.
6. Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

**R. Acceptance**

Determination of the acceptability of services shall be made by the sole judgment of the State. Acceptance shall be in writing, verbal acceptance will not be allowed. Services shall be completed in accordance with the Scope of Work, agreed to and accepted schedules, plans, and agreed to performance standards. Acceptance shall be one hundred percent (100%) functionality, which will be determined by the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required Tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

**S. Order of Precedence**

**T. Performance**

Contractor agrees that, from and after the date that the applicable services commence, its performance of the Scope of Services will meet or exceed industry best practices subject to the limitations and in accordance with the provisions set forth in this Contract. If the Services provided pursuant to this Contract are changed, modified or enhanced (whether by Change Order or through the provision of new Services), The State and the Contractor will review the current performance experience and will in good faith

**Exhibit B – Arizona Special Terms and Conditions**  
**PARTICIPATING ADDENDUM**  
State of Arizona Contract Number: ADSP017-149774

determine whether such experience should be adjusted and whether additional services should be implemented or whether services be removed. The following requirements shall also apply:

1. Failure to Perform

If Contractor fails to complete any deliverable, then Contractor shall:

- 1.1 Promptly perform a root-cause analysis to identify the cause of such failure;
- 1.2 Use commercially reasonable efforts to correct such failure and to begin meeting the requirements as promptly as practicable;
- 1.3 Provide the State with a report detailing the cause of, and procedure for correcting, such failure; and
- 1.4 If appropriate under the circumstances, take action to avoid such failure in the future.

2. Root-Cause Analysis

In the event of the Contractor's failure to perform required services or meet agreed upon service levels or other Contractor service standards as required by the State under this Contract, the Contractor shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The State shall have the right to review the analysis and approve the remediation steps prior to or subsequent to their implementation, as deemed appropriate by the State, if the remediation steps impact State assets or operational processes.

**U. Compensation**

Should the Contractor fail to provide all required services or deliver work products, as agreed upon by State and the Contractor, the State shall be entitled to invoke applicable remedies, including but not limited to, withholding payment to the Contractor and declaring the Contractor in material breach of the Contract. If the Contractor is in any manner in default of any obligation or the Contractor's work or performance is determined by the State to be defective, sub-standard, or if audit exceptions are identified, the State may, in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default, defect, exception or sub-standard performance. The Contractor shall reimburse the State on demand, or the State may deduct from future payments, any amounts paid for work products or performance which are determined to be an audit exception, defective or sub-standard performance. The Contractor shall correct its mistakes or errors without additional cost to the State. The State shall be the sole determiner as to defective or sub-standard performance.

The Contractor shall fulfill their contractual requirements including the Deliverables identified in the Statement of Work and fulfill the roles and responsibilities described in the Statement of Work for a firm fixed price, inclusive of travel and travel-related expenses. The fixed amount shall be inclusive of any fees for the use of any third party products or services required for use in the performance of this Contract

**V. Contractor Performance Reports**

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

**W. Offshore Performance of Work Prohibited**

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed

**Exhibit B – Arizona Special Terms and Conditions**  
**PARTICIPATING ADDENDUM**  
State of Arizona Contract Number: ADSP017-149774

within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

**X. Indemnification and Insurance**

**1.1 Indemnification Clause**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

**1.2 Insurance Requirements**

1.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

1.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

**1.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3.1 Commercial General Liability (CGL) – Occurrence Form  
Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000

**Exhibit B – Arizona Special Terms and Conditions  
PARTICIPATING ADDENDUM**

State of Arizona Contract Number: ADSP017-149774

Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**1.3.2 Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- c. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**1.3.3 Workers' Compensation and Employers' Liability**

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- e. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

**1.3.4 Technology Errors & Omissions Insurance**

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000

- f. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

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- g. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.
- h. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

**1.3.5 Media Liability Coverage**

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000

- i. Such insurance shall cover any and all errors and omissions or negligent acts in the production of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark and trade dress.
- j. In the event that the Media Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**1.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 1.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 1.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**1.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

**1.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State

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of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**1.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

**1.7.1** All certificates and endorsements, as required by this written agreement, are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

**1.7.2** All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**1.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

**1.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**1.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

**Y. Data Privacy and Security**

Contractor shall treat all information obtained through performance of the contract, as confidential or sensitive information consistent with State and federal law and State Policy. Contractor or its agents shall not use any data obtained in the performance of the contract in any manner except as necessary for the proper discharge of its obligations and protection of its rights related to this agreement. Contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that data in its or its agents' possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner in performance of the contract. This includes data contained in Contractor's records obtained from the State or others, necessary for contract performance. Contractor and its agents shall

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take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

**Z. Data Privacy/Security Incident Management**

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

1. Threat of Security Breach

Contractor(s) agrees to notify the State Chief Information Officer (CIO), the State Chief Information Security Officer (CISO) and other key personnel as identified by the State of any perceived threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). The State agrees to provide contact information for the State CIO, CISO and key personnel to the Contractor(s).

2. Discovery of Security Breach

Contractor agrees to immediately notify the State CIO, the CISO and key personnel as identified by the State of a discovered breach of security. The State agrees to provide contact information for the State CIO, the CISO and key personnel.

**AA. Security Requirements for Contractor Personnel**

Each individual proposed to provide services through this contract agrees to security clearance and background check procedures, including fingerprinting, as defined by the Arizona Department of Administration in accordance with Arizona Revised Statutes §41-710. The results of the individual's background check procedures must meet all HIPAA and law enforcement requirements. Contractor is responsible for all costs to obtain security clearance for their consultants providing services through this contract. Contractor personnel, agents or sub-contractors that have administrative access to the State's networks may be subject to any additional security requirements of the State as may be required for the performance of the contract. The Contractor, its agents and sub-contractors shall provide documentation to the State confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

1. Identity and Address Verification – that verifies the individual is who he or she claims to be including verification of the candidate's present and previous addresses;
2. UNAX/confidentiality Training;
3. HIPAA Privacy and Security Training; and
4. Information Security Training.

**BB. Access Constraints and Requirements**

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (A.R.S.) §28-447, §28-449, §38-421, §13-2408, §13-2316, §41-770.

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.



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**CC. Health Insurance Portability and Accountability Act of 1996**

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a “Pledge to Protect Confidential Information” and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

*Suggested References:*

<https://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/HIPAAGenInfo/downloads/hipaalaw.pdf>

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/>

**DD. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement**

1. The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
3. Failure to comply with a State audit process to randomly verify the employment records of Contractors and subcontractors shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
4. The State Agency retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph One (1).

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**1. Definition of Terms**

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *“Attachment”* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *“Contract”* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *“Contract Amendment”* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *“Contractor”* means any person who has a Contract with the State.
- 1.5. *“Days”* means calendar days unless otherwise specified.
- 1.6. *“Exhibit”* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *“Gratuity”* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *“Materials”* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *“Procurement Officer”* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *“Services”* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *“Subcontract”* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *“State”* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *“State Fiscal Year”* means the period beginning with July 1 and ending June 30.

**2. Contract Interpretation**

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;

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- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

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- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited.  
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. **Costs and Payments**

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all

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applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
  - 4.5.1. Accept a decrease in price offered by the contractor;
  - 4.5.2. Cancel the Contract; or
  - 4.5.3. Cancel the contract and re-solicit the requirements.

**5. Contract Changes**

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

**6. Risk and Liability**

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
  - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree

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that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

- 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2. Force Majeure shall not include the following occurrences:
- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition;  
or
- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the

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extent that such delay or failure is caused by force majeure.

- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

**7. Warranties**

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2. Fit for the intended purposes for which the materials are used;
  - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
  - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

**8. State's Contractual Remedies**

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.

## Exhibit C – Arizona Uniform Terms and Conditions

### PARTICIPATING ADDENDUM

State of Arizona Contract Number: ADSP017-149774

- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all



**Exhibit C – Arizona Uniform Terms and Conditions**

**PARTICIPATING ADDENDUM**

State of Arizona Contract Number: ADSP017-149774

subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

**9.5. Termination for Default.**

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**10. Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

**11. Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

**12. Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.



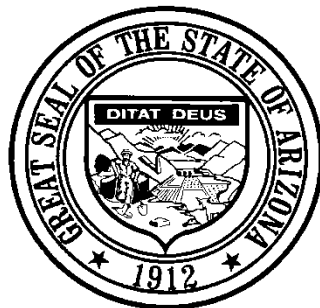
Software Value-Added Reseller (SVAR) Services  
MASTER PRICE AGREEMENT

with

CDW Government LLC  
Contract No. ADSPO16-130652

State of Arizona  
Lead State

Effective: April 8, 2016 to April 7, 2018





### Offer and Acceptance

SOLICITATION NO.: ADSP016-00005829

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OFFEROR: CDW Government LLC

OF  
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State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

### OFFER

#### TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

CDW Government LLC

Company Name

230 N Milwaukee Ave

Address

Vernon Hills

IL

60061

City

State

Zip

Signature of Person Authorized to Sign Offer

Christina V. Rother

Printed Name

President, CDW Government LLC

Title

Phone: 312.705.6285

Fax: 847.465.6800

E-Mail: [elharr@cdw.com](mailto:elharr@cdw.com)

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization  IS/  IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.

### ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. Available upon Posting

The effective date of the Contract is April 8, 2016

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona  
Awarded this 5<sup>th</sup> day of April 2016

Procurement Officer



# Master Agreement Table of Contents

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

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# Master Agreement

## Section 1: General Information

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

### 1.1 Purpose

The State of Arizona, State Procurement Office, is requesting proposals for Software Value-Added Reseller (SVAR) services in furtherance of the NASPO ValuePoint Cooperation Purchasing Program (NASPO ValuePoint). The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors so that NASPO ValuePoint Cooperative Members may acquire Commercial off the Shelf Software (COTS) and related services from Software Value-Added Resellers.

The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions, as explained in section 3 of the NASPO ValuePoint Master Agreement Terms and Conditions. The initial term of the Master Agreement shall be two (2) years with renewal provisions as outlined in Section 3 of the NASPO ValuePoint Master Terms and Conditions (Section 4).

### 1.2 Lead State, Solicitation Number and Lead State Contract Administrator (LSCA)

The State of Arizona, State Procurement Office (SPO) is the Lead State and issuing office for this document and all subsequent addenda relating to it. This solicitation (RFP) is a competitive process, in accordance with the Arizona Procurement Code available at <https://spo.az.gov/>. The Arizona Procurement Code is a compilation in one place of Arizona Revised Statutes (ARS) 41-2501 et seq. and administrative rules and regulations A.A.C R2-7-1010 et.seq. The Solicitation #ADSP016-00005829 must be referred to on all proposals, correspondence, and documentation relating to this RFP.

The Lead State Contract Administrator (LSCA) identified below is the single point of contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, change, clarification, protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator (LSCA) designated by the State of Arizona, State Procurement Office is:

Charlotte Righetti, CPPB, CTNS State Procurement Manager  
State of Arizona, State Procurement Office  
100 N. 15<sup>th</sup> Avenue, Suite 201  
Phoenix, Arizona 85007  
Phone: (602)542.9127

### 1.3 NASPO ValuePoint Background Information

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each



# Master Agreement

## Section 1: General Information

State of Arizona  
State Procurement Office  
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Description: **Software Value-Added Reseller (SVAR) Services**

of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites: [www.naspovaluepoint.org](http://www.naspovaluepoint.org) and [www.naspo.org](http://www.naspo.org).

### 1.4 Participating States

In addition to the Lead State conducting this solicitation, the Participating States listed below have requested to be named in this RFP as potential Users of the resulting Master Agreement. Other entities may become Participating Entities after award of the Master Agreement. State specific terms and conditions will govern each state's Participating Addendum that will govern each state's Participating Addendum. A listing of the Participating States can be found in Exhibit I.

### 1.5 Definitions – all capitalized terms in this document have the meaning as defined in AAC R2-7-101. Any capitalized term not defined in AAC R2-7-101 has the meaning defined below.

**"Appliance"** means a separate and discrete hardware device with integrated software (firmware), specifically designed to provide a specific computing resource. For the purposes of this solicitation only an "Appliance" which is the sole means of obtaining the Software product is allowable.

**"Attachment"** means any item the Solicitation requires an Offeror to submit as part of the Offer.

**"Best and Final Offer (BAFO)"** means a revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service, and products to be delivered.

**"Commercial Off the Shelf" ("COTS")** for the purposes of this solicitation means non-developmental software which has been created for specific uses and is available to the general public in the commercial marketplace. COTS products are designed to be implemented easily into existing systems without the need for customization.

**"End-User License Agreement (EULA)"** is a legal contract between the manufacturer (publisher) and the end User of an application that details how the software can and cannot be used.

**"eProcurement (Electronic Procurement)"** means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.

**"Excluded Software Publishers"** means a Software Publisher who is unwilling to do business with a Reseller.

**"Exhibit"** means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.



# Master Agreement

## Section 1: General Information

State of Arizona  
State Procurement Office  
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Contract No: ADSP016-130652  
Description: Software Value-Added Reseller (SVAR) Services

“**Lead State Contract Administrator**” (“**LSCA**”) means the Procurement Officer for the Master Agreement.

“**Master Agreement**” (“**MPA**”) means the contractual agreement executed between the winning (awarded) contractor (s) and the Lead State conducting the procurement on behalf of NASPO ValuePoint.

“**Non-perpetual license**” or “**Subscription License**” is a temporary license that provides the right to use a particular licensed product until the end of the license-agreement term.

“**Participating State Contract Administrator**” (“**PSCA**”) means the Procurement Officer for the Participating State.

“**Perpetual license**” means a license which is everlasting and valid if the software is being used in accordance with the license-agreement requirements.

“**Person**” means any corporation, business, individual, union, committee, club, or other organization or group of individuals

“**Publisher**” means a software manufacturer (e.g., Microsoft)

“**Reseller**” means a Software Value-Added Reseller who is awarded under this solicitation, and who has a fully-executed (MPA and PA-s) contract.

“**Reseller Cost**” means the price that the Reseller pays the Publisher or Distributor to purchase software on behalf of the Participating State. Reseller Cost should not include any administrative or other mark-up costs.

“**Software**” means the computer program, including media and associated documentation.

“**Software Licensing**” means allowing an individual or group to use a piece of software.

“**Software Maintenance and Support**” means any software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order.

“**Solicitation Amendment**” means a change to the Solicitation issued by the Procurement Officer.

“**Volume License Agreements (VLAs)**” means an agreement with a Software Publisher wherein the Participating State’s total expected purchasing over a period of time is considered in establishing the discount level.



# Master Agreement

## Section 2: Scope of Work

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: ADSP016-130652  
Description: Software Value-Added Reseller (SVAR) Services

### 2.1 Software Value-Added Reseller ('Reseller' – "SVAR")

2.1.1 Software Value-Added Reseller ('Reseller' – "SVAR") shall be a large account reseller authorized to sell products direct from Key Software Publishers or authorized Distributors.

2.1.2 SVAR shall do the following:

2.1.2.1 Provide Commercial Off-the-Shelf-Software (COTS).

2.1.2.2 Honor existing Volume or Enterprise license agreements.

2.1.2.3 Offer maintenance and support packages on licenses already owned by the Participating State and other Purchasing Entities.

2.1.2.4 Advise the LSCA, each PSCA, and other Purchasing Entities of SVAR's channel partner status with Key Software Publishers.

2.1.2.5 Retain or enhance reseller certifications with software publishers - At a minimum, maintain Reseller certification levels held at time of award.

If Reseller's certification or reseller status is withdrawn or reduced, Reseller is required to immediately notify, in writing, the Lead State Contract Administrator (LSCA), each PSCA and other Purchasing Entities explaining:

- The change;
- The impact on their costs to obtain the product;
- Limitations on the products or services they may provide; and,
- The reasons for the change.

Failure to provide the required notification, regarding significant negative changes in their reseller status, may be grounds for suspension or cancellation of the MPA and PA's.

2.1.2.6 Provide Pre-Sale Advisement - **There shall be no charge for these services:**

2.1.2.6.1 Advise the Purchasing Entity in making strategic software application decisions by providing evaluation copies, product comparisons, needs analysis, product information and application recommendations.

2.1.2.6.2 Act as liaison between the Purchasing Entity and individual publishers in identifying best approaches and cost savings opportunities for the Purchasing Entity.

2.1.1.6.3 Examples of such advice would be:

- In selecting appropriate software;
- In explaining Volume License Agreements with complicated rules;
- In determining the most cost-effective buying strategies;
- In ensuring that Participating States and other Purchasing Entities are in compliance with licensing requirements; and,
- In finding software options to meet a specific need, for example, a flow-charting package.

2.1.2.7 Reseller shall negotiate to reduce Reseller Cost, to pass on savings to the Participating State and other Purchasing Entities.





# Master Agreement

## Section 2: Scope of Work

State of Arizona  
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Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

- 2.1.2.8 Provide assistance in explaining and developing Volume License and Enterprise Agreements.
- 2.1.2.9 Provide Software Installation Assistance.
  - 2.1.2.9.1 Provide, at no additional cost, assistance or advice in basic installation or implementation of COTS product.
  - 2.1.2.8.2 If the Purchasing Entity encounters difficulty in downloading or installing the software, the Reseller must provide assistance within eight (8) business hours of being informed of the problem.
- 2.1.2.10 Provide Software De-Installation Assistance.
- 2.1.2.11 Provide Tracking, Management, Usage Monitoring and Reporting of Licenses
  - 2.1.2.11.1 Reseller shall have in place a product license inventory and asset management system, which will include an accurate inventory record of product licenses purchased under this Contract.
  - 2.1.2.11.2 Reseller must also have the capability tracking maintenance renewal and other significant due dates.
  - 2.1.2.11.3 At a minimum, this system shall be able to provide this information by Participating State and Purchasing Entity.
  - 2.1.2.11.4 Reseller shall work with Participating State, other Purchasing Entities, publishers, previous and subsequent contract software resellers, and hardware computer contractors to ensure the most comprehensive record of licenses is created, maintained, and the information transferrable.
  - 2.1.2.11.5 States may choose to award multiple PA's under this Agreement. Details on how licenses are to be tracked and managed under multiple awards will be determined by that awarding State.
  - 2.1.2.11.6 As may be required by a Participating State, or other Purchasing Entity, Reseller shall work with NASPO ValuePoint computing equipment contractors, or a Participating State's comparable computer hardware contractor, to see that any software acquired under those contracts can be tracked through this contract.
- 2.1.2.12 Notify Participating State and Purchasing Entities of publisher publicly announced changes pertinent to User licensing.
- 2.1.3 SVAR shall Develop and Maintain Website
  - 2.1.3.1 *For Participating States*, Reseller shall develop and support a website specific to that State, with content approved from the LSCA or PSCA as appropriate based on content.
    - 2.1.3.1.1 This web site information shall be available through the Internet without the use of additional software or licenses.



# Master Agreement

## Section 2: Scope of Work

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

- 2.1.3.1.2 Website should be User friendly to allow for quick and easy access and use.
  - 2.1.3.1.3 Website shall be available 24 x 7, except for scheduled maintenance.
  - 2.1.3.1.4 Website shall be ADA compliant.
  - 2.1.3.1.5 No costs or expenses associated with providing this information shall be charged to the States.
  - 2.1.3.1.6 Universal Resource Locator (URL) for the website must be supplied to the PSCA and the LSCA within sixty (60) days of the execution of the PA.
  - 2.1.3.1.7 The website will include contract information, product information/catalog, the capability to generate online reports, and other pertinent information as may be reasonably requested by States, such as copies of VLAs.
  - 2.1.3.1.8 *Publisher Notifications and Other Industry Information.* In the event that a publisher publicly announces changes that are pertinent to User licensing, the Reseller shall assist Users by posting the information on the state websites.
  - 2.1.3.1.9 Reseller shall provide, at no additional cost, training on how to use their website and how to use this contract in obtaining quotes and placing orders. Online training should be available on the website, but supplementary electronic (e.g. Webinars, emails), telephone or on-site training should be provided, as needed, during standard working hours.
- 2.1.3.2 *Contract and General Information.* The website shall provide contract and ordering information to include, at a minimum:
- 2.1.3.2.1 The contract number(s) (MPA and PA);
  - 2.1.3.3.2 The Reseller primary contact and contacts to whom incidents are to be escalated:
    - Name(s and titles
    - Areas of responsibility for each contact name;
    - Phone number(s); and,
    - Email address(es).
  - 2.1.3.3.3 Information on use of website,
  - 2.1.3.3.4 Quote and ordering information; and,
  - 2.1.3.3.5 Notifications regarding publishers and products, such as pending key product changes or upgrades.
- 2.1.3.3 *Online Catalog*
- 2.1.3.3.1 Reseller shall provide COTS software, and software maintenance of new or existing licensed software, under this contract. Information on approved products, customized by Participating State, will be available through an online catalog and through Reseller's representatives either through email or telephone inquiry during the standard working hours of the Participating State. The online catalog shall provide an expansive list



# Master Agreement

## Section 2: Scope of Work

State of Arizona  
State Procurement Office  
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Phoenix, AZ 85007

Contract No: ADSP016-130652  
Description: Software Value-Added Reseller (SVAR) Services

of products allowed per the contracts, particularly those products of itemized publishers.

- 2.1.3.3.2 The website shall provide contract and ordering information to include, at a minimum: publishers, product names, standard product pricing, and product descriptions (photos optional or links to access product literature). Regardless of the number and types of links to the Reseller's electronic catalog, the Reseller shall ensure that all eligible agencies purchasing under one PA are accessing the same current base version of the product catalog. Online information shall include purchases of Volume or Enterprise License Agreement software as well as individual COTS software licenses.
- 2.1.3.3.3 Online catalog shall be restricted to just software. Non-authorized products or groups of products shall not be on the website. Reseller shall not use this proposed website to cross sell or cross advertise other products and or services the Reseller may be able to offer.
- 2.1.3.4 *Product Searching Capability.* At a minimum, the online catalog should be searchable by Purchasing Entity and their VLAs, Software Publisher, Product name, OEM product number, and software description (e.g., GIS, Security). The online category can be modified as Users' needs dictate, such as including products obtained through a distributor (non-itemized publisher products) that are frequently purchased.
- 2.1.3.5 *Online Product Quotes.* Product price displayed online is a 'not-to-exceed' product price quote based on contract rate and real time Reseller Cost. For high dollar purchases, or quantity purchases, Purchasing Entity should request a quote by contacting Reseller representative off-line. The online pricing should allow for overrides when a quote with a negotiated better price has been offered and is being placed online. Website should have capability to track all quotes by Purchasing Entity and be easily accessible for viewing by quote number. Website shall include a shopping cart feature that allows Purchasing Entities to provide shipping instructions. Purchasing Entities can place orders on the web either via credit card or purchase order. Specifics regarding an individual state's requirements for placing an order may be included in that State's Participating Addendum (PA).
- 2.1.3.6 *User Differentiation.* Catalog should be designed so as to provide a means to identify the Participating State (state agency or other eligible Purchasing Entity). This method used must not require any administrative tasks on the part of the LSCA for the MPA, the PSCA for the individual PSCA. Website should allow Users to develop personal lists and profiles, including an option to securely store and maintain procurement card information. Catalog should have the capability of being used as a 'Punch Out' to an individual state's electronic purchasing system.
- 2.1.3.7 *Online Reports.* Website shall have capability to provide order history, as well as order status and order tracking.
- 2.1.3.8 *Other.* Other information may be added to the website as may be required by State (such as copies of volume license agreements) or enhancements that may be proposed by Reseller and approved by State.



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 Description: Software Value-Added Reseller (SVAR) Services

### 2.2 COTS Products

#### 2.2.1 Software which requires little or no services

	IN SCOPE Offerings		OUT OF SCOPE Offerings
<b>LICENSING TYPE</b>	COTS	Individual Licensing Volume Licensing Enterprise Licensing	Custom/Customized
<b>LICENSING PERIOD</b>	Perpetual	Subscription	<i>none</i>
<b>Delivery</b>	Shrink-Wrap	Download	<i>none</i>
<b>HOSTING as part of delivery &amp; use.</b>	On Premise	Off Premise	<i>Managed Service</i> <i>Managed Services means the proactive management of an IT (Information Technology) asset or object, by a third party typically known as a MSP, on behalf of a customer</i> <i><a href="http://mspalliance.com/definition-of-managed-services/">mspalliance.com/definition-of-managed-services/</a></i>

2.2.1.1 Most Current Version - Purchase orders shall be deemed to reference a manufacturer's most recent release model or version of the product at the time of the order, unless the Purchasing Entity specifically requests in writing an earlier model or version and the Reseller is willing to provide such model or version.

#### 2.2.1.2 Licenses and Maintenance Agreements

##### 2.2.1.2.1 Volume License Agreements (VLA) and Enterprise License Agreements (ELA)

The Reseller will honor existing Participating State's VLA's or ELA's with publishers and include those licenses as part of the Reseller's license tracking service. Following an executed PA with a Participating State, and if so required by the Participating State, the Purchasing Entity and/or an individual publisher, the Reseller will identify itself to software publishers as Reseller for that Participating State or Purchasing Entity. If so required by the Publisher and Participating State, Reseller will execute a change of channel partner agreement with the Publisher. Resellers will sell additional seats consistent with Purchasing Entities' Enterprise or Volume Agreements. Reseller will work with Participating State, Purchasing Entity(ies) and Publishers as needed to establish new VLAs or ELAs. The Reseller will work with the Publisher and Participating State as necessary to ensure the Participating State receives timely and pertinent license information, such as: license or agreement renewals, or opportunities based on actual volume.

Reseller will work directly with Purchasing Entity(ies) in establishing, signing and maintaining enrollment agreements. If Reseller is sole SVAR contractor in a State, Reseller will aggregate all enrollments together for



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Master Agreement reporting purposes. If a PSCA elects to have multiple SVAR contractors, Reseller's responsibilities will be delineated in that State's PA. Resellers shall monitor and be able to report on the current levels of software ordered towards any of the Participating State's VLA required sales levels to ensure the Participating State does not fall short and thereby incur Publisher penalties. The Reseller shall be responsible for providing license usage information to the Publishers, if such information is required by the Publishers, in a timely manner (e.g., for 'true up' assessments)

2.2.1.2.2 *Individual Software Licenses.* Purchasing Entities can purchase individual COTS licenses, such as perpetual and non-perpetual licenses, through the Reseller.

### 2.2.1.3 Software Maintenance and Support Agreements.

Purchasing Entities can purchase maintenance agreements, including upgrade protection, through the Reseller. Resellers will sell software maintenance agreements, even if the software was not purchased under this agreement, such as on-going support for a User's existing perpetual license. As requested, Reseller will explain what product support or services are included in a publisher's maintenance agreement.

2.2.1.3.1 *Software Maintenance and Support.* Reseller to provide needed services to support maintenance products such maintenance agreements, software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order. Such services may include providing recommendations on most cost-effective or appropriate long-term maintenance plan. Reseller will provide such support, not only to maintenance packages purchases under this agreement, but in support of any existing and current agreements.

#### 2.2.1.3.2 *Software Updates.*

2.2.1.3.2.1 Users are eligible to receive, from the Publisher, all new releases and updates of the software, at no additional charge, while under a maintenance agreement. A "Release" means any collection of enhancements or updates which the Publisher generally makes available to its installed base of customers of such programs. The Reseller shall assist the Purchasing Entity to obtain such releases or updates for their Users from the Publisher.

2.2.1.3.2.2 Should a User not want to receive the next upgrade, the User shall so notify the respective Publisher.

#### 2.2.1.3.3 *License Confirmations*

For licenses ordered under the contract by Purchasing Entity(ies), Reseller shall be able to provide:



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- (i) Certified Licensing Confirmation Certificates for all software licenses;
- (ii) Reseller's certified license confirmation certificates in the name of such Licensee; or,
- (iii) Written confirmation from the Reseller or Publisher accepting the Eligible Participating State's contract or purchase order as proof of license.

The form of "Proof of License" provided must be acceptable proof to the Publisher, and in the format requested by the Purchasing Entity. The Proof of License shall be provided as an electronic file and/or a hardcopy document, as required by the Purchasing Entity. Reseller will retain an electronic file of Participating State's Proof of Licenses and provide copies to the Participating State as requested.

#### 2.2.1.3.4 *Transitioning License Tracking Information at Contract Termination*

The license information data acquired and retained by Reseller will be stored as sortable data fields so the license information can be transferred to the Participating State upon contract termination. Reseller will work with States and Participating Entities, or their designees, to ensure that the license information data has been successfully transferred in a usable format.

#### 2.2.1.4 Leases

Lease purchase and term leases are allowable only for Purchasing States whose rules and regulations permit leasing of software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. No lease agreements will be reviewed or evaluated as part of this RFP evaluation process.

2.2.1.5 Software Publishers, Categories. The identified software product needs under this solicitation have been divided into three tiers: Key Itemized Publishers, Other Itemized Publishers, and Non-Itemized Publishers. See descriptions and chart which follow. As indicated, it is most desirable for Reseller to have a direct reseller agreement with the itemized software publishers. If a direct reseller agreement is not already in place between itemized software publishers and the Reseller, the Reseller is expected to enter into a direct reseller agreement and submit a rate for that itemized publisher that is better than the rate for a Non-Itemized Publisher. Over the life of this contract, product needs or volumes may change and new publishers may be added by amendment to the itemized publishers' lists.

#### 2.2.1.5.1 *Itemized Highest Volume Publishers (Highest Volume, Itemized Lines).*

The products of the publishers in this category represent the highest tier of sales volume identified for this solicitation, of those publishers who sell through resellers. This category is the one most likely to include a Participating State's enterprise or high volume agreements with a publisher. Resellers shall be certified direct resellers for publishers in this



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category. The preferred pricing that a Reseller receives based on their reseller certification status, in conjunction with the anticipated considerable volume of purchases through these Contracts, is the expected foundation for a very competitive base Reseller Cost, with further reductions of Reseller Cost as they are achieved through ongoing Reseller negotiations. A percentage rate above or below Reseller Cost is to be provided for each itemized publisher. Specific requirements may be required for some publishers in this category in an individual State's PA.

2.2.1.5.2 Other Itemized Publishers (High Volume, Itemized Lines). The products of the publishers in this category represent a high level of sales volume as identified for this solicitation. This category may include a Participating State's high volume agreements or VLAs with a publisher. It is desirable for Resellers to be certified direct resellers for publishers in this category. A percentage rate above or below Reseller Cost is to be provided for each itemized publisher

2.2.1.5.3 Non-Itemized Publishers (all other distributed software purchases). This category is defined to include all other distributed computer software not specifically itemized. Enterprise or Volume Licensing Agreements are not anticipated in this category. New or existing software products can be added to this category at any time during the term of the Contract without the written consent of the LSCA and may be itemized in the online catalog, if volume justifies the addition. There should be one percentage rate above or below Reseller cost covering all products in this category

<b><u>KEY ITEMIZED PUBLISHERS</u></b> Certification as Direct Reseller.	<b><u>OTHER ITEMIZED PUBLISHERS</u></b> Certification as direct reseller desirable. If not certified, the percentage rate should be no greater than Non-Itemized rate	<b><u>NON-ITEMIZED PUBLISHER</u></b> One 'not to exceed' rate
ADOBE	AI SQUARED	
CITRIX	AIRWATCH MOBILE DEVICE MANAGEMENT VMWARE	
MICROSOFT	ALLIANCE ENTERPRISES	
NOVELL	APPLE	
SYMANTEC	ATTACHMATE – MICROFOCUS	
VMWARE	AUTODESK	
	AUTONOMY – HP	
	BAKBONE – DELL	
	BARRACUDA	
	BOMGAR REMOTE SOFTWARE	
	CA TECHNOLOGIES	
	CISCO	
	COMPUTRONIX USA	



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	COMPUWARE	
	COREL	
	DOUBLETAKE	
	EMC	
	ENCHOICE	
	ESET	
	ESRI	
	FREEDOM SCIENTIFIC	
	GUARDIAN EDGE – SYMANTEC	
	GW MICRO	
	IBM	
	ICM CONVERSIONS	
	INFOR	
	INTERMEDIX EMSYSTEMS	
	HP	
	HUMANWARE	
	INFORMATION BUILDERS	
	KRONOS SOFTWARE	
	LANDESK	
	LASERFISCHE	
	LIQUIDWARE STATUSPHERE	
	MICROFOCUS INC	
	MINJET	
	MPS	
	MQSOFTWARE – BMC SOFTWARE	
	NCIRCLE	
	NETOP	
	NUANCE	
	ORACLE	
	OSAM	
	PASSPORT	
	PATCHLINK	
	PROOFPOINT	
	RSA SECURITY	
	REFERENCIA SYSTEMS	
	SAP AMERICA	
	SAS	
	SOLUTIONS SOFTWARE	
	SOPHOS	
	SPLUNK SOFTWARE	
	STASEEKER NETWORK INFRASTRUCTURE MONITORING	
	STELLEMENT – ORACLE	





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	SUNGUARD	
	SYBASE	
	TECHSMITH	
	TREND MICRO	
	TRUSTWARE	
	ULTRABAC	
	VORMETRIC	
	WEBSense	

### 2.2.1.6 Software Publishers, General Representation.

2.2.1.6.1 *Excluded Software Publishers.* The Reseller must agree that there are no software publishers with whom they will refuse to do business if the Software Publisher is willing to do business with them. Resellers shall advise the LSCA or designee of any Excluded Software Publishers and provide explanations for the non-representation.

2.2.1.6.2 *Expanded Representation.* The Reseller is expected to continue to work towards reseller certifications with publishers not currently represented, particularly with those publishers whose sales volume merit classification into the itemized publisher lines. Similarly, Reseller is expected to continue to work towards a higher certification level with current publishers

2.2.1.7 Price Quote, General. Pricing is submitted in the MPA as a percentage of Reseller Cost. Individual PA's will use the MPA pricing as a base and may negotiate an adjusted rate. Any negotiated PA rates, exclusive of taxes or any individual state's administrative fee, shall not exceed the MPA rates. As requested by Purchasing Entity, for example on a high volume single order, Reseller shall negotiate to reduce Reseller Cost, to pass on savings to the Participating State. Firm individual order quotes shall be provided to Purchasing Entity prior to order submittal.

2.2.1.7.1 *Telephone or Email Quote Support.* Reseller shall accept requests for quotes by telephone, fax, email, or online. Reseller shall accept collect telephone calls and/or provide and maintain a toll-free number for eligible agency use. Reseller shall provide an email address for receipt of requests for price quotes. Reseller shall provide written quotes by fax, email or online as requested by the Participating State.

2.2.1.7.2 *Quoted Delivery Method.* The quote must clearly indicate the method of delivery, whether via media, download, or **3.3 Services** below.

2.2.1.7.3 *Timely Quotes.* Reseller agrees to work with publishers and distributors to obtain quotes and deliver software in a timely fashion. Expected response should be within twenty-four (24) hours but no more than three (3) business days. If, after three (3) business days, the Reseller has been unable to obtain the quote or assurances that



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they can obtain the software, the Reseller shall contact the Participating State or other Purchasing Entity with a status report. The Reseller and the Participating State/Purchasing Entity will mutually agree as to whether the Reseller shall continue to pursue a quote and within what timeframe, or whether the Reseller will provide the Participating State/Purchasing Entity with a written statement that the Reseller cannot supply the software. If the Reseller has been unable to obtain a quote within ten (10) days of the request for quote, the Reseller shall provide a written statement (email is sufficient) to Participating State/Purchasing Entity, and the LSCA as may be required under the PA, that the Reseller cannot supply the software, and the reason why.

2.2.1.7.4 *Guaranteed 30 Day Quote.* Reseller is required to honor all quotes for thirty (30) calendar days. If it is known that a price adjustment will occur during the thirty (30) calendar days following the quote, the Reseller may provide two quotes, based upon the date that the order is received.

2.2.1.7.5 *Sales Promotion.* The Reseller may conduct sales promotions involving specific products or groups of products for specified time periods. If electing to exercise this provision, the Reseller shall submit a formal request for approval to the LSCA. The request should include: the product or product groups, the promotional price as compared to the standard price and the Master Agreement price for the product or product groups, and the start and end dates of the sales promotion. LSCA's approval shall be in the form of an amendment to the MPA. Upon approval, the Reseller shall provide conspicuous notice of the promotion to all Participating Entities.

2.2.1.7.6 A Participating State or other Participating Entity may allow the Contractor to charge a credit card fee in their Participating Addendum.

### 2.2.1.8 Product Delivery and Returns

2.2.1.8.1 Media. The Reseller shall work with Participating State or other Purchasing Entity to provide media via any method available and as requested by the Participating State including, but not limited to: original Publisher media, CD copies of master media duplicated by the Reseller, electronic downloads, etc. In cases where original publisher's media is not available, the Reseller shall provide CD's copied from master disks of the software purchased under any volume or enterprise license agreement.

2.2.1.8.2 Delivery Period. Reseller to provide delivery no longer than ten (10) business days after receipt of a valid order unless conditions arise that are outside the control of the Reseller. If delivery cannot be within this time frame, Reseller is to notify Purchasing Entity of delay and anticipated



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ship date. If this delayed delivery is unacceptable to Purchasing Entity, the order can be cancelled without penalty.

2.2.1.8.3 Product Returns. Unopened software can be returned with no restocking fee up to 30 days from date of receipt, if allowed by the software publisher. If the software publisher has a shorter timeframe for returns or requires a restocking fee, this must be stated on the quote. If that information is not provided to the Participating State by the Reseller, Reseller is responsible for the restocking fee. If delivered software is defective, or if the incorrect product was delivered, the Reseller must agree to accept returns. If delivered software is defective, the Reseller is responsible for return shipping and packaging costs and for restocking charges if applicable. The Reseller must agree that any defective or incorrectly delivered media will be replaced by overnight delivery at the Reseller's expense if requested by the Participating State or Purchasing Entity. If overnight delivery is not requested, all replacement products must be received by the Participating State or Purchasing Entity within seven (7) days of initial notification.

2.2.1.8.4 Shipping Charges. Items covered under this contract are FOB Destination and shipping charges are not to be included on any invoice unless the Purchasing Entity has ordered expedited shipment. For expedited shipment, Purchasing Entity would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.

### 2.3 Services

	IN SCOPE		OUT OF SCOPE
<b>SOFTWARE &amp; LICENSING TYPE</b>	COTS	Volume Licensing	Custom/Customized
<b>LICENSING PERIOD</b>	Perpetual	Subscription	Not Applicable
<b>Delivery</b>	Shrink-Wrap	Download	Not Applicable
<b>Hosting as part of delivery &amp; use</b>	On-Premise	Off-Premise	Managed Services
<b>SERVICES</b>	Basic Installation, Training and Maintenance <i>Means that activity which does not require Consulting, Configuration, Engineering, Design or any other type of service specific to a Purchasing Entity requiring description of tasks and deliverables and agreement by the parties (Statement of Work).</i>		Consulting, configuration, engineering, design, etc., any type of service specific to a Purchasing Entity requiring description of tasks and deliverables and agreement by the parties

2.3.1 In Scope Services:  
 Basic Installation, Maintenance packages and Training (3.4) are considered to be within the Scope of this Solicitation. This Master Agreement is intended for the acquisition of distributed, commercial off the shelf software



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### 2.3.2 (RESERVED)

2.3.3 A Participating State may include a statement in their Participating Addendum allowing state employees to purchase software licenses.

2.3.4 Individual Participating Addendums may further limit the Scope of this Solicitation.

2.3.5 This Master Agreement is not intended for the purchase of custom software applications.

## 2.4 Training.

2.4.1 Training shall be available in the form of tutorials for basic installation and web-based training for software operation, basic phone support.

2.4.2 Provision of information on how to access a Software Publisher's "Help Desk" (either telecom or web-based) for basic use questions.

## 2.5 Customer Service and Representation.

2.5.1 *Dedicated Representation and Timely Response.* Reseller shall provide a dedicated representative for each Participating State. Such representative will become familiar with the State and its cooperative partners, provide a single point as needed for quote assistance, offer software recommendations, track and report on renewal deadlines, and serve as a contact point for the LSCA. **Reseller must commit to returning phone calls or responding to emails within two (2) business days.**

2.5.2 *Problem Escalation.* The Reseller must provide an incident escalation path for each State, showing on that State's website, the name, contact information, and role of individuals to whom problems should be escalated if the problems are not resolved by primary assigned contacts.

2.5.3 *Product purchasing trends.* **The Reseller will speak with LSCA and sourcing team quarterly** to review usage and discuss possible revisions of the categorization of publishers based upon actual sales volume or other changes.

2.5.4 *Contract Reviews.*

2.5.4.1 Reseller is expected to conduct **quarterly reviews** of all sales volumes and report sales figures and savings from Publisher's list price, by Publisher and by PA, as well as observed trends or purchasing patterns, and **to present the information to the LSCA.**

2.5.4.2 At the discretion of the individual participating states, an equivalent review, limited to that state, will be presented to the PSCA.

2.5.4.3 **All awardees under this contract shall meet once a year with the LSCA and Sourcing Team** to review usage and discuss possible revisions of the categorization of publishers based upon actual sales volume, and to discuss any service concerns, industry trends, and the effectiveness of the contract.

2.5.4.3.1 Reseller is expected to **conduct a customer satisfaction survey** and an audit prior to this discussion and be prepared to discuss the results, and



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provide reports, at this review. At a minimum, the audit will report address quoting and billing accuracy, and any Reseller Cost that exceeds a Publisher's List price for that item.

2.5.4.3.2 Based on historical sales volume information, Reseller should be prepared to discuss potential cost savings opportunities which could be passed through to Participating States.

2.5.4.3.2 In a renewal year, the annual review will take place prior to contract extensions.

### 2.6. Interactions with Software Publishers

2.6.1 *Best Interests of Participating State.* Reseller would represent the best interests of the Participating State and other Participating Entities in negotiating or otherwise working with Publishers for such items as: maximizing cost savings with best use of volume or enterprise license agreements, better pricing on individual volume buys, taking advantage of publishers' specials, promotions, coupons or other savings opportunities.

2.6.2 *Liaison with Publisher.* A State may establish, in their individual PA, a requirement for Reseller to arrange with the software publisher or software publisher's designee for implementation, customization, training, support, maintenance and other software related services. **The provision of said services must be under a separate agreement between the Participating State and the applicable parties.**

### 2.7 Reporting

#### 2.7.1 Standard Reports

Individual participating states may require their own standard reports, such as report on savings. Reseller shall provide these reports at the intervals, and in the format, as reasonably requested by the States. Reseller shall advise of standard reports which they can provide, and work with participating states on additional standard reports.

#### 2.7.2 Online Reports

The SVAR shall be able to provide online, real time, reporting capabilities using website established for the state. These reports may include Back Order or Current Order Status reports. In addition, the system shall be able to provide the ability for the User agency to create custom reports. The requesting Participating State shall be able to select specific fields and create a necessary report for their specific needs. Data Fields shall include, but not be limited to, purchasing entity, Purchase Order Number, Order date, Invoice date, Publisher, Publisher Part Number, Software Reseller's Part Number, Description, Quantity Shipped, Unit actual price, Extended Price, Sales Tax and order total. Reports shall be able to be shown online as well as emailed to the requesting Participating State, if requested. Examples of Reseller's standard and online reports shall be submitted with the offer.

#### 2.7.3 Custom Reports



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Participating State and SVAR may mutually agree to include terms and conditions and pricing for the development and provision of customized reports as an optional service in a Participating Addendum.

### **2.8 Other Value-Added Services**

SVAR may propose other Value-Added Services, e.g., key escrow, in their response. Such services from an awarded Offeror, if consistent with this Statement of Work, recommended by the Evaluation Team, and accepted by the PSCA, would be added to the final awarded contract.



# Master Agreement

Section 4: Lead State (ARIZONA) Terms and Conditions

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## 1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating State's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Statement of Work;
- (5) The Solicitation; and
- (6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

## 2. Definitions

**Acceptance** is defined by the applicable commercial code, except Acceptance of a Product for which acceptance testing is not required shall not occur before the completion of delivery in accordance with the Order, installation, if required, and a reasonable time for inspection of the Product.

**Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Embedded Software** means one or more software applications which permanently reside on a computing device.

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.



# Master Agreement

## Section 3: NASPO ValuePoint Master Agreement Terms and Conditions

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**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating State incorporating this Master Agreement and any other additional Participating State specific language or other requirements, e.g. ordering procedures specific to the Participating State, other terms and conditions.

**Participating State** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating State.

**Product** means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

**Purchasing Entity** means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

### 3. Term of the Master Agreement

The initial term of this Master Agreement is for two (2) years. This Master Agreement may be extended beyond the original contract period for successive periods with a maximum aggregate, including all extensions, not to exceed five (5) years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

### 4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State.

### 5. Assignment/Subcontracts

- a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

### 6. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least ninety (90) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or





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rates will be allowed.

### 7. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, and rights attending any warranty or default in performance in association with any Order. Cancellation of the Master Agreement due to Contractor default may be immediate.

### 8. Confidentiality, Non-Disclosure, and Injunctive Relief

Provisions governing confidentiality of information during performance of orders for the State of Arizona are governed by The State of Arizona Special Terms and Conditions. Except where a Participating Addendum prescribes otherwise, this section governs confidentiality and disclosure of information of other Purchasing Entities.

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating State, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or



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indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

### 9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

### 10. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:



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- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating State shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

### 11. Shipping and Delivery.

Section 3.2.1.8 of the solicitation prescribes requirements for product delivery and return.

### 12. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

### 13. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by "force majeure," as that term is defined in and under conditions specified in section 6.4 of the State of Arizona Uniform Terms and Conditions.

### 14. Indemnification

a. Section 5.1X1.1 of the State of Arizona Special Terms and Conditions governs indemnification of the State of Arizona. With respect to other entities, the Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. Section 6.3 of the State of Arizona Uniform Terms and Conditions governs indemnification of the State for intellectual property infringement claims. With respect to other entities the Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing



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Organization LLC (doing business as NASPO ValuePoint), Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### 15. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

### 16. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.



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## 17. Insurance

a. The insurance requirements of the State of Arizona are specified in section 5.1 X 1.2 of the State of Arizona Special Terms and Conditions. For performance in other states, unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating State's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating State's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

1) Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate \$2,000,000

Products – Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Damage to Rented Premises \$50,0000

Each Occurrence \$1,000,000

2) Business Automobile Liability

Bodily injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract. Combined Single Limit (CSL) \$1,000,000

3) Technology Errors & Omissions Insurance

Each Claim \$2,000,000

Annual Aggregate \$2,000,000

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract. Coverage shall include or shall not exclude services, and/or licensed programs under this contract. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement. In the event that Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this contract is completed.

c. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days



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after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating State by the Contractor.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating State's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating State who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating State, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating State, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

### 18. Laws and Regulations

Any and all Products offered and furnished shall comply with solicitation section 5.10, Compliance with Applicable Laws.

### 19. License of Pre-Existing Intellectual Property

Any rights to intellectual property shall be as prescribed in the Lead State's solicitation and resulting contract, and Purchasing Entities shall have the same rights as the Lead State under those provisions.

### 20. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of a Lead State, a Participating State, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating State only to the extent Congress



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has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

### 21. Ordering

- a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- b. The resulting Master Agreements permit Purchasing Entities to define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Agency may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document compliance with the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - (1) The services or supplies being delivered;
  - (2) The place and requested time of delivery;
  - (3) A billing address;
  - (4) The name, phone number, and address of the Purchasing Entity representative;
  - (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
  - (6) A ceiling amount of the order for services being ordered; and
  - (7) The Master Agreement identifier.
- g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or



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otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

## 22. Participants

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating State and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating State (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating State, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@wsca-naspo.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. State Participating Addenda or other Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating State is located.

g. Resale. "Resale" means any transfer of software for compensation or assignment of services for compensation. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes software and services that are deliverables). Absent any





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such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities under cooperative agreements and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

### 23. Payment

Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

Any prompt payment terms proposed by contractor shall be extended to all Purchasing Entities.

### 24. Public Information.

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

### 25. Records Administration and Audit.

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating State, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating State, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

### 26. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint



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Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states, such as the State of Arizona, may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 26a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

### 27. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-Rom, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in EXHIBIT III\_Cooperative Contract Sales Reporting Data Requirements and Data Format.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due 30 days after the conclusion of each



# Master Agreement

## Section 3: NASPO ValuePoint Master Agreement Terms and Conditions

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

### **28. Standard of Performance and Acceptance.**

Determination of the acceptability of services shall be made by the sole judgement of the Purchasing Entity. Acceptance shall be in writing, verbal acceptance will not be allowed. Services shall be completed in accordance with the Scope of Work, agreed to and accepted schedules, plans, and agreed to performance standards. Acceptance shall be one hundred percent (100%) functionality, which will be determined by the Purchasing Entity. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship, and successfully performing all required Tasks. Nonconformance to a stated acceptance and performance criteria of both services and or products, as required, shall result in a delay for payment. The warranty period will begin upon Acceptance.

### **29. Warranty**

The Contractor warrants for a period of 90 days from the date of Acceptance in accordance with the provisions of section 7 of the State of Arizona Uniform Terms and Conditions and section 5.1 N. of the State of Arizona Special Terms and Conditions, with rights of the State available to other Purchasing Entities. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

### **30. (RESERVED)**

### **31. Title of Product**

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to Product consisting of tangible media free and clear of all liens, encumbrances, or other security interests.

### **32. Waiver of Breach**

Failure of the Lead State, Participating State, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating State, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating State of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.



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Description: **Software Value-Added Reseller (SVAR) Services**

### 33. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating State's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating State's option, the right to control any such litigation on such claim for relief or cause of action.

### 34. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### 35. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating State's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating State state if a named party; or the Purchasing Entity state if a named party.

### 36. NASPO ValuePoint eMarket Center

In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provided customers information regarding the Contractors website and ordering information.



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At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

### **37. Contract Provisions for Orders Utilizing Federal Funds.**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this master agreement.

### **38. State Government Support**

No support, facility space, materials, special access, personnel or other obligations on behalf of the states or other Participating Entity, other than payment, are required under the Master Agreement.

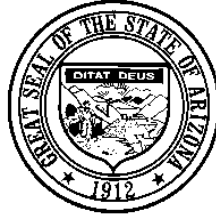


# Master Agreement

Section 4: Lead State (ARIZONA) Terms and Conditions

State of Arizona  
State Procurement Office  
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## 5.1 State of Arizona Special Terms and Conditions

### A. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract (Participating Addendum, PA) for the materials or services as listed herein in service to the State.

### B. Term of Contract

The term of any resultant Contract shall commence on date of execution and shall be for an initial period of two (2) years, unless terminated, canceled or extended as otherwise provided herein.

### C. Contract Extensions

The Contract term is for period stated in Item B. subject to additional successive periods with a maximum aggregate including all extensions not to exceed five (5) years.

### D. Contract Type – Fixed Price

### E. Eligible Agencies (STATEWIDE)

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion. In order to participate in this contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6).

### F. Licenses

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

### G. Volume of Work

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.



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### H. Key Personnel

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions if required.

1. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.
2. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

### I. Changes

The State may at any time make changes within the general scope of this Contract. The Contractor shall respond to the Change Order with a proposal. If any such change causes an adjustment in the cost of, or the time required for the performance of any part of the work under this Contract, whether changed or not changed by the Change Order, the Procurement Officer shall modify the Contract in writing via a bilateral Contract Amendment.

### J. Price Adjustment

Any price adjustment shall be within the confines of the awarded contract, or as negotiated in service to this Contract. Any negotiated price adjustments for this Contract shall be documented via a bilateral Contract Amendment.

### K. Payment Procedures

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

### L. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of



# Master Agreement

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the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

### **M. Employees of the Contractor**

All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times, and not employees of the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

### **N. Warranty**

All services supplied under this Contract shall be fully guaranteed by the Contractor for a minimum period of ninety (90) days from the date of acceptance by the State. Any defects of design, workmanship, or delivered materials, that would result in non-compliance shall be fully corrected by the Contractor without cost to the State.

### **O. Compliance with Applicable Laws**

The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on Users or prevent the Materials from performing as required under the terms and conditions of this Contract.

### **P. Non-Exclusive Contract**

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

### **Q. Administrative Fee/Usage Reports**

1. In accordance with ARS § 41-2633 the Department of Administration, State Procurement Office includes an Administrative Fee, in the majority of its Statewide contracts – multiple agency, multiple government, cooperative contracts. The Administrative Fee is used by the State to defray the additional costs associated with soliciting, awarding and administering statewide contracts.

In addition to the State agencies, boards and commissions, statewide contracts are available to members of the State Purchasing Cooperative including cities, counties, school districts, special districts, other state governments, agencies of the federal government, tribal nations, schools, medical institutions, and nonprofit organizations.

The Administrative Fee is the responsibility of the contractor. The Administrative Fee is a part of the contractor's unit prices and is not to be charged directly to the customer in the form of a





# Master Agreement

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separate line item. In accordance with Section 26 of the NASPO ValuePoint Master Agreement Terms and Conditions, the 0.25% NASPO ValuePoint Administrative fee shall be incorporated into the Offerors base price. Other states, including the State of Arizona, may negotiate additional Administrative Fees in their Participating Addenda following award of a Master Agreement.

Further, Statewide contracts maintain one set of pricing for all customers and not separate prices for State agency customers and State Purchasing Cooperative customers.

### 2. State of Arizona Fee Amount:

Unless defined differently within the contract, the Statewide Contracts Administrative Fee shall be one percent (1.0%) of quarterly sales receipts under an active Statewide contract, transacted by only the members of the State Purchasing Cooperative, minus any taxes or regulatory fees, minus any returns or credits, and minus any shipping charges not already included in the unit prices. The Administrative Fee percentage is only applicable to amounts actually received by the contractor during the quarter and is not applicable to amounts ordered by customers but not yet paid for. The administrative fee is not paid on transactions with state agency customers.

### 3. Method of Assessment

At the completion of each quarter, the contractor reviews all sales under their contract in preparation for submission of their Usage Report. The contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: <https://spo.az.gov/state-purchasing-cooperative> . At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) written notice prior to exercising or changing this option. The contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- Total sales receipts from State agencies, boards and commissions;
- Total sales receipts from members of the State Purchasing Cooperative; and
- Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

### 4. Submission of Reports and Fees. Within thirty (30) days following the end of the quarter, the contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office. Contractors are required to use the State's current report templates unless you have authorization from your contract officer to use a different format. You need to complete Form 799, which is a cover letter that gives the totals of your transactions; and Form 801, which is an Excel spreadsheet that details your transactions. Sales to state agencies and the cooperative members are to be totaled separately. The most current forms can be downloaded at <https://spo.az.gov/statewide-contracts-administrative-fee>.

#### 4.1 The submission schedule for Administrative Fees and Usage reports shall be as follows:

FY Q1, July through September	Due October 31
FY Q2, October through December	Due January 31
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 31



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- 4.2 Usage Reports and any questions are to be submitted by email to the state's designated usage report email address: [usage@azdoa.gov](mailto:usage@azdoa.gov)
- 4.3 Administrative Fees shall be made out to the "State Procurement Office" and mailed to:  
Department of Administration  
General Services Division  
ATTN: "Statewide Contracts Administrative Fee"  
100 N. 15th Avenue, Suite 202  
Phoenix, AZ 85007
5. The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.
6. Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

### R. Acceptance

Determination of the acceptability of services shall be made by the sole judgment of the State. Acceptance shall be in writing, verbal acceptance will not be allowed. Services shall be completed in accordance with the Scope of Work, agreed to and accepted schedules, plans, and agreed to performance standards. Acceptance shall be one hundred percent (100%) functionality, which will be determined by the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required Tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

### T. Performance

Contractor agrees that, from and after the date that the applicable services commence, its performance of the Scope of Services will meet or exceed industry best practices subject to the limitations and in accordance with the provisions set forth in this Contract. If the Services provided pursuant to this Contract are changed, modified or enhanced (whether by Change Order or through the provision of new Services), The State and the Contractor will review the current performance experience and will in good faith determine whether such experience should be adjusted and whether additional services should be implemented or whether services be removed. The following requirements shall also apply:

#### 1. Failure to Perform

If Contractor fails to complete any deliverable, then Contractor shall:

- 1.1 Promptly perform a root-cause analysis to identify the cause of such failure;
- 1.2 Use commercially reasonable efforts to correct such failure and to begin meeting the requirements as promptly as practicable;
- 1.3 Provide the State with a report detailing the cause of, and procedure for correcting, such



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failure; and

1.4 If appropriate under the circumstances, take action to avoid such failure in the future.

## 2. Root-Cause Analysis

In the event of the Contractor's failure to perform required services or meet agreed upon service levels or other Contractor service standards as required by the State under this Contract, the Contractor shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The State shall have the right to review the analysis and approve the remediation steps prior to or subsequent to their implementation, as deemed appropriate by the State, if the remediation steps impact State assets or operational processes.

## U. Compensation

Should the Contractor fail to provide all required services or deliver work products, as agreed upon by State and the Contractor, the State shall be entitled to invoke applicable remedies, including but not limited to, withholding payment to the Contractor and declaring the Contractor in material breach of the Contract. If the Contractor is in any manner in default of any obligation or the Contractor's work or performance is determined by the State to be defective, sub-standard, or if audit exceptions are identified, the State may, in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default, defect, exception or sub-standard performance. The Contractor shall reimburse the State on demand, or the State may deduct from future payments, any amounts paid for work products or performance which are determined to be an audit exception, defective or sub-standard performance. The Contractor shall correct its mistakes or errors without additional cost to the State. The State shall be the sole determiner as to defective or sub-standard performance.

The Contractor shall fulfill their contractual requirements including the Deliverables identified in the Statement of Work and fulfill the roles and responsibilities described in the Statement of Work for a firm fixed price, inclusive of travel and travel-related expenses. The fixed amount shall be inclusive of any fees for the use of any third party products or services required for use in the performance of this Contract

## V. Contractor Performance Reports

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

## W. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up



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services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

### **X. Indemnification and Insurance**

#### **1.1 Indemnification Clause**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### **1.2 Insurance Requirements**

1.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

1.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

#### **1.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.



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### 1.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 1.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- c. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 1.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards,



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commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- e. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 1.3.4 Technology Errors & Omissions Insurance

- |                    |             |
|--------------------|-------------|
| • Each Claim       | \$2,000,000 |
| • Annual Aggregate | \$2,000,000 |

- f. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.
- g. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.
- h. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

### 1.3.5 Media Liability Coverage

- |                    |             |
|--------------------|-------------|
| • Each Claim       | \$2,000,000 |
| • Annual Aggregate | \$2,000,000 |

- i. Such insurance shall cover any and all errors and omissions or negligent acts in the production of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark and trade dress.
- j. In the event that the Media Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

## 1.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 1.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents,



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officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

**1.4.2** Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **1.5** Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **1.6** Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **1.7** Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

**1.7.1** All certificates and endorsements, as required by this written agreement, are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

**1.7.2** All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **1.8** Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance



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Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### 1.9 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### 1.10 Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

## Y. **Data Privacy and Security**

Contractor shall treat all information obtained through performance of the contract, as confidential or sensitive information consistent with State and federal law and State Policy. Contractor or its agents shall not use any data obtained in the performance of the contract in any manner except as necessary for the proper discharge of its obligations and protection of its rights related to this agreement. Contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that data in its or its agents' possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner in performance of the contract. This includes data contained in Contractor's records obtained from the State or others, necessary for contract performance. Contractor and its agents shall take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

## Z. **Data Privacy/Security Incident Management**

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

### 1. Threat of Security Breach

Contractor(s) agrees to notify the State Chief Information Officer (CIO), the State Chief Information Security Officer (CISO) and other key personnel as identified by the State of any perceived threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). The State agrees to provide contact information for the State CIO, CISO and key personnel to the Contractor(s).

### 2. Discovery of Security Breach

Contractor agrees to immediately notify the State CIO, the CISO and key personnel as identified by the State of a discovered breach of security. The State agrees to provide contact information





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for the State CIO, the CISO and key personnel.

## **AA. Security Requirements for Contractor Personnel**

Each individual proposed to provide services through this contract agrees to security clearance and background check procedures, including fingerprinting, as defined by the Arizona Department of Administration in accordance with Arizona Revised Statutes §41-710. The results of the individual's background check procedures must meet all HIPAA and law enforcement requirements. Contractor is responsible for all costs to obtain security clearance for their consultants providing services through this contract. Contractor personnel, agents or sub-contractors that have administrative access to the State's networks may be subject to any additional security requirements of the State as may be required for the performance of the contract. The Contractor, its agents and sub-contractors shall provide documentation to the State confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

1. Identity and Address Verification – that verifies the individual is who he or she claims to be including verification of the candidate's present and previous addresses;
2. UNAX/confidentiality Training;
3. HIPAA Privacy and Security Training; and
4. Information Security Training.

## **BB. Access Constraints and Requirements**

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (A.R.S.) §28-447, §28-449, §38-421, §13-2408, §13-2316, §41-770.

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

## **CC. Health Insurance Portability and Accountability Act of 1996**

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with



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HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a “Pledge to Protect Confidential Information” and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

Suggested References:

<https://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/HIPAAGenInfo/downloads/hipaalaw.pdf>

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/>

## **DD. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement**

1. The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
3. Failure to comply with a State audit process to randomly verify the employment records of Contractors and subcontractors shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
4. The State Agency retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph One (1).

## **5.2 State of Arizona Uniform Terms and Conditions**

### **1. Definition of Terms**

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *“Attachment”* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *“Contract”* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.



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- 1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "*Contractor*" means any person who has a Contract with the State.
- 1.5. "*Days*" means calendar days unless otherwise specified.
- 1.6. "*Exhibit*" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "*Gratuity*" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. "*Materials*" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. "*Procurement Officer*" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. "*Services*" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. "*Subcontract*" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. "*State*" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. "*State Fiscal Year*" means the period beginning with July 1 and ending June 30.

## 2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;



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- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless



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otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited.  
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically



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stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
  - 4.5.1. Accept a decrease in price offered by the contractor;
  - 4.5.2. Cancel the Contract; or
  - 4.5.3. Cancel the contract and re-solicit the requirements.

#### 5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is



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not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
  - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
  - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
  - 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in



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default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- 6.4.2. Force Majeure shall not include the following occurrences:
- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  - 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2. Fit for the intended purposes for which the materials are used;
  - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;





# Master Agreement

## Section 4: Lead State (ARIZONA) Terms and Conditions

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
  - 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8. State's Contractual Remedies

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
  - 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and



# Master Agreement

## Section 4: Lead State (ARIZONA) Terms and Conditions

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007

Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

the Contract shall be amended in writing accordingly.

- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by



# Master Agreement

## Section 4: Lead State (ARIZONA) Terms and Conditions

State of Arizona  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
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Contract No: **ADSP016-130652**  
Description: **Software Value-Added Reseller (SVAR) Services**

the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

### 10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

### 11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

### 12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona, 85007.

# Attachment A: Qualifications

## 1. Overall Company Information

### Requirement

#### 1.1 Business Operations

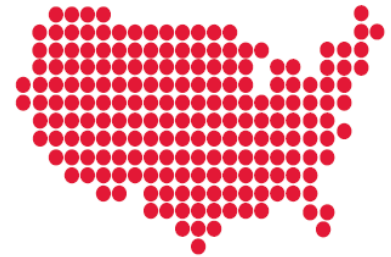
1.1.1 Provide a Brief overview of business operations, with an emphasis on the provision of services as a Software Value-Added Reseller.

### Response

CDW was founded in 1984 as a home-based business, and has since grown tremendously through strategic partnerships, online and onsite inventories and services, and strong technical expertise to earn \$12 billion in net sales in 2014. CDW partners with over 1,000 manufacturers to offer a portfolio of 100,000-plus products. Over 7,000 individuals constitute the CDW workforce, ranging from salespeople and field executives to administrative and service experts to highly skilled technology specialists and engineers.

Incorporated in 1998, CDW-G is the wholly owned subsidiary of CDW LLC that focuses on the public sector, including federal, state, and local government agencies, educational institutions, and healthcare facilities. With over 200 government and education contracts, we are the nation's largest direct response provider of multi-brand IT solutions. We are currently the largest value-added reseller in the United States, ranked #253 on the 2015 *Fortune 500* list.

CDW-G focuses on building strong customer relationships by leveraging our knowledgeable account managers and technical specialists to provide extensive pre- and post-award support. Our experts lead the industry in public-sector customer service and product knowledge, directly benefitting the various personnel of our public-sector customers.



## Software Services

CDW is a market-leading software provider with \$3 billion annually in software revenue. Through our distribution partner network, we offer nearly every software title available on the market today and have direct partnerships with over 300 software partners. As a company, we manage 25,000 software agreements and process over 180,000 annual software renewals. For the key itemized publishers named in this RFP, we maintain top-tier partnerships (e.g., Adobe Platinum Partner) and regularly receive annual awards (e.g., 2014 Microsoft O365 Sales Achievement Award).

## Proof of Authorization

Our ability to supply NASPO ValuePoint members with the key and secondary itemized software publishers listed in the RFP rests on the strong partnerships forged with industry-leading manufacturers, whose solutions meet the needs of our public sector customers. Letters of authorization for each publisher can be provided upon request.

Key Itemized Publishers		
Publisher	Relationship with CDW-G	Learn More
Adobe	<ul style="list-style-type: none"> <li>▪ Fully authorized Adobe Licensing Center (ALC)</li> <li>▪ Platinum Channel Partner</li> <li>▪ Adobe's largest and most successful reseller partner since 2001</li> <li>▪ CDW named <b>Adobe 2015 Consumer and Business Worldwide Partner of the Year</b> at Global Sales Conference (12/15/2015)</li> <li>▪ Internal Adobe support team (8 licensing specialists, 1 Creative Cloud program specialists, 1 senior brand manager)</li> <li>▪ The only Adobe reseller with multiple dedicated, onsite channel account managers (23 total)</li> </ul>	<a href="http://www.cdwg.com/content/brands/adobe/">www.cdwg.com/content/brands/adobe/</a>
Citrix	<ul style="list-style-type: none"> <li>▪ Citrix LAR Certified Partner certification</li> <li>▪ Large Account Reseller Partner of the Year 2013, 2012, 2011 at Citrix Summit conference</li> <li>▪ Internal Citrix specialist team (1 partner specialist, 3 technical specialists, 2 business development specialists, 1 brand manager)</li> <li>▪ Hold over 400 Citrix certifications (e.g., CCA/Certified Administrator, CCEA/Certified Enterprise Administrator, CCSP/Certified Sales Professional)</li> </ul>	<a href="http://www.cdwg.com/content/brands/citrix/">www.cdwg.com/content/brands/citrix/</a>
Microsoft	<ul style="list-style-type: none"> <li>▪ Microsoft Gold Certified Partner, Software Asset Management (SAM) Partner, Authorized Direct Reseller (ADR) for Open Value licensing programs</li> <li>▪ Number-one ranked Licensing Solution Provider (LSP) and Enterprise Software Advisor (ESA)</li> <li>▪ Manage over 25,000 active Microsoft agreements</li> <li>▪ Largest Microsoft Partner in Office 365 customer deployments, contract volume LSP of EAs/SAs, new enterprise agreements</li> <li>▪ 2014 US OEM Reseller of the Year, Office 365 Sales Achievement Award, Experience Center (MEC) Partner of the Year</li> </ul>	<a href="http://www.cdwg.com/content/brands/microsoft/">www.cdwg.com/content/brands/microsoft/</a>
Novell	<ul style="list-style-type: none"> <li>▪ Novell Gold Partner with distinctions:                             <ul style="list-style-type: none"> <li>○ ALA, MLSA, SLA, VLA, VLA academic, VLA nonprofit/government authorized reseller</li> <li>○ End-user computing sales specialization</li> <li>○ California SLP contract authorized reseller</li> <li>○ NetIQ authorized reseller</li> </ul> </li> <li>▪ <b>4/6/2015:</b> Micro Focus completed its merger with The Attachmate Group, which acquired Novell, Inc. (4/27/2011); Novell now operates as two separate business units under Novell® and SUSE® brand names, having joined Attachmate® and NetIQ® as holdings of The Attachmate Group</li> </ul>	<a href="http://www.cdwg.com/content/brands/novell/">www.cdwg.com/content/brands/novell/</a>

Key Itemized Publishers		
Publisher	Relationship with CDW-G	Learn More
Symantec	<ul style="list-style-type: none"> <li>▪ Symantec Platinum Partner</li> <li>▪ Named the <b>Symantec 2015 National Access Reseller (NAR) Innovation Partner of the Year</b> at Partner Engage awards (11/5/2015)</li> <li>▪ Largest/top-selling LAR partner; Specialization Member (includes Endpoint Management, Data Loss Prevention, IT Compliance, Managed Security Services, SMB Backup, SMB Security, Enterprise Security, Archiving and eDiscovery, Data Protection with NetBackup, Storage Management)</li> <li>▪ Dedicated internal Symantec team (16 CDW-badged coworkers (segment, renewals))</li> </ul>	<a href="http://www.cdwg.com/content/brands/symantec/">www.cdwg.com/content/brands/symantec/</a>
VMware	<ul style="list-style-type: none"> <li>▪ VMware Authorized Consulting (VAC) Program Gold member</li> <li>▪ 2014 Global and Americas Marketing Partner of the Year award at VMware Partner Exchange</li> <li>▪ 55+ dedicated internal VMware personnel (1 onsite brand manager, 6 pre-sales support specialists, 4 vCloud Air pre-sales/technical/business development specialists, 1 end-user computing channel account representative, 3 business development specialists, 5 renewal specialists, 5 capacity planner assessment engineers, 2 national account managers, 12 inside sales reps, 2 systems engineers, 14 virtualization solution architects)</li> <li>▪ Over 1,500 VMware Sales Professional (VSP) accreditations; 34 VMware Certified Professional (VCP) accreditations; 71 VMware Technical Sales Professional (VTSP) accreditations</li> </ul>	<a href="http://www.cdwg.com/content/brands/vmware/">www.cdwg.com/content/brands/vmware/</a>

**Requirement**

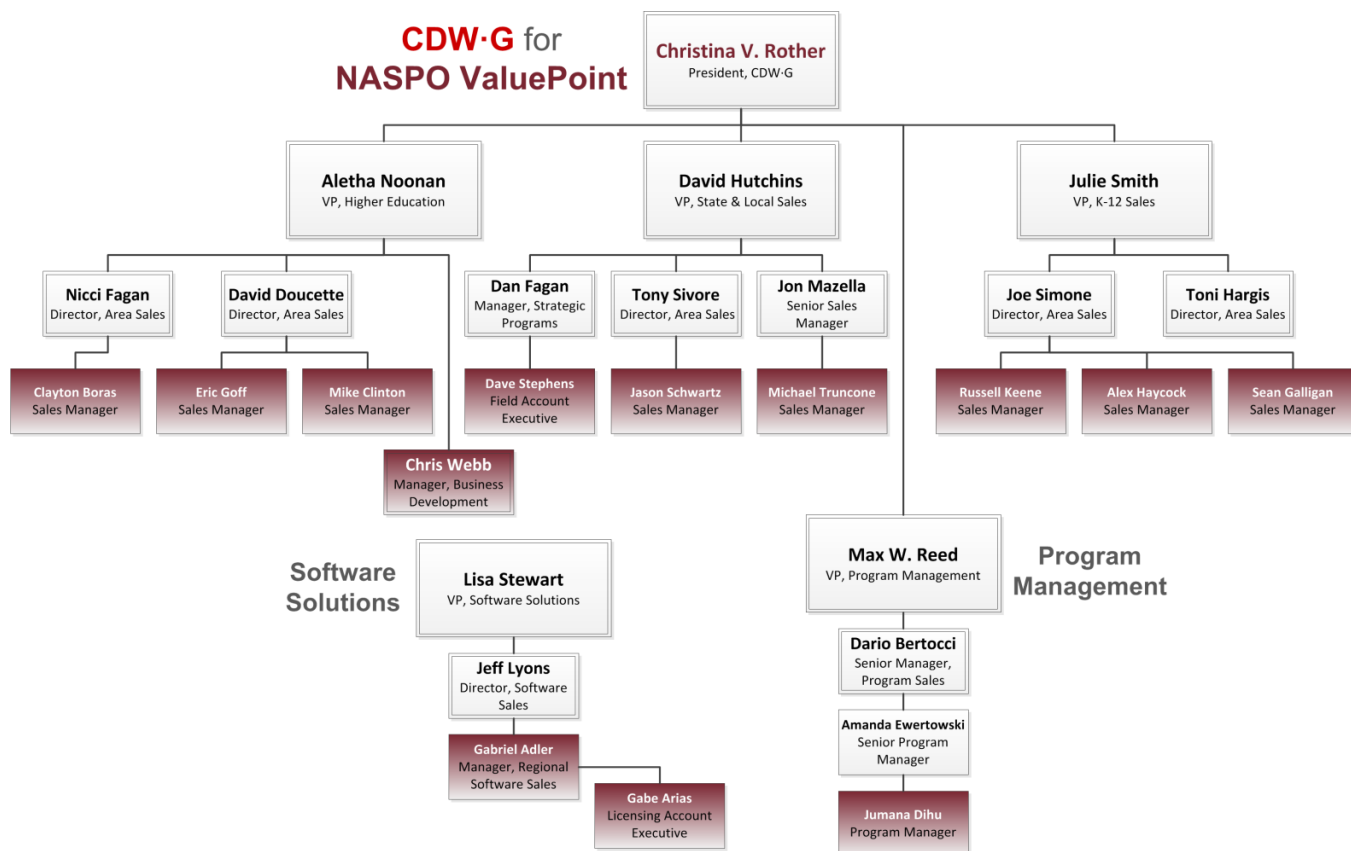
1.1.2 Provide the following information using the format below.

**Response**

1.1 Business Operations	
Required Information	Offeror's Response
1.1.2.1 Offeror's full legal name	CDW Government LLC (CDW-G)
1.1.2.2 Primary business contact information (name, address, phone number, email address, website)	Jason Schwartz, Sales Manager 230 N Milwaukee Ave Vernon Hills, IL 60061 P: 877.325.0934 E: <a href="mailto:jasons@cdw.com">jasons@cdw.com</a> W: <a href="http://cdwg.com/PeopleWhoGetIT">cdwg.com/PeopleWhoGetIT</a>
1.1.2.3 Date Company was established	CDW-G was incorporated in 1998; parent company CDW was founded in 1984.
1.1.2.4 Location where the Offeror is incorporated	CDW-G is incorporated in the state of Illinois.
1.1.2.5 Ownership structure (public, partnership, subsidiary, etc.)	CDW Government LLC is a wholly owned subsidiary of CDW LLC, which is owned by CDW Corporation, a publicly traded entity under NASDAQ (ticker symbol "CDW").
1.1.2.6 Office location(s)	<b>Corporate Headquarters</b>

<b>1.1 Business Operations</b>	
<b>Required Information</b>	<b>Offeror's Response</b>
responsible for performance of contract. Include address, contact information.	230 N Milwaukee Ave Vernon Hills, IL 60061 P: 800.808.4239  <b>Eastern Distribution Center</b> 200 N Milwaukee Ave Vernon Hills, IL 60061 P: 847.465.6000  <b>Western Distribution Center</b> 3201 E Alexander Road North Las Vegas, NV 89030 P: 702.495.5000
1.1.2.7 Organizational chart relevant to Scope of Work of this solicitation.	An organizational chart pertaining to this solicitation immediately follows this table. Names in <b>red boxes</b> have resumes included in this Attachment.
1.1.2.8 Contact information for the individual who is responsible for any clarifications or discussions regarding the submitted response.	Edie Harris, Proposal Manager P: 312.705.6285 E: <a href="mailto:elharr@cdw.com">elharr@cdw.com</a>

The following organizational chart is indicative of the personnel structure that will be supporting the NASPO ValuePoint contract and its members throughout the life of the agreement. Names in **red boxes** have resumes included in this Attachment.



**Requirement**

1.2 Key Personnel—Provide the information, using the format below, regarding each Key Personnel for a resultant contract for items 1.2.1 through 1.2.5:

**Response**

The following key personnel will participate in serving the NASPO ValuePoint contract and its participating member agencies. Please note that the named personnel included in this response are not meant to provide an exhaustive list of the CDW-G sales, software, and support individuals who will be involved in serving this contract’s participating states.

**Program Management**

1.2 Key Personnel	
Required Information	Offeror’s Response
1.2.1 Name	Jumana Dihu
1.2.2 Position/Title and reporting responsibilities	Program Manager, State & Local Government
1.2.3 Years of industry experience	13 years
1.2.4 Years in current position	Two (2) years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Program Manager; will oversee NASPO ValuePoint contract details post-award, including reports, audits, and management



## Software Solutions

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Gabriel Adler
1.2.2 Position/Title and reporting responsibilities	Sales Manager, Software Solutions
1.2.3 Years of industry experience	Nine (9) Years
1.2.4 Years in current position	Two (2) years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Software; oversees team of licensing account executives and field specialists, grows public-sector software sales

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Gabe Arias
1.2.2 Position/Title and reporting responsibilities	Licensing Account Executive, Software Solutions
1.2.3 Years of industry experience	Nine (9) years
1.2.4 Years in current position	Four (4) years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Licensing Account Executive, Software; helps NASPO ValuePoint customers manage software investments and cultivates trusted client relationships at CIO/Director level within state agencies

## State & Local Sales

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Jason Schwartz
1.2.2 Position/Title and reporting responsibilities	Sales Manager, State & Local
1.2.3 Years of industry experience	10 years
1.2.4 Years in current position	Two (2) years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Pacific Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Michael Truncone
1.2.2 Position/Title and reporting responsibilities	Sales Manager, State & Local
1.2.3 Years of industry experience	11 years
1.2.4 Years in current position	One (1) year
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Keystone Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with

1.2 Key Personnel	
Required Information	Offeror's Response
	publishers/manufacturers, long-term contract success strategy

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Clayton Boras
1.2.2 Position/Title and reporting responsibilities	Sales Manager, State & Local
1.2.3 Years of industry experience	17 years
1.2.4 Years in current position	12 years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Keystone Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Dave Stephens
1.2.2 Position/Title and reporting responsibilities	Business Development Manager, Public Safety
1.2.3 Years of industry experience	30 years
1.2.4 Years in current position	Seven (7) years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Business Development, Northwest and Pacific Geographies (15 states); works with publishers/manufacturers and NASPO ValuePoint customers to determine best-fit solution options

**K-12 Sales**

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Russell Keene
1.2.2 Position/Title and reporting responsibilities	Sales Manager, K-12 Sales
1.2.3 Years of industry experience	19 years
1.2.4 Years in current position	12 years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Pacific Geography (includes Arizona, Hawaii); oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Alex Haycock
1.2.2 Position/Title and reporting responsibilities	Sales Manager, K-12 Sales
1.2.3 Years of industry experience	Five (5) years
1.2.4 Years in current position	One (1) year
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, North Pacific (California and Alaska) Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Sean Galligan
1.2.2 Position/Title and reporting responsibilities	Sales Manager, K-12 Sales
1.2.3 Years of industry experience	Eight (8) years
1.2.4 Years in current position	One (1) year
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, New England Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

**Higher Education Sales**

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Mike Clinton
1.2.2 Position/Title and reporting responsibilities	Sales Manager, Higher Education
1.2.3 Years of industry experience	13 years
1.2.4 Years in current position	One (1) year
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Northwest Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Chris Webb
1.2.2 Position/Title and reporting responsibilities	Business Development Manager, Higher Education
1.2.3 Years of industry experience	11 years
1.2.4 Years in current position	Seven (7) years
1.2.5 Proposed role relative to Offered	Business Development, National Contracts; works

1.2 Key Personnel	
Required Information	Offeror's Response
services. Include the functions and tasks for which they will have prime responsibilities.	with publishers/manufacturers and NASPO ValuePoint customers to determine best-fit solution options

1.2 Key Personnel	
Required Information	Offeror's Response
1.2.1 Name	Eric Goff
1.2.2 Position/Title and reporting responsibilities	Sales Manager, Higher Education
1.2.3 Years of industry experience	15 years
1.2.4 Years in current position	Seven (7) years
1.2.5 Proposed role relative to Offered services. Include the functions and tasks for which they will have prime responsibilities.	Sales Manager, Pacific Geography; oversees account managers handling NASPO ValuePoint members, maintains regional relationships with publishers/manufacturers, long-term contract success strategy

**Requirement**

1.2.6 In addition, provide a brief resume which contains education/credentials/certifications/employment.

**Response**

Resumes for the named key personnel in the previous requirement are featured at the end of this section, in the following order:

- Jumana DiHu
- Gabriel Adler
- Gabe Arias
- Jason Schwartz
- Michael Truncone
- Clayton Boras
- Dave Stephens
- Russell Keene
- Alex Haycock
- Sean Galligan
- Mike Clinton
- Chris Webb
- Eric Goff

**Requirement**

1.3 Account Management Team—Provide a description of the responsibilities of the dedicated account management team(s) that would be assigned to each Participating State under resultant contract. Include a description of how the account management structure ensures that service will continue despite vacations, illness, other absences or resignations.

**Response**

Whenever an **account manager** (AM) is out of the office (e.g., vacation, illness, absence), they designate a fellow coworker to assist their customers, leaving no gap in support.

This designated backup AM will be an individual who supports other NASPO ValuePoint customers, to ensure knowledge of contract requirements. As an extra point of redundancy, customers can also reach out to our CDW-G general sales support team at the following:

- Phone: 800.808.4239
- Email: [cdwgsales@web.cdwg.com](mailto:cdwgsales@web.cdwg.com)
- Chat: [www.cdwg.com](http://www.cdwg.com)

Our Connecticut-based team staffing these lines of communication is available Monday-Friday, 7am-6pm CST. In instances of coworker resignation, the sales manager overseeing a given account team will assign the departing AM's customers to an experienced account manager who possesses familiarity with the NASPO ValuePoint contract and purchase history.

Account managers are proactively available to their customers to make regular solution recommendations, in addition to addressing support concerns. For more familiar and less complex public-sector software solutions, the AM can call our Supplemental Presales Support line to assist with product research, competitive comparison, simple design, standard architecture, and more. If necessary, the AM will include the customer on this call to further craft the best solution.

With complex customer requests or solutions, the AM engages our **software licensing team**, and their technology specialists and solution architects. Within 48 hours of the initial request, this group works out an offer/solution to present to the customer, including (but not limited to) features, cost analysis, licensing agreement/contract details, interoperability with current environment, implementation actions, and any available maintenance or software assurance programs.

**Sales managers** work with our AMs to develop strategies that best serve customers for long-term success. They spend significant time meeting with customers to understand the dynamics of the local market, and will ensure NASPO ValuePoint customers receive full advantage of CDW-G's software offerings. Additionally, sales managers are responsible for building and maintaining strong relationships with our top manufacturing partners in each region. For example, leveraging a strong existing relationship with the area Symantec representative can provide contract-specific cost savings that benefit NASPO ValuePoint members.

When the number of customers being supported in a particular geographic location reaches a certain capacity, CDW-G dedicates a local resource to support the group. **Field account managers** work jointly with our AMs to provide comprehensive sales support, and are available for onsite business meetings as needed to offer project development, technical expertise, roadmapping, and business reviews.

These coworkers are responsible for promoting the contract to end-users, including **free** trainings in the field, presentations, and attendance at regional tech fairs. They will meet with NASPO ValuePoint, the LSCA, or agency customers for contract status and progress reports, and will assist in solving customer-service issues in the field.

### Requirement

1.4 Subcontractors—Provide the following information for items 1.4.1 through 1.4.3, using the format below, for any subcontractors you propose to use.

- 1.4.1 Name of individual or company;
- 1.4.2 Proposed work to be performed;
- 1.4.3 Approximate percentage of work directed to subcontractor relative to total work under a resultant contract;
- 1.4.4 In addition, provide a brief resume which contains education / credentials / certifications / employment.

### Response

For the purposes of this RFP, at the time of this submission, CDW·G is not proposing the use of any subcontracting partners.

## 2. Company's Experience

### Requirement

Describe the Offeror's experience and expertise providing the following services:

- 2.1 Account Management (assume 'accounts' as equivalent to a state contract, and to a using municipality).

### Response

Expert contract support is a hallmark of CDW·G's **program management team**. Most vendors—even large resellers—neglect to have a team devoted to managing their contracts, instead relying on salespeople for compliance and reporting issues, which can result in delayed responses, unreliable support, and potentially faulty reporting. CDW·G, however, understands that contracts are serious commitments, and we honor these commitments through our dedicated program management team.

**Jumana DiHu** will manage the NASPO ValuePoint SVAR contract and agreements. Ms. DiHu has over a decade of contract management experience and has been supporting our NASPO ValuePoint reseller agreements for over two years. Our account teams and manufacturing partners know Ms. DiHu is the resident expert for our NASPO ValuePoint contracts and often reach out to her for assistance on related issues. Other knowledgeable program managers will be actively supporting the contract, both as out-of-office backup for Ms. DiHu or in a scenario where she transitions to a new career level.

To support our NASPO ValuePoint customers, CDW-G provides one primary point-of-contact—an account manager (as described in **requirement 1.3**). Our account managers, their supporting product specialists, and their sales managers understand the current technology trends and are specialized to only work public-sector customers. The multiple teams that will be supporting the participating states are, by and large, generalists; they understand the broad range of equipment and services we offer and often have sales certifications for several leading manufacturers. Rather than organizing our account teams by solution type, we've seen greater customer benefit organizing them by the type and location of the patrons they serve.

By asking our generalist sales teams to have laser-like focus on their customers and a strong general understanding of our product offering, we ensure that we're matching the right products to each customer's highly individual needs. For this reason, we go through the effort of breaking down the geography that each of our account managers covers by having them work with customers that are closely located to each other.

This is done because we understand that our government customers like to benchmark how they purchase and what they purchase in relation to their neighbors. Due to this degree of granularity when distributing accounts, our account managers can propose products that an agency's counterpart is using in the next town, middle school, or university in many instances from personal experience.

However, we recognize that some of our products and services are so complex that a generalist's approach is not enough. That is where our specialized sales force comes in. Similar to the general account teams, our specialists are split between in-house teams and field teams. They are organized primarily around technology type (e.g., cloud, mobility, data centers, etc.) and secondarily around customer type. If an account manager or field account executive requires additional depth of knowledge for a certain type of solution, they'll call in their specialist resources.

### Requirement

- 2.2 License Management.

### **Response**

The Software Licensing Support Team is vital in ensuring purchases that are scalable and complement software that is currently in place, as well as those forecasted for future projects. Our software support team includes over 85 Software Licensing Specialists, 250 Presales Systems Engineers, and 45 Licensing Account Executives. They assist with the full scope of software licensing and assist customers with leveraging their buying power for software purchases; provide the right mix of software products; and offer cost analysis of available discounts and credits.

Dedicated account managers will help NASPO ValuePoint customers with software license management needs. License management is detailed further in **Attachment B**.

Requirement

- 2.3 Training

**Response**

After the six-week intensive training members of our sales team undergo, they continue to receive an average of 165 hours of training in their first year at CDW•G, and participate in more than 140 hours in each subsequent year of employment. Our sales teams are also proactive in being certified experts in the products they sell, with proof of this dedication in the numbers. For example, we have over 1,500 VMware Sales Professionals (VSPs) on staff; the result is more leads generated, stronger customer relationships, and the ability to help our customers prioritize their technology needs.

Requirement

- 2.4 Software Advisement

**Response**

The software-specific coworkers of CDW•G who collaborate with our account managers to help advise customers on their right-size solution include the following:

- **Software Licensing Specialists (SLS).** This team is certified in a wide array of the licensing programs members seek. SLSs are dedicated to assisting customers in understanding and navigating complex licensing options for the top software publishers. They help compare key features of different programs, and ensure interoperability of products and the accuracy and comprehensiveness of software quotes. They assist users in finding the best software to fit their needs, along with the most advantageous licensing level.
- **Partner Specialists.** These individuals provide insight into product features and functionality, making sure that software is being sold correctly. Among their duties, they provide accurate licensing solutions. The Partner Specialist teams providing support to CDW•G solutions include over 30 experts focused on our software offering. These coworkers are designated to a specific brand, such as Microsoft, or to a solution, such as cloud. This relates to expert assistance for not only key itemized manufacturers, but to all the publishers users are purchasing.
- **Cloud Client Executives (CCE).** Similar to our SLS team, our 14 CCEs work with our customers to provide guidance and optional engagements to align their unique business goals with a cloud plan that provides maximum benefits.



## Requirement

- 2.5 Other (specify)

## **Response**

CDW•G also leverages the following resources to provide unmatched support for customers' IT solutions:

### **Engineers**

Also included in our recognizable attributes is an investment in engineers that are available to help design custom solutions. We have the largest team of engineers when compared to our direct IT competitors, more on par with the big integrator firms that serve the federal market—such as Boeing—than other potential respondents. Through the account teams located in strategic geographies across the nation, our engineers provide customers design and consultative services at **no additional charge**.

### **Partner Resources**

Many of our OEM partners have staff dedicated to support CDW•G customers exclusively. In March 2015, over 340 partner coworkers from over 100 various partners were collocated with CDW•G, collaborating with our sales teams and engineers to provide expert help to our customers. The wide variety of partners that are onsite allows us to help customers analyze the best value among the products under consideration and provide the right product for each customer the first time.

### **Distribution Facilities**

Our distribution infrastructure is another key reason why no other IT solution provider in the industry can match our ability to service NASPO ValuePoint customers. As our number of orders has increased across the public and corporate sector, we continue to achieve higher order accuracy year over year. We own two distribution centers that have one million square feet of storage space and stock over \$200 million in inventory at any given time.

This combination of stock and shipping infrastructure allows us to ship on average 37,000 boxes per day. Despite all of these capabilities, we do not solely rely on our facilities to meet customer needs; we complement our own distribution centers with our distribution partner network, leveraging the most cost-effective solution for each individual product line and customer order.

### **Distribution Partner Network**

Our Distribution Partner Network includes over 130 different suppliers, meaning we can provide any solution customers need. Similarly to our OEM partners, we're the largest partner for many of our distributors. Like our manufacturer partner relationships, this results in direct benefits for CDW•G, which we pass along to our customers.

Most partners send us EDI (Electronic Data Interchange) downloads or real time information on their available inventory, resulting in access to products usually in as little as a day. As an example, we are a top Ingram Micro partner and hold Elite Partner status. This partnership provides a customized and exclusive support resource to our account teams and customers, among other benefits.

## 3. Clients

### Requirement

3.1 Provide information on Offeror's current government client list.

- 3.1.1 Explain the services provided to each and how long Offeror has been working with each.

### Response

CDW-G has vested partnerships with nearly every government entity in the US. For insight into our customer base, we served over 5,200 customers in 2014 on our NASPO ValuePoint reseller agreements alone.

Our 2014 net sales to federal, state, and local governments totaled \$1.5 billion; state and local government sales accounted for approximately 41 percent of these net sales. The top product categories provided to state and local government customers included software, notebooks/mobile devices, and enterprise storage. Specific to this RFP, software is a multibillion-dollar component of CDW's net revenue.

As a whole, we manage more than 25,000 software agreements and conduct over 18,000 software renewals annually. Additionally, we offer electronic delivery of many of our software solutions (about one-fifth of our total revenue). Many of these product sales were components of integrated solutions and coupled with services typical of solutions, such as Data Center, Unified Communications and Collaboration, Security, Mobility, and Cloud.

The average customer relationship for CDW, as a whole, is eight years. Our government customers sit at the highest end of the average, as our corporate customer relationships are typically no more than three years. Multiyear contracts and the cultivation of personal connections between customer and account manager attribute greatly to the lengthy tenure of these government relationships.

### Requirement

- 3.1.2 List government contracts Offeror has gained over the past three (3) years. Provide an explanation of why Offeror was chosen.

### Response

CDW-G has gained 363 public-sector contracts (non-federal) over the past (3) years; the list of these contracts is attached to this section of our response.

Most often, customers select CDW-G for contract award due to our capacity for managing large-scale agreements, as well as the value we can provide their purchasers and end-

users. Unique differentiators that lead to an award decision include our vendor agnosticism and the investment of ongoing sales training to best serve our customers. CDW-G employs over 1,300 account managers, meaning that size and consistency of support staff is a consistent development initiative in order to support national contracts such as NASPO ValuePoint with any necessary transitions.

**Requirement**

- 3.1.3 List government contracts Offeror has lost or resigned over the past three (3) years. Provide an explanation of why they were lost or resigned.

**Response**

As you can see from the following table, of the total 512 contracts lost or resigned, we were named to a new contract in 211 instances and awarded upon rebid in 73 instances, meaning that over half of the no-longer-current contracts are in new iterations being held by CDW-G.

3.1.3 Lost or Resigned Government Contracts	
Reason	Number
Agreement out to RFP	1
Agreement rebid and awarded to CDW-G	73
Agreement rebid and not awarded to CDW-G	7
CDW-G was named to a new Contract	211
Contract may be renewed, pending NY OGS	9
Moved purchasing to local cooperative agreements	7
Signed a new agreement	11
Unknown reason	82
We are still awaiting renewal	3
OEM did not sign a new contract	22
Contract expired and was not rebid/renewed	86
<b>GRAND TOTAL</b>	<b>512</b>

A full list is attached to this section of the response, as well.

Through the normal course of business, CDW-G’s contract portfolio changes year to year. Contracts in the Public segment are generally terminable at any time for convenience of the contracting agency or group purchasing organization (GPO) or upon default. An adverse change in government spending policies (including ongoing budget cuts), budget priorities, or revenue levels could cause our government customers to reduce their purchases or to terminate or not renew their contracts with us. In the past three (3) years, CDW-G has not lost a contract to default. The primary reason our contracts end is when a customer is out of available options to extend the contract.

**Requirement**

3.2 If Offeror has no government clients, note this in your response and answer questions 3.1.1 through 3.1.3 based on non-government clients.

**Response**

As detailed, CDW-G has a substantial number of government clients. We provide our responses to 3.1.1 through 3.1.3 to reflect these relationships.

**Requirement**

3.3 References—Provide information for three (3) client references that replicate or are similar to the requirements of this solicitation. All references shall be for engagements received and completed within the last five (5) years. The State may, at its sole discretion, contact additional clients not presented as references. Reference information is to be provided using the following table format:

**Response**

The following references are submitted for NASPO ValuePoint review.

3.3 References			
Reference Information	Client One	Client Two	Client Three
Company Name	State of Illinois Central Management Services (CMS)	Federal Aviation Administration (FAA)	University of Washington
Type of Contract Product and Services Delivered	<p>CDW-G's IL CMS Microsoft Large Account Reseller contract includes Microsoft Select, Enterprise Agreements, and Microsoft Academic Select. CMS currently has both a Microsoft Select and an Enterprise Agreement.</p> <p>CDW-G has held this contract for three consecutive iterations, starting in 2005. The current contract, recently awarded, expires September 2019.</p>	<p>Software contract includes but is not limited to ACD Systems, Software AG, EMC, HP, IBM, Oracle, and Symantec (among dozens of other publishers, including "weirdware"). With CDW-G has grown software sales from \$5 million the first year of the contract to \$26 million in GFY15, and grown hardware sales from \$15 million to \$37 million.</p> <p>Both catalog contracts (Software DTFAC-13-D-00004, Hardware DTFAWA-11-D-00057) are administered by the SAVES Contracts Office; mandatory for the FAA and open to the Department of Transportation</p>	<p>Software agreements under contract include Microsoft EES Agreement, VMware ELA, Citrix ELA, Adobe CLP (all Adobe products = 1,000+ orders annually)</p> <p>Support through assessing changes in UW's licensing needs, deploying software to end-users, providing guidance on new licensing/support structures, renewing maintenance for all OEMs, identifying large spend of similar products across campus to drive campus-wide agreements that reduce cost</p>
Contact Name, Mailing Address, Phone Number, Email	James Ellenburg, Contracting Officer 120 W Jefferson 3 <sup>rd</sup> Floor Springfield, IL 62702	Harry Lutz, Contracting Officer USDOT/FAA 800 Independence Ave SW Washington, DC 20591	Ray Hsu, Assistant Director, Procurement Services 4300 Roosevelt Way NE Seattle, WA 98195

3.3 References			
Reference Information	Client One	Client Two	Client Three
Address	P: 217.785.0897 E: james.ellenburg@illinois.gov	P: 609.485.6127 E: <a href="mailto:harry.lutz@faa.org">harry.lutz@faa.org</a>  Elizabeth Ford Ochs, Authorized Contract Officer P: 609.485.5557 E: <a href="mailto:elizabeth.ford@faa.gov">elizabeth.ford@faa.gov</a>  Robert Cochran, Contracting Officer Representative P: 571.209.3111 E: <a href="mailto:robert.cochron@faa.gov">robert.cochron@faa.gov</a>	P: 206.543.0793 E: rayhsu@uw.edu
Contract Start and End Date	October 2015- November 2019	Software: May 2013-April 2018 Hardware: September 2011-September 2016	2010-2020 (10-year renewal)
Contract Value	Estimated \$140 million/duration of contract	Software: sales through September 2015 = \$52 million Hardware: sales through September 2015 = \$96 million	\$5 million/annual

## 4. Financial/Accounting Information and Disclosures

### Requirement

4.1 Offeror must provide evidence of financial stability and capability to fund all cost associated with providing the services through the term of the Contract. The latest two (2) years audited annual financial statement(s), including Total Revenue, Net Income, and Total Assets, must be submitted with the Offeror's Offer. If audited financial data is unavailable, explain in full the reason and provide latest non-audited financial information to include Balance Sheet, Income Statement, as well as, Statement of Cash flows and Change in Financial position. Include information to attest to the accuracy of the information provided.

### Response

Included at the end of this attachment are CDW's most recent 10K audit reports (2013 and 2014); audited financial statements are located in *Item 8: Financial Statements and Supplementary Data*.

CDW Financial Information		
	2014	2013
<b>Total Revenue</b> (listed as Net Sales)	\$12,074.5 million	\$10,768.6 million
<b>Net Income</b>	\$244.9 million	\$132.8 million
<b>Total Assets</b>	\$6,099.9 million	\$5,924.6 million

Online versions of these documents are also located at [investor.cdw.com](http://investor.cdw.com).

## 4.2 Disclosures

### Requirement

4.2.1 Information regarding any irregularities that were discovered in any account maintained by the Offeror on behalf of others. Describe the circumstances and disposition of the irregularities.

### Response

To the best of our knowledge, at the time of this submission, accounts maintained by CDW on behalf of others have not been subject to any irregularities of circumstance or disposition.

### Requirement

4.2.2 Full disclosure of any potential conflict of interest, i.e. serving as a member, board member, officer, or having significant financial interest with any company, firm or joint venture with interests in the provision of software.

### Response

To the best of our knowledge, at the time of this submission, CDW does not have any potential conflicts of interest that would prevent us from serving NASPO ValuePoint members via this contract.

### Requirement

4.2.3 Whether or not, in the last ten (10) years, the Offeror has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details;

### Response

To the best of our knowledge, at the time of this submission, CDW has not filed (nor had filed against it) any bankruptcy or insolvency proceeding. No receiver, trustee, or assignee for the benefit of creditors has been specifically appointed.

### Requirement

4.2.4 Whether or not there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a Contract under this RFP.

### Response

On 29 October 2015, CDW (the Company) received a request for production of documents in connection with an investigation by the SEC of our vendor partner program incentives. We are cooperating with the SEC in this matter.

The Company is party to various legal proceedings that arise in the ordinary course of its business, which include commercial, intellectual property, employment, tort, and other litigation matters.

The Company is also subject to audit by federal, state, and local authorities by various partners, group purchasing organizations, and customers (e.g., government agencies) relating to purchases and sales under various contracts. In addition, the Company is subject to indemnification claims under various contracts. From time to time, certain customers of the Company file voluntary petitions for reorganization or liquidation under the US bankruptcy laws. In such cases, certain pre-petition payments received by the Company could be considered preference items and subject to return to the bankruptcy administrator.

As of 30 September 2015, the Company does not believe that there is a reasonable possibility that any material loss exceeding the amounts already recognized for these proceedings and matters, if any, has been incurred. However, the ultimate resolutions of these proceedings and matters are inherently unpredictable. As such, the Company's financial condition and results of operations could be adversely affected in any particular period by the unfavorable resolution of one of more of these proceedings or matters.

#### Requirement

4.2.5 Documenting all open or pending litigation initiated by the Offeror or where the Offeror is a dependent or party in litigation that may have a material impact on Offeror's ability to deliver the contracted services;

#### Response

To the best of our knowledge, at the time of this submission, CDW does not have any open or pending litigation that would present a material impact on our ability to deliver the contracted services.

#### Requirement

4.2.6 Full disclosure of any public sector contracts terminated for cause or convenience in the past five (5) years.

#### Response

To the best of our knowledge, at the time of this submission, CDW has not had any public sector contracts terminated for cause or convenience in the past five (5) years.

# Jumana DiHu

## Relevant Experience

### CDW

#### Program Manager (2013–Present)

- Manages contract portfolio for healthcare, higher education, K–12, state & local sales segments within CDW Government LLC
- Responsible for full range of customer-facing contracts and partner contracts, including master purchase agreement, subcontractor agreements, teaming agreements, referral agreements
- Initiates and responds to requests for contract changes, product substitutions, technical refreshments
- Facilitates preliminary dispute resolution and coordinates with legal department as necessary to maintain customer satisfaction and bring prompt closure
- Ensures document compliance and analyzes success of program to make recommendations for improvement, including product add/drop, offer expansion
- Manages all reporting capabilities for high-visibility contracts

### Sirva, Inc.

#### Program Manager (2002–2013)

Handled contract negotiation, cost/price analysis, compliance, market and channel analysis, development of strategic initiatives, and directed business goals and project management

## Education

BS, International Economics, DePaul University



# Gabriel Adler

## Relevant Experience

### CDW

#### Sales Manager, Software Solutions (2014—Present)

- Responsible for software sales in multiple public-sector segments with CDW Government LLC (e.g., federal, state & local, K–12, higher education)
- Manages team of six inside software solution and licensing sellers, five outside software solution and licensing sellers
- Manages continuous pipeline of software number, including cascade of forecast to upper management
- Goes in-market with field sellers and interfaces with clients
- Develops coworkers via education around products, services, solutions

#### Program Manager, Software Sales (2011–2014)

Responsible for multiple software programs, including Microsoft T36 Contract Management, Select Plus, NGVL (Next Generation Volume Licensing), OTRR (On Time Renewal Rate), Licensing Help Desk

#### Microsoft Inside Enterprise Licensing Specialist (2009–2011)

#### Microsoft Sales Executive (2006–2009)

#### AMSB Account Manager (2005–2006)

### Dave Adler, Inc.

#### Controller & Lead Sales Person

## Education

BA, Business, Northeastern Illinois University

## Professional Memberships

International Association of Web Masters and Designers

## Skills

- Microsoft Office Suite (Excel, Word, Access, Outlook)
- Microsoft FrontPage
- HTML Programmer
- Adobe Photoshop
- Cute FTP
- Adapta 2000
- Microsoft Certified Professional—SAM (Software Asset Management)
- Microsoft ESA/LAR FY09 Certified
- VMware VSP 5.5
- Citrix CSP
- AS/400

# Gabe Arias

## Relevant Experience

### CDW

#### Licensing Account Executive (2011–Present)

- Supports state & local government customers manage software investments, including Microsoft volume licensing
- Builds trusted client relationships at CIO/Director level within state agencies, counties, cities
- Presents CDW Government LLC's software solution capabilities at client-facing meetings, hosted events, selected software partner events
- Acts as subject matter expert for all Microsoft licensing agreements, VMware, Adobe, Citrix, Red Hat, HP, IBM, and professional services offerings
- Manages multiple government contracts, answers complex licensing and product questions/scenarios, supports CDW account teams, proactively manages client software business (e.g., EA enrollment process, QBRs, trend analysis, technology briefings)

### Dell, Inc.

#### Licensing Specialist, Global Accounts (2007–2011)

Focused on software and service solutions for large Enterprise and global segment

### ASAP Software

#### Inside Account Manager (2006–2007)

## Education

BS, Marketing, Illinois State University

## Awards, Certifications & Trainings

- Certified Microsoft Licensing Expert
- CDW-G Most Valuable Player, Software Team (2013, 2015)
- CDW Presidents Achievement (2014)
- Classroom Training Program
- Sales Leadership Training
- Yellow Belt Certification Training
- Microsoft Solution Selling Training
- Cloud Computing & Virtualization Conference
- Microsoft Volume Licensing Certification
- VMware Licensing Certification
- Symantec Licensing Certification
- Citrix Licensing Certification
- Oracle Licensing Certification
- IBM Licensing Certification
- Effective Presentations Training

# Jason Schwartz

## Relevant Experience

### CDW

#### **Sales Manager, State & Local Sales (2015–Present)**

- Manages 20 account managers supporting state & local government customers in California, Arizona, Alaska, and Hawaii
- Builds relationships with coworkers, customers, partners for both small and large enterprises in the public sector
- Leads team of sales professionals through motivational coaching, effective partner management, and customer engagement
- Consistently interacts with field personnel, customer base, and OEM partners
- Performs business pipeline review calls with sales teams to ensure financial objectives are achieved monthly, quarterly, and annually

#### **Sales Manager, Sales Academy (2014–2015)**

Responsible for onboarding account managers hired into Medium Large Central and South regions and Small Business teams; developed individual coaching plans for each account manager

#### **Senior Account Manager (2010–2014)**

Achieved strong sales results with higher education customers through consultative selling of hardware, software, and professional services solutions to assist in long-term strategic IT plan of each customer

## Education

BA, Political Science & Business Administration, University of Iowa

# Michael Truncone

## Relevant Experience

### CDW

#### Sales Manager, State & Local Sales (2015–Present)

- Travels to discover, develop, and increase relationships with key clients, manufacturers, and service business partners
- Performs business pipeline reviews with sales teams to ensure financial objectives are achieved monthly, quarterly, and annually
- Conducts services scope reviews on opportunities with integration services to ensure successful project execution

#### Executive Account Manager (2005–2015)

- Worked to develop partner relationships while holding weekly cadence with partners including Cisco, HP, and Lenovo
- Demonstrated consistent sales growth throughout career
- Pursued relevant certifications within IT field, including partners HP, NetApp, EMC, Cisco, and Microsoft
- Participated in Emerging Leaders Program
- Worked efficiently and effectively while coordinating and managing within large sales organization
- Coached and developed high-performing coworkers

## Education

BA, Economics & Business Administration, University of Connecticut

# Clayton Boras

## Relevant Experience

### CDW

#### Sales Manager, Higher Education (2011–Present)

- Supervises 20 inside sales and field sales personnel supporting higher education business in Northeast and Keystone geographies
- Develops team members with career opportunities in Emerging Leaders program and promotion to Sales Operations
- Consistently interacts with field personnel, customer base, and OEM partners
- Lead sales team ranked #1 in Higher Education (2012)
- Executes large higher education wins for hardware, software, licensing, and services solutions

#### Sales Manager, K–12 Sales (2007–2011)

- Oversaw 22 internal sales and two field sales personnel supporting K–12 education business for Keystone geography
- Created sales strategies to identify lucrative contract opportunities and leveraged vendor relationships to achieve significant sales and gain visibility
- Interfaced with vendors, executive management contracts for key accounts, and information technology, purchasing, and general services personnel at state level

#### Regional Sales Manager (2003–2007)

#### Territory Sales Manager (2001–2003)

### Micro Warehouse Inc.

#### Group Business Unit Education Manager (1999–2003)

#### Strategic Business Unit Account Manager (1998–1999)

## Education

- MBA, Marketing, Sacred Heart University
- BS, Finance, Sacred Heart University

## Awards & Certifications

- CDW Presidents Club Achievement Award (2008, 2012)
- CDW #1 Ranked K–12 Sales Manager (2003, 2008)
- CDW #1 Ranked Higher Education Sales Manager (2012)
- Mitsubishi Sales Award (2006-2009)

# Dave Stephens

## Relevant Experience

### CDW

#### **Business Development Manager, Public Safety (2010–Present)**

- Manages sales engineering process for large-scale integration projects involving public safety agencies
- Provides subject matter expertise to CDW Government LLC resources and offers resource training, as well as partner development and management
- Presents at state, regional, and national public safety conferences on topics such as mobility, digital evidence management, CJIS mandate compliance

#### **Senior Field Account Executive (2002–2010)**

Worked with account teams to grow state & local government marketplace; additionally developed high-visibility opportunities within specific sales geography

### CATG Inc. dba MBS CONNECTING POINT

#### **Operation Director (2000–2001)**

#### **President and General Manager (1999–2000)**

#### **National Sales Manager (1997–1999)**

#### **State Contract Sales Manager (1991–1997)**

#### **Account Manager (1988–1990)**

### VALCOM COMPUTER

#### **Account/Assistant/Service Manager (1984–1988)**

## Education

BA, Data Processing & Business Administration, Weber State University

# Russell Keene

## Relevant Experience

### CDW

#### **Sales Manager, K–12 Sales (2006–Present)**

- Trains and manages inside sales team of 27 account managers covering K–12 accounts in California, Arizona, Alaska, and Hawaii
- Manages a team of six field account executives in California and Arizona
- Travels to discover, develop, and increase relationships with key clients, manufacturers, and service business partners
- Performs business pipeline reviews with sales teams to ensure financial objectives are achieved monthly, quarterly, and annually
- Conducts services scope reviews on opportunities with integration services to ensure successful project execution
- Acts as Education liaison for CDW Emerging Leaders Program
- Analyzes contracts prior to RFP response submission to ensure positive outcome and acceptable company risk

#### **District Manager, Northwest & Pacific Regions (2005–2006)**

Created regional business plan leading to sales increase and trained/coached inside account teams covering customers in western US

#### **Senior Account Manager (1997–2005)**

Proactively targeted key contracts and successfully bid to further business opportunities while acting as team mentor for new sales coworkers

## Education

BS, Marketing, North Central College

# Alex Haycock

## Relevant Experience

### CDW

#### **Sales Manager, K-12 Sales (2015–Present)**

- Mentors account team with various lengths of tenure across multiple CDW segments
- Leads account team to exceed goals via one-on-one coaching and focused selling efforts
- Builds strong relationships with vendor partners, inside sales reps, and field resources to ensure customer satisfaction and support

#### **Senior Account Manager (2014–2015)**

Guided peers through daily and monthly sales activities while maintaining and expanding customer relationships in Aggregation Services team

#### **Account Manager (2011–2014)**

Developed strong and long-lasting relationships with back-end departments and vendors to become consistent and reliable resource to customers and colleagues

## Education

BA, Business Administration, Columbia College

### Awards & Certifications

- Cisco CCE
- EMC Sales Professional
- NetApp Sales Professional
- VMware Sales Professional
- Tripp Lite Sales Professional



# Sean Galligan

## Relevant Experience

### CDW

#### Sales Manager, K–12 Sales (2014–Present)

- Manages recruitment, selection, training, and coaching of 18 direct reports handling millions in total business to ensure sales goals are met
- Drives business growth by capitalizing on new revenue potential in existing markets in New England geography
- Leverages strategic relationships with customers, peers, and vendor partners
- Provides customer service management and problem resolution training and mentorship
- Utilizes knowledge of partner sales programs and procedures to effectively steer sales growth projects with key partners such as Cisco, NetApp, VMware, and Aruba

#### Account Manager (2007–2014)

Managed, fostered, and maintained successful working relationship with multiple vendor partners in K–12 education IT sales

### Nielsen Media Research

#### Sports Product Placement Auditor (2006–2007)

Edited and evaluated analysis of sports marketing initiatives of product vendors, athletic teams, sports venues to assist in formulation of appropriate business strategy

#### Sports Product Placement Analyst (2005–2006)

## Education

BBA, Finance, University of Connecticut

### Awards & Certifications

- Cisco Sales Expert
- NetApp Accredited Sales Professional
- Microsoft Sales Accreditation
- EMC Velocity Sales Accreditation

### Major Projects

- Project Name 1 (Project Date), 5-7 word description
- Project Name 2 (Project Date), 5-7 word description

# Mike Clinton

## Relevant Experience

### CDW

#### **Sales Manager, Higher Education (2015–Present)**

- Covers higher education sales in Northwest geography
- Leads experienced inside and outside sales team to sell best-in-class manufacturers and technology from Cisco, Lenovo, Microsoft, Adobe, VMware, etc.

#### **Principal ISA, Unified Communications (2008–2015)**

- Subject matter expert for CDW's unified communications portfolio to customers, colleagues, account managers
- Assessed customer business goals and technical requirements to develop UC strategies
- Leveraged extensive knowledge of CDW's Professional Services to provide customers with turnkey solutions
- Supported Med/Lar, nonprofit, and healthcare teams

#### **Senior Account Manager, Med/Lar (2002–2008)**

Provided IT solutions and services to mid-market and Enterprise clients

## Education

BS, Telecommunications Management, DeVry University

# Chris Webb

## Relevant Experience

### CDW

#### **Business Development Manager, Higher Education (2015–Present)**

- Owns higher-education strategy for contracts, eProcurement, and key OEM partnership in CDW Government LLC
- Directs team of five field-based business development resources focuses on higher education market
- Builds strategic partnerships with key OEM partners, providers, and third-party service organizations
- Drives customer relationships through C-level engagement, partnership reviews, mutually beneficial contracts
- Reports to VP, Higher Education Sales

#### **Business Development, Higher Education (2008–2015)**

- Positioned CDW and negotiated contracts for west coast higher education business
- Conducted business reviews with executive-level large clients to identify growth opportunities

#### **Sales Manager, Higher Education (2007–2008)**

Led team of 18 account managers covering higher education in mid-Atlantic and Keystone geographies

#### **Inside Account Manager, K–12 Education (2005–2007)**

Proactively sought new customers and innovative ways to solve the technology needs of K–12 education

## Education

BS, Information Systems, Wake Forest University

### Awards & Certifications

- CDW Annual Sales Top Performers (2005, 2006, 2007)
- CDW #1 Higher Education/Sales Manager (2008)

# Eric Goff

## Relevant Experience

### CDW

#### **Sales Manager, Higher Education, Pacific Region (2009–Present)**

- Manages day-to-day sales team activities to achieve financial plan, interacting with direct reports, coworkers, customers, and partners
- Responsible for two territories consisting of 15 states; develops, improves, and maintains customer and partner relationships
- Hosts meetings, delivers presentations, conducts onsite visits, develops plans and strategic planning sessions, handles contract negotiation
- Works effectively with internal and external stakeholders to achieve business objectives and exceed sales goals
- Motivates and coaches sales team, educates and teams with OEM partners, engages customers to provide consultation and value

#### **Sales Manager, Corporate Academy (2007–2009)**

Responsible for managing newest sales representatives, coaching effective career strategies, and providing selling assistance

#### **Account Manager (2001–2007)**

Responsible for corporate accounts across the country (focus on Northern California)

## Education

BS, Marketing, Illinois State University

### Awards & Certifications

- CDW Presidents Achievement Award of Excellence (2009, 2014)
- Public Sales Manager Advisory Council (PSMAC)
- Higher Education liaison, CDW Emerging Leaders Program

**GAINED GOVERNMENT CONTRACTS**

Issuing Agency	Contract Title	Start Date	Exp Date
Academy School District 20	Peripheral Purchase Agreement	07/10/2015	07/31/2016
Alabama Joint Purchasing Program	ALJP 2013 - HP Networking	03/08/2013	03/08/2016
Alabama Joint Purchasing Program	ALJP 2013 - NEC	03/08/2013	03/08/2016
Alabama Joint Purchasing Program	ALJP 2013 - Lenovo	03/08/2013	03/08/2016
Alabama Joint Purchasing Program	ALJP2015-0102 GoGuardian	07/06/2015	07/01/2017
Alabama Joint Purchasing Program	ALJP2015-0113: Microsoft Hardware	07/29/2015	06/30/2017
American Lebanese Syrian Associated Charities, Inc (ALSAC)	Master Services and Product Sales Agreement b	12/18/2013	12/18/2015
American Public University System	Master Product Sales Agreement	04/15/2013	04/14/2016
Arlington Independent School District	Computer, AV Equipment, Supplies and Services	07/01/2015	06/30/2016
Aruba Networks, Inc.	California Aruba WSCA Data Communications	02/17/2015	05/31/2019
Aruba Networks, Inc.	Aruba WSCA Data Communications	02/17/2015	05/31/2019
Aruba Networks, Inc.	Florida Aruba NASPO Data Communications	05/11/2015	05/31/2019
Aruba Networks, Inc.	Alaska Aruba NVP Data Communications	08/18/2015	05/31/2019
Aruba Networks, Inc.	Nevada Aruba NVP Data Communications	08/19/2015	05/31/2019
Aruba Networks, Inc.	Montana Aruba NVP Data Communications	08/24/2015	05/31/2019
Aruba Networks, Inc.	New Jersey Aruba NVP Data Communications	08/24/2015	05/31/2019
Aruba Networks, Inc.	South Carolina Aruba NVP Data Communication:	08/24/2015	05/31/2019
Aruba Networks, Inc.	Washington Aruba NVP Data Communications	08/24/2015	05/31/2019
Aruba Wireless Networks, Inc.	Ohio STS Aruba	11/13/2014	06/30/2017
Associated Colleges of the Twin Cities	NJPA Stretch Agreement	12/01/2014	11/18/2018
Association of Computer Technology Educators of Maine	Master Product Sales Agreement	05/30/2014	05/30/2016
Baltimore City Public Schools	Symantec Software Maintenance	07/01/2014	06/30/2017
Beaufort County School District	APC Smart UPSs and Batteries	06/05/2015	06/04/2018
BJC Healthcare	Mutual Non-Disclosure Agreement	11/20/2013	11/20/2016
Board of Regents of the Nevada System of Higher Education on behalf of Bu:	NJPA Stretch Agreement	12/01/2014	11/18/2018
Bossier Parish School Board	Technology Catalog Contract	11/01/2015	10/31/2020
Brocade Communications Systems, Inc.	State of Georgia Brocade	04/30/2013	06/30/2016
Brocade Communications Systems, Inc.	Brocade WSCA Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	Alaska Brocade NVP Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	Delaware Brocade NVP Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	Montana Brocade NVP Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	Nevada Brocade NVP Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	South Dakota Brocade NVP Data Communicatio	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	Washington Brocade NVP Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	Wyoming Brocade WSCA Data Communications	07/10/2014	05/31/2019
Brocade Communications Systems, Inc.	New Jersey Brocade NVP Data Communications	09/08/2014	05/31/2019
Brocade Communications Systems, Inc.	Wyoming Brocade NVP Data Communications	09/08/2014	05/31/2019
Brocade Communications Systems, Inc.	California Brocade NVP Data Communications	09/09/2014	05/31/2019
Brocade Communications Systems, Inc.	Oregon Brocade WSCA Data Communications	09/09/2014	05/31/2019
Brocade Communications Systems, Inc.	Oregon Brocade NVP Data Communications	09/09/2014	05/31/2019
Brocade Communications Systems, Inc.	Florida Brocade NVP Data Communications	10/06/2014	05/31/2019
Brocade Communications Systems, Inc.	Hawaii Brocade NVP Data Communications	10/06/2014	05/31/2019
Brocade Communications Systems, Inc.	South Carolina Brocade NVP Data Communicatic	07/14/2015	05/31/2019
Brocade Communications Systems, Inc.	TX DIR Brocade	09/24/2014	08/13/2016
Brother International Corp.	TX DIR Brother	06/05/2015	06/05/2016
Brother International Corporation	NC Brother Printer	04/10/2013	03/31/2016
Brother International Corporation	NY OGS Brother Printing and Imaging	11/06/2014	09/01/2017
Capistrano Unified School District	Audio Visual Equipment	08/01/2015	07/31/2016
Carahsoft Technology Corp	TX DIR Carahsoft/Adobe	08/29/2013	08/29/2016
Carahsoft Technology Corp	Texas DIR Carahsoft/VMWare	03/13/2014	05/03/2016
Carahsoft Technology Corp	Oklahoma OneNet Carahsoft/VMWare	04/15/2014	06/30/2016
Carahsoft Technology Corp	OH STS Carahsoft/Nutanix	06/01/2015	12/19/2016
CESA Purchasing	Technology Catalog	03/01/2014	02/29/2016
Chicago Public Schools	Audio Visual Equipment	08/01/2013	06/30/2016
Cisco Systems, Inc.	TX DIR Cisco	05/05/2014	05/05/2016
Cisco Systems, Inc.	Cisco WSCA	08/07/2014	05/31/2019
Cisco Systems, Inc.	Nevada Cisco WSCA	08/07/2014	06/01/2019
Cisco Systems, Inc.	Oregon Cisco WSCA	08/15/2014	05/31/2019
Cisco Systems, Inc.	Michigan Cisco WSCA	08/29/2014	05/31/2019
Cisco Systems, Inc.	Washington Ciso WSCA	08/29/2014	05/31/2019
Cisco Systems, Inc.	Hawaii Cisco WSCA	09/08/2014	05/31/2019
Cisco Systems, Inc.	Wyoming Ciso WSCA	09/08/2014	05/31/2019
Cisco Systems, Inc.	New Jersey Cisco WSCA	09/24/2014	05/31/2019
Cisco Systems, Inc.	Louisiana Cisco WSCA	10/08/2014	06/01/2019
Cisco Systems, Inc.	Florida Cisco WSCA	10/09/2014	05/31/2019
Cisco Systems, Inc.	Iowa Cisco WSCA	10/29/2014	05/31/2019
Cisco Systems, Inc.	Utah Cisco WSCA	04/02/2015	05/31/2019
Cisco Systems, Inc.	Montana Cisco NASPO ValuePoint Data Commu	07/24/2015	05/31/2019

Cisco Systems, Inc. 7-14-07-04	California Cisco WSCA	10/10/2014	05/31/2019
Citrus County School Board - Otterbox Cases	Citrus County School Board	04/14/2015	04/14/2016
City of Atlanta	City of Atlanta Hardware and Software	10/01/2013	10/01/2016
City of Austin	Electronic Visual Display Systems	05/12/2015	05/11/2018
City of Austin	Cisco Hardware and Support	08/05/2015	08/04/2018
City of Cambridge	Misc Computer Hardware & Software for the Po	12/10/2014	12/09/2015
City of Chattanooga	City of Chattanooga Brocade	10/01/2013	09/30/2016
City of Chesapeake	Technology Solutions and Related Services	12/01/2014	11/18/2018
City of Denver	City of Denver Ipad	06/20/2013	06/20/2016
City of Richmond Department of Procurement Services	Richmond IT Products	05/14/2014	05/13/2016
City of Spokane	City of Spokane Product Sales and Service Projec	09/23/2015	09/22/2017
City of Tucson, Arizona	National IPA Technology Solutions	08/18/2013	08/16/2016
Clarkstown Central School District	Samsung Chromebooks	09/08/2015	09/07/2016
Cobb County School District	iPad Cases	05/01/2013	04/30/2016
Cobb County School District	Audiovisual Equipment	06/01/2015	05/31/2016
Commonwealth of Massachusetts Operational Services Division	Massachusetts Converged Voice & Data Commu	09/18/2013	08/31/2018
Commonwealth of Pennsylvania	PA Commonwealth- Enterprise IT Peripherals	10/01/2013	09/30/2016
Commonwealth of Pennsylvania	PA Commonwealth- PC and Monitors	02/15/2014	02/14/2016
Community Unified School District 300	Master Services Agreement	10/13/2014	10/12/2016
Community Unified School District 300	Computer & Tablets Purchase	04/13/2015	04/12/2016
Concorde Colleges	Concorde Colleges Master Product Sales Agreeer	03/22/2013	03/22/2016
Conejo Valley Unified School District	Technology Solutions	08/06/2015	06/30/2016
Connecticut General Assembly, Joint Committe on Legislative Management	IBM Express x3650 M4 Servers	04/24/2014	04/23/2019
Cook County Government	Cook County Hardware Software Contract	05/15/2013	05/14/2016
County of Los Angeles Internal Services Department	County of Los Angeles Wireless Accessories	11/01/2013	10/31/2016
County of Los Angeles Internal Services Department	County of Los Angeles Media	04/01/2014	03/31/2017
County of Los Angeles Internal Services Department	County of Los Angeles Orchid Peripherals	06/06/2014	06/05/2016
County of Los Angeles Internal Services Department	County of Los Angeles Orchid Ergotron Peripher:	09/10/2014	09/09/2016
Department of Information Technology and Telecommunications (DOITT)	NYC DOITT Panasonic	04/10/2013	12/29/2015
Desert Sands Unified School District	Chromebook Carts	11/06/2013	11/05/2016
Desert Sands Unified School District	Chromebooks	09/02/2014	09/02/2016
Desert Sands Unified School District	Tablets	03/18/2015	03/12/2016
Desert Sands USD Display Solutions	Desert Sands USD Display Solutions	05/21/2015	05/16/2016
DeVry, Inc.	Master Product Purchase Agreement	04/01/2013	04/01/2016
Digital Edge	Digital Edge Wireless Mobile Devices	05/28/2014	12/31/2015
Digital Edge	DigitalEdge Wireless Mobile Devices - Spectrum,	05/28/2014	01/01/2016
D-Link Systems, Inc.	TX DIR D-Link Networking	06/01/2015	09/25/2016
Dutchess County BOCES	Dutchess County BOCES Cooperative Lock and C	09/10/2015	09/10/2016
Eastern Suffolk BOCES	Microcomputers, Perioherals & Software	01/15/2015	02/29/2016
EC America Ohio STS	EC America Ohio State Term Schedule	08/31/2015	06/26/2017
EC America, Inc.	PA Cisco immixGroup	11/27/2013	08/17/2018
Ector County Independent School District	Electronic Surveillance System Upgrade	12/23/2014	12/22/2016
Education Service Center Region VII	Computer Hardware & Supplies	08/20/2015	08/20/2016
El Paso Independent School District	District Printers	07/01/2014	06/30/2016
Elk Area Schools ISD 78	Projector Bulb Contract	03/01/2014	06/30/2016
EMC Corporation	EMC NVP Computer Equipment	08/24/2015	04/01/2017
EMC Corporation	Alaska EMC NVP Computer Equipment	08/25/2015	03/31/2017
EMC Corporation	Arizona EMC NVP Computer Equipment	08/26/2015	03/31/2017
EMC Corporation	South Dakota EMC NVP Computer Equipment	08/26/2015	03/31/2017
EMC Corporation	Alaska EMC NVP Data Communications	10/23/2015	05/31/2019
EMC Corporation	California EMC NVP Data Communications	10/27/2015	05/31/2019
EMC Corporation	Florida EMC NVP Data Communications	10/27/2015	05/31/2019
EMC Corporation	Hawaii EMC NVP Data Communications	10/27/2015	03/31/2019
EMC Corporation	Missouri EMC NVP Data Communications	10/27/2015	05/31/2019
EMC Corporation	Montana EMC NVP Data Communications	10/27/2015	05/31/2019
EMC Corporation	Utah EMC NVP Data Communications	10/27/2015	05/31/2019
EMC Corporation	Kansas EMC NVP Computer Equipment	12/01/2015	03/31/2017
EMC Corporation	New Jersey EMC NVP Computer Equipment	12/03/2015	03/31/2017
Epson America, Inc.	TX DIR Epson Projectors	03/29/2013	12/07/2015
Extreme Networks, Inc.	Extreme WSCA	06/17/2014	05/31/2019
Extreme Networks, Inc.	Nevada Extreme WSCA	06/17/2014	05/31/2019
Extreme Networks, Inc.	New Jersey Extreme WSCA	09/09/2014	05/31/2019
Extreme Networks, Inc.	Florida Extreme NASPO Data Communications	05/11/2015	05/31/2019
Florida Department of Management Services	Commercial Off-The-Shelf (COTS) Software	09/30/2014	09/09/2018
Florida Keys Community College	NJPA Stretch Agreement	08/05/2015	11/18/2018
Florida State University	NJPA Stretch Agreement	05/11/2015	11/18/2018
Florida Virtual Schools	Computer Peripherals, Supplies and Accessories	06/18/2013	06/25/2016
Furman University	Furman Univeristy	11/23/2015	08/16/2016
Garden Grove Unified School District	Audio Visual / Technology Bid	11/05/2014	11/17/2016
Georgia State University	National IPA Piggyback	11/16/2015	08/15/2016

Grand Prairie Independent School District	Technology Equipment, Supplies, Services, Etc.	09/06/2014	08/31/2016
Grantham University	Grantham University Master Product Sales Agree	05/22/2014	05/21/2017
Harris County Department of Education	Harris County Department of Education	04/01/2014	01/22/2016
HealthEast Care System	Business Associate Agreement	05/01/2013	08/18/2018
HealthEast Care System	Master Services Agreement	09/25/2013	05/10/2016
Hewlett Packard Company	HP Los Angeles Community College Data Storage	11/10/2014	02/08/2017
Hewlett Packard Company	Los Angeles Community College District Server M	11/10/2014	02/08/2017
Hewlett Packard Company	Alaska HP NVP Computer Equipment	08/12/2015	03/31/2017
Hewlett Packard Company	HP NVP Computer Equipment	08/12/2015	03/31/2017
Hewlett Packard Company	Arizona HP NVP Computer Equipment	08/13/2015	03/31/2017
Hewlett Packard Company	Delaware HP NVP Computer Equipment	08/14/2015	03/31/2017
Hewlett Packard Company	Kansas HP NVP Computer Equipment	08/14/2015	03/31/2017
Hewlett Packard Company	Nevada HP NVP Computer Equipment	09/03/2015	03/31/2017
Hewlett Packard Company	Florida HP NVP Computer Equipment	09/04/2015	03/31/2017
Hewlett Packard Company	North Dakota HP NVP Computer Equipment	09/09/2015	03/31/2017
Hewlett Packard Company	Utah HP NVP Computer Equipment	09/09/2015	03/31/2017
Hewlett Packard Company	Wyoming HP NVP Computer Equipment	09/09/2015	03/31/2017
Hewlett Packard Company	Arkansas HP NVP Computer Equipment	10/01/2015	03/31/2017
Hewlett Packard Company	Washington HP NVP Computer Equipment	10/01/2015	03/31/2017
Hewlett Packard Company	Wisconsin HP NVP Computer Equipment	10/01/2015	03/31/2017
Hewlett Packard Company	California HP NVP Computer Equipment	10/08/2015	03/31/2017
Hewlett Packard Company	Colorado HP NVP Computer Equipment	10/08/2015	03/31/2017
Hewlett Packard Company	South Carolina HP NVP Computer Equipment	10/08/2015	03/31/2017
Hewlett Packard Company	Oregon State University	11/25/2015	09/30/2016
Hewlett Packard Company	Louisiana HP Inc NVP Computer Equipment	12/11/2015	03/31/2017
Hewlett-Packard Company	Ohio STS HP2	03/11/2013	07/02/2018
Hewlett-Packard Company	State of Georgia HP Server and Storage	06/12/2014	08/31/2016
Hewlett-Packard Company	North Carolina HP Microcomputers	06/18/2014	01/31/2016
Hewlett-Packard Company	TX DIR HP	07/03/2014	07/03/2016
Hewlett-Packard Company	State of Georgia HP PC Hardware	08/04/2014	08/31/2016
Hewlett-Packard Company	HP WSCA Data Communications	09/16/2014	05/31/2019
Hewlett-Packard Company	California HP WSCA Data Communications	09/16/2014	05/31/2019
Hewlett-Packard Company	Alaska HP WSCA Data Communications	09/18/2014	05/31/2019
Hewlett-Packard Company	Hawaii HP WSCA Data Communications	09/18/2014	05/31/2019
Hewlett-Packard Company	Nevada HP WSCA Data Communications	09/19/2014	05/31/2019
Hewlett-Packard Company	Utah HP WSCA Data Communications	09/19/2014	05/31/2019
Hewlett-Packard Company	Washington HP WSCA Data Communications	09/19/2014	05/31/2019
Hewlett-Packard Company	NY OGS HP Printing and Imaging	10/03/2014	08/31/2017
Hewlett-Packard Company	Kentucky HP WSCA Data Communications	10/13/2014	05/31/2019
Hewlett-Packard Company	Ohio STS HP	10/15/2014	07/02/2018
Hewlett-Packard Company	Louisiana HP WSCA Data Communications	10/17/2014	05/31/2019
Hewlett-Packard Company	Wyoming HP NASPO Data Communications	05/07/2015	05/31/2019
Howard County Public Schools	Career and Technology Education Supplies and E	01/15/2015	01/14/2016
Howard University-MedAssets Stretch Agreement	MedAssets Stretch Agreement between CDW Gc	07/01/2013	07/22/2016
Humanscale Corporation	Humanscale IT Support Equipment	02/23/2015	09/15/2016
Illinois Department of Central Mangement Services	Illinois Sniffer	07/11/2013	07/12/2017
Illinois Learning Technology Purchasing Program	Illinois Learning Technology Purchasing Program	10/20/2015	10/21/2018
Illinois Public Higher Education Cooperative	IPHEC Networking and Equipment Services	12/06/2013	06/30/2017
Irvine Unified School District	Master Services And Product Sales Agreement	07/22/2013	07/21/2016
Jefferson County Public School District	Mobile Device Management System	05/12/2014	05/31/2016
Juniper Networks (US), Inc.	Louisiana Juniper NASPO Data Communications	04/30/2015	05/31/2019
Juniper Networks (US), Inc.	Juniper VALP Data Communications	04/30/2015	05/31/2019
Juniper Networks, Inc.	TX DIR Juniper	08/22/2014	08/21/2016
Kansas Department of Administration	Kansas Sophos Contract	07/01/2013	06/30/2016
Kentucky Department of Education	Instructional Devices	07/01/2015	06/30/2016
Kodak Alaris Inc.	NY OGS Kodak PT66606	01/23/2015	08/31/2017
Kodak Alaris Inc.	NY OGS Kodak Printers PT66606	01/23/2015	08/31/2017
Laramie County School District No. 1	Windows Mobile 8 Devices Tablets	07/01/2013	06/30/2016
Laredo Independent School District	Computer Supplies & Peripherals	04/17/2014	04/16/2016
Laureate Education, Inc.	Confidentiality and Non-Disclosure Agreement	04/15/2014	04/15/2018
Laureate Education, Inc.	Laureate Education Master Services Sales Agree	11/11/2014	11/10/2016
Legacy Health	Master Service Agreement	01/18/2013	01/23/2016
Lenovo (United States) Inc.	Arizona Lenovo NVP Computer Equipment	08/25/2015	03/31/2017
Lenovo (United States) Inc.	Lenovo NVP Computer Equipment	08/25/2015	03/31/2017
Lenovo (United States) Inc.	Alaska Lenovo NVP Computer Equipment	09/16/2015	03/31/2017
Lenovo (United States) Inc.	Arkansas Lenovo NVP Computer Equipment	10/07/2015	03/31/2017
Lenovo (United States) Inc.	Florida Lenovo NVP Computer Equipment	10/07/2015	03/31/2017
Lenovo (United States) Inc.	Nevada Lenovo NVP Computer Equipment	10/07/2015	03/31/2017
Lenovo (United States) Inc.	Kansas Lenovo NVP Computer Equipment	10/16/2015	03/31/2017
Lenovo (United States) Inc.	Washington Lenovo NVP Computer Equipment	10/21/2015	03/31/2017

Lenovo (United States) Inc.	Louisiana Lenovo NVP Computer Equipment	11/17/2015	03/31/2017
Lenovo (United States) Inc.	Hawaii Lenovo NVP Computer Equipment	11/19/2015	03/31/2017
Lenovo (United States) Inc.	Maine Lenovo NVP Computer Equipment	11/19/2015	03/31/2017
Lenovo (United States) Inc.	New Jersey Lenovo NVP Computer Equipment	11/19/2015	03/31/2017
Lexmark International, Inc.	Lexmark Printers	02/27/2013	02/26/2016
Lexmark International, Inc.	NY OGS Lexmark	04/01/2013	02/26/2016
Lexmark International, Inc.	NY OGS Lexmark Printing and Imaging	11/20/2014	08/31/2017
Lifespan Corporation	Business Associate Agreement	09/23/2013	08/18/2018
Lincoln Public Schools	Vendor Discount Request	01/01/2015	12/31/2015
Los Angeles Unified School District	Keyboards for Tablet Devices	12/23/2014	12/22/2017
Lubbock Independent School District	Catalog Bid	11/25/2014	12/31/2016
Magnolia Independent School District	Technology Equipment & Peripherals	02/19/2015	02/19/2016
Massachusetts Higher Education Consortium	MHEC Consortium Contract- Multi-media equipn	12/01/2014	09/30/2017
McKinney Independent School District	Technology Products & Services	03/26/2014	03/25/2016
Meridian Health System, Inc.	Business Associate Agreement	08/23/2013	08/18/2018
Mesa Unified School District No. 4	Computer Parts & Peripherals	03/24/2015	02/24/2016
Metropolitan Transportation Authority	MTA Peripherals	03/14/2014	08/01/2016
Middlesex Regional Educational Services Commission	Technology Supplies & Services	07/01/2015	06/30/2016
Milwaukee Public Schools	Various Electronic Supplies, Blanket Contract	02/01/2013	01/31/2016
Milwaukee Public Schools	Chromebook Agreement	05/30/2014	05/29/2016
Milwaukee Public Schools	Charging Carts for Chromebooks	08/22/2014	08/21/2016
Minnesota Department of Administration	Minnesota Professional and Technical Services S	07/03/2014	04/15/2019
Mississippi Department of Information Technology Services	Mississippi IT Hardware EPL 3760	03/11/2015	06/30/2017
Momentum Ventures, LLC	Group Purchasing Agreement	05/15/2013	05/14/2016
Montgomery County Department of Technology Services	Montgomery County MD IT Commodities	09/16/2014	02/02/2016
National Cooperative Purchasing Alliance	Red Hat Software	09/02/2015	12/31/2015
National Joint Powers Alliance	Technology Solutions with Related Equipment at	12/01/2014	11/30/2018
NetApp, Inc.	Oklahoma State Regents NetApp	03/01/2014	02/28/2016
NetApp, Inc.	TX DIR NetApp	08/19/2014	08/19/2016
NetApp, Inc.	Alaska NetApp NVP Computer Equipment	10/13/2015	03/31/2017
NetApp, Inc.	Arkansas NetApp NVP Computer Equipment	10/15/2015	03/31/2017
New Mexico Cooperative Educational Services	Windows Desktop, Accessories and Software for	05/19/2014	05/18/2016
New York City Department of Education	AV and Interactive Whiteboard Agreement	01/31/2014	01/31/2019
Noble County Clerk	Noble County Office Supplies	07/01/2015	12/31/2015
Northwestern University	Northwestern University Lenovo Desktop Compi	09/01/2014	08/31/2019
Northwestern University	Northwestern Computer Peripherals and Supplie	10/31/2014	10/31/2019
Ohio Council of Educational Purchasing Consortia	Technology Catalog	03/01/2014	02/28/2016
Ohio Inter University Council Purchasing Group	Ohio Inter University Purchasing Group Price Ag	10/01/2014	09/30/2017
Ohio State University Medical Center	Ohio State Unvi Med Ctr Material Systems and P	10/18/2013	08/31/2018
Oki Data America's Inc.	TX DIR Okidata	06/05/2015	06/05/2016
Oki Data Americas, Inc.	NY OGS Oki Data	02/27/2013	02/26/2016
Oki Data Americas, Inc.	NY OGS Oki Data Printers and Imaging Equipmer	09/01/2014	08/31/2017
Onondaga-Cortland-Madison Board of Cooperative Educational Services	COMPUTER PERIPHERALS	01/01/2014	12/31/2015
Orange County Public Schools	Computer Peripheral Equipment	01/17/2013	12/31/2015
Orange County Public Schools	Single Sign On Software	06/25/2014	06/24/2017
Oregon Department of Administrative Services-Enterprise Technolog Service	Enterprise Technology Hardware, Software, and	05/14/2015	05/13/2017
Oregon State University	Contract for the Purchase of Computer Hardwar	11/12/2013	11/11/2017
Palo Alto Networks, Inc	California Palo Alto NVP Data Communications	04/16/2015	05/31/2019
Palo Alto Networks, Inc	Palo Alto NVP Data Communications	04/16/2015	05/31/2019
Palo Alto Networks, Inc	Nevada Palo Alto NVP Data Communications	06/08/2015	05/31/2019
Palo Alto Networks, Inc	Washington Palo Alto NVP Data Communication	08/19/2015	05/31/2019
Palo Alto Networks, Inc	Alaska Palo Alto NVP Data Communications	08/27/2015	05/31/2019
Palo Alto Networks, Inc	Colorado Palo Alto NVP Data Communications	08/27/2015	05/31/2019
Palo Alto Networks, Inc	Louisiana Palo Alto NVP Data Communications	08/27/2015	05/31/2019
Palo Alto Networks, Inc	Utah Palo Alto VALP Data Communications	08/27/2015	05/31/2019
Palo Alto Networks, Inc	Florida Palo Alto NVP Data Communications	12/08/2015	05/31/2019
Panasonic Computer Solutions Company	TX DIR Panasonic	12/20/2013	12/20/2015
Pemayetv Emahakv Charter School	Printer Supplies Management Program	04/16/2015	04/15/2018
Pennsylvania Department of General Services	PA Commonwealth- Server Equipment	06/01/2014	05/31/2016
PEPPM	General Hardware and Software	01/01/2014	12/31/2016
PEPPM	PEPPM 2014 Steelcase Product Line Bid	05/28/2014	12/31/2017
PEPPM	PEPPM 2015 Ruckus Product Line Bid	01/01/2015	12/31/2017
PEPPM	PEPPM Panasonic Product Line Bid 2015	03/09/2015	12/31/2017
PEPPM	PEPPM Product Line Bid	03/26/2015	01/01/2018
PEPPM	PEPPM 2015 Synnex Product Line Bid	10/12/2015	12/31/2017
Pharr-San Juan-Alamo Independent School District	Audio Visual Aids, Videos, Equipment, Services a	09/01/2015	08/31/2016
Pharr-San Juan-Alamo Independent School District	Toner & Ink Cartridges for Printers, Equipment, !	09/01/2015	08/31/2016
Pharr-San Juan-Alamo Independent School District	Computer and Printer, Equipment, Services and	09/01/2015	08/31/2016
Pima County Community College District	National IPA Piggyback Agreement	09/25/2015	08/14/2016
Polycom, Inc.	State of Georgia Polycom	07/25/2013	06/30/2016



Prince George County Public Schools	MDM Licenses	10/01/2014	09/30/2017
Promark Technology	Ohio STS Promark	07/16/2014	09/04/2016
Promethean, Inc.	NY OGS Promethean Materials and Equipment	02/13/2013	08/02/2017
Rasmussen, Inc.	Rasmussen, Inc. Master Services and Product Sa	08/26/2014	08/25/2016
Region 18 Education Service Center	Catalog Bid	06/23/2015	06/22/2016
Region 8 Education Service Center	Printer Supplies Management Agreement	04/16/2015	04/15/2018
Regional Educational Media Center Association of Michigan	Computer & Networking 2014	07/01/2014	06/30/2019
Regional Educational Media Center Association of Michigan	Computer & Networking	07/01/2014	06/30/2019
Regional Educational Media Center Association of Michigan	Supplies & Equipment 2015	01/01/2015	12/31/2015
Regional Educational Media Center Association of Michigan	Software, Digital Content & Automated Notificai	07/01/2015	06/30/2018
Regional Educational Media Center Association of Michigan	Computer Equipment	08/11/2015	03/31/2017
Ricoh U.S.A. Inc.	NY OGS Ricoh Printing and Imaging	11/06/2014	09/01/2017
Rocky Point Union Free School District	Lexmark OEM Toner Cartridges & Supplies Bid	07/01/2013	06/30/2016
Samsung Electronics America, Inc.	North Carolina 204D Samsung	04/01/2013	03/31/2016
Samsung Electronics America, Inc.	NY OGS Samsung Printing	01/12/2015	08/31/2017
School Board of Hernando County	Interactive Solutions	05/07/2014	05/06/2016
School Board of Sarasota County	Audio Visual and Video Equipment	01/20/2015	01/19/2017
ShoreTel Inc.	Hawaii ShoreTel NVP Data Communications	02/17/2015	05/31/2019
ShoreTel Inc.	Nevada ShoreTel NVP Data Communications	02/17/2015	05/31/2019
ShoreTel Inc.	ShoreTel WSCA	02/17/2015	05/31/2019
ShoreTel Inc.	Utah ShoreTel NVP Data Communications	02/17/2015	05/31/2019
ShoreTel Inc.	ShoreTel NVP Data Communications	02/17/2015	05/31/2019
ShoreTel Inc.	California ShoreTel NVP Data Communications	08/19/2015	05/31/2019
ShoreTel Inc.	Arkansas ShoreTel NVP Data Communications	08/28/2015	06/01/2019
ShoreTel Inc.	Florida ShoreTel NVP Data Communications	08/28/2015	05/31/2019
ShoreTel Inc.	Missouri ShoreTel NVP Data Communications	08/28/2015	05/31/2019
ShoreTel Inc.	Washington ShoreTel NVP Data Communication	09/18/2015	05/31/2019
ShoreTel Inc.	Snohomish County PUD Fireye	10/21/2014	10/21/2019
Snohomish County Public Utility District	District Interactive Projectors	11/20/2014	11/19/2016
Socorro Independent School District	South Carolina Symantec	02/20/2013	02/19/2018
South Carolina Information Technology Management Office	South Carolina Aerohive	05/29/2015	05/28/2018
South Carolina Information Technology Management Office	Southeast Kansas Educational Services Cooperat	03/01/2014	02/29/2016
Southeast Kansas Educational Services Cooperative	State of Connecticut Classroom Furniture	07/23/2014	03/31/2017
Spectrum Industries, Inc.	Promethean Interactive Whiteboards & Related	04/01/2013	03/31/2016
St. Mary's County Public Schools	Stanford University MPSA	10/27/2015	10/27/2018
Stanford University	SLP Academic Microsoft	06/27/2013	06/30/2016
State of California, Department of General Services	CMAS Cisco	08/07/2013	09/30/2017
State of California, Department of General Services	SLP Microsoft	11/15/2013	02/01/2017
State of California, Department of General Services	SLP Adobe	01/24/2014	12/31/2015
State of California, Department of General Services	SLP Novell	06/09/2014	06/30/2016
State of California, Department of General Services	SLP VMware	07/21/2014	07/31/2017
State of California, Department of General Services	Cisco PC Servers	06/30/2015	06/29/2017
State of California, Department of General Services	SLP Commvault	08/03/2015	07/31/2017
State of California, Department of General Services	SLP Symantec	09/19/2014	08/31/2016
State of Connecticut, Dept of Administrative Services	Information Processing Systems Agreement	01/17/2014	01/17/2018
State of Connecticut, Dept of Information Technology	Audio Visual	05/01/2014	03/31/2019
State of Oregon	IT Hardware Value Added Reseller	09/25/2015	09/30/2017
State of Tennessee, Department of General Services	Tennessee Cisco Hardware, Software, and Servic	01/01/2013	12/31/2015
State of Tennessee, Department of General Services	Tennessee Ultrabooks and Related Peripherals	07/11/2014	07/10/2016
State of Tennessee, Department of General Services	Tennessee Multi Manufacturer Software	04/01/2015	03/31/2016
State of Texas, Department of Information Resources	TX DIR Networking	09/20/2014	09/19/2016
State of Texas, Department of Information Resources	TX DIR Education IT Products	06/18/2015	06/18/2016
Tegile Systems, Inc.	Florida Tegile NASPO ValuePoint Computer Equi	07/22/2015	03/31/2017
Tegile Systems, Inc.	Tegile NASPO ValuePoint Computer Equipment	07/22/2015	03/31/2017
Texas A&M University	TCPN Stretch Agreement	07/01/2013	10/31/2016
Texas Christian University	Texas Christian Managed Print Services Contract	08/19/2013	08/19/2016
The Catholic University of America	The Catholic University of America-MPA	10/26/2015	05/31/2017
The Interlocal Purchasing System	TIPS/TAPS Computers, Equipment, Components	06/26/2015	06/29/2018
The Interlocal Purchasing System	TIPS-TAPS Software	07/16/2015	07/27/2018
Tri-Consortia Technology Committee	Category 2-Products and Services	02/13/2015	06/30/2018
Tuskegee University	Tuskegee University	05/14/2013	05/14/2016
University Hospitals Health System, Inc	Letter of Understanding for VDI project	12/02/2013	12/01/2016
University of Alabama	University of Alabama Computer Peripherals	03/01/2014	12/31/2015
University of Alabama at Birmingham	Business Associates Agreement	08/13/2013	08/12/2018
University of Florida	NJPA Stretch Agreement	02/26/2015	11/18/2018
University of Idaho	NJPA Stretch Agreement	07/31/2015	11/18/2018
University of Iowa	University of Iowa Border Routers	08/29/2014	08/28/2016
University of Kentucky	University of Kentucky Software, Peripherals & /	01/07/2013	01/06/2016
University of Massachusetts	NJPA Stretch Agreement	05/01/2015	11/18/2018
University of Minnesota	University of Minnesota Juniper and Powersdine	07/01/2013	06/30/2016

University of Montana	NJPA Stretch Agreement	12/01/2014	11/18/2018
University of Virginia	NJPA Stretch Agreement	12/01/2014	11/18/2018
University of Wisconsin Foundation	Master Services Sales Agreement	09/11/2015	09/10/2017
US Educational Technology Purchasing Alliance	End User Devices	01/01/2015	12/31/2019
US Educational Technology Purchasing Alliance	LAN/WAN Security (E-Rate)	01/01/2015	12/31/2019
Vanguard University	Vanguard University MPSA	12/12/2013	12/13/2015
Victoria Independent School District	Audio Visual Equipment & Supplies	01/01/2014	12/31/2015
Victoria Independent School District	Technology RFP	03/01/2014	02/28/2016
Village of Lombard	MPS-Village of Lombard	10/30/2013	10/30/2016
Village of Lombard	Village of Lombard PSMP	10/30/2013	10/29/2016
Virginia Information Technologies Agency	VITA Governance, Risk and Compliance Software	02/04/2013	02/04/2017
Virginia Information Technologies Agency	VITA Hardware and Maintenance	03/31/2014	03/31/2016
Virginia Information Technologies Agency	VITS Software License Contract	04/01/2014	03/31/2016
Wayne-Finger Lakes BOCES	Chrome Books & Accessories	06/01/2013	01/31/2016
Western Suffolk BOCES	Western Suffolk BOCES Smartboard & Audio Vis	02/24/2015	12/31/2015

**LOST OR RESIGNED GOVERNMENT CONTRACTS**

Issuing Agency	Contract Title	Start Date	Exp Date	Reason
Montgomery County Public Schools	Computer Supplies	01/13/2010	01/12/2013	Unknown reason
Arlington Independent School District	Computer, AV Equipment, Supplies and Services	11/01/2012	01/15/2013	Agreement rebid and awarded to CDW•G
Milwaukee Public Schools	Tech Catalog Contract	11/20/2009	01/31/2013	Agreement rebid and awarded to CDW•G
Albuquerque Public Schools	Audio Visual	03/02/2009	02/28/2013	Moved purchasing to local cooperative agreements
New Mexico Cooperative Educational Services	Technology Contract	03/01/2010	02/28/2013	Agreement rebid and awarded to CDW•G
King County Director's Association	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Clark County School District	Classroom Visual Presentation Equipment and Accessories	03/23/2011	03/22/2013	Unknown reason
Irvine Unified School District	Irvine Unified School District Product Purchase Agreement 56943	04/15/2008	04/16/2013	Signed a new agreement
New Caney Independent School District	Special Education Supplies	05/17/2011	05/16/2013	Unknown reason
San Francisco Unified School District	Interactive Whiteboard Classroom Solution	06/09/2010	06/07/2013	Unknown reason
Region 18 Education Service Center	Computer Hardware, Software, Supplies and Accessories	06/23/2012	06/22/2013	Unknown reason
Socorro Independent School District	District Software	06/24/2011	06/25/2013	Agreement rebid and awarded to CDW•G
Tuscon Unified School District	Computer, Technology, Electrical Parts and Supplies	09/18/2008	06/30/2013	Unknown reason
Corona-Norco Unified School District	Audio Visual Equipment	07/01/2011	06/30/2013	Unknown reason
Garden Grove Unified School District	Audio Visual Equipment	09/19/2012	06/30/2013	Unknown reason
Orange County Public Schools	Projectors	07/01/2011	06/30/2013	Unknown reason
Jackson-Madison County School System	Slate-Tablet Computers	03/15/2013	06/30/2013	Agreement rebid and awarded to CDW•G
Copper Country Intermediate School District	22i SPOT Device	05/23/2013	08/30/2013	Agreement rebid and awarded to CDW•G
NORTH ALABAMA COOPERATIVE PURCHASING ASSOCIATION	MANUFACTURER SUPPLIED TECHNOLOGY EQUIPMENT WITH PERIPH	09/01/2010	08/31/2013	Agreement rebid and awarded to CDW•G
Academy School District 20	Peripherals	09/01/2012	08/31/2013	Agreement rebid and awarded to CDW•G
Eagle Pass Independent School District	Computer Hardware & Equipment	10/01/2011	08/31/2013	Unknown reason
Harlingen Consolidated Independent School District	Audio Visual	09/11/2012	08/31/2013	Unknown reason
Lone Star College System	Technology Solutions	11/20/2012	10/13/2013	Agreement not renewed due to lack of sales
School District of Palm Beach County	Computer Software, Peripherals, Accessories & Repair Parts	11/20/2009	11/19/2013	Unknown reason
Smoky Hill Education Service Center	NJPA Stretch Agreement	12/17/2012	11/22/2013	Signed new NJPA Stretch Agreement
Associated Colleges of the Twin Cities	Technology Catalog	08/08/2012	11/22/2013	Signed new Stretch Agreement under new NJPA Agreement
City of Chesapeake	Technology Solutions and Related Services	10/11/2012	11/23/2013	Signed new Stretch Agreement under new NJPA Agreement
Socorro Independent School District	Audio Visual Equipment	12/18/2011	12/17/2013	Agreement rebid and awarded to CDW•G
Lake County School Board	Catalog Bid for Incidental Supplies	09/25/2006	12/31/2013	Unknown reason
Regional Educational Media Center Association of Michigan	quipment & Supplies 2013	01/01/2013	12/31/2013	Agreement rebid and awarded to CDW•G
School District of Kansas City Missouri	Computer Technology and Peripherals	01/01/2013	12/31/2013	Unknown reason
Cypress-Fairbanks Independent School District	Repair Parts for AV, Computer, Printer & Miscellaneous Office Equip	01/01/2012	12/31/2013	Unknown reason
Northside Independent School District	Audio, Visual & DVD Software	02/01/2012	01/31/2014	Unknown reason
University of Alabama	Lenovo Product	03/01/2013	02/28/2014	Agreement rebid and awarded to CDW•G
Colorado BOCES Association	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Panhandle Area Education Consortium	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Iowa Educators Consortium	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Indiana Association Educational Service Centers	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Indiana Association Educational Service Centers - GovPro	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Oakland Schools	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Minnesota Service Cooperatives	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Cooperating School Districts of Greater St Louis	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Montana Cooperative Services, LLC	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
North Dakota Educators Service Cooperative	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
InterMountain ESD	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Portland Public Schools	Technology Catalog	01/03/2006	02/28/2014	Agreement rebid and awarded to CDW•G
Keystone Purchasing Network	Technology Catalog	07/01/2013	02/28/2014	Agreement rebid and awarded to CDW•G
TexBuy (Region 16 Education Service Center)	Technology Catalog	09/27/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Fairfax County Public Schools	Technology Catalog	03/01/2010	02/28/2014	Agreement rebid and awarded to CDW•G
Richmond Public Schools	Audio Visual Equipment & Misc Items	03/01/2011	02/28/2014	Unknown reason
Regional Education Service Agencies 5	Technology Catalog	05/09/2012	02/28/2014	Agreement rebid and awarded to CDW•G
Atlanta Independent School System	Instructional Interactive Devices Accessories for Promethean	04/08/2013	03/27/2014	Agreement rebid and awarded to CDW•G
Socorro Independent School District	District Technology	03/27/2013	03/27/2014	Agreement rebid and awarded to CDW•G
City of Mesquite	Annual Supply of Miscellaneous PC Components	04/05/2012	04/04/2014	Unknown reason
North County Educational Purchasing Corsoritum	Audio Visual	04/15/2011	04/15/2014	Agreement rebid and not awarded to CDW•G

National Joint Powers Alliance	Emergency Response Agreement	04/15/2009	04/15/2014	Agreement rebid and awarded to CDW•G
San Bernardino City Unified School District	Audio Visual Equipment & Supplies	05/06/2013	05/05/2014	Unknown reason
Community Unified School District 300	Replacement Computers	05/13/2013	05/13/2014	Agreement rebid and awarded to CDW•G
Douglas County Schools (Omaha Public Schools)	Promethean Interactive Whiteboards	05/21/2013	05/20/2014	Unknown reason
San Diego County Office of Education	Chromebook	08/27/2013	06/30/2014	Unknown reason
Hillsborough County Public Schools	Audio Visual Equipment, Related Parts and Periodic Services	01/25/2012	06/30/2014	Unknown reason
Lenovo (United States) Inc.	KETS Instructional Devices Workstations	12/04/2012	06/30/2014	Agreement rebid and awarded to CDW•G
Montgomery County Public Schools	Chrome-Android-Windows Mobile Devices	07/15/2014	06/30/2014	Unknown reason
Jackson-Madison County School System	Computer Requirements	08/20/2013	06/30/2014	Agreement rebid and not awarded to CDW•G
Arlington Independent School District	Computer / Audio Visual Equipment, Supplies and/or Services	08/16/2013	06/30/2014	Agreement rebid and awarded to CDW•G
Jefferson County School District No. R-1	AV Equipment & Supplies	08/01/2013	07/31/2014	Agreement rebid and awarded to CDW•G
School District of Desoto County	Catalog Discount Term Contract	11/13/2012	07/31/2014	Unknown reason
Copper Country Intermediate School District	22i SPOT Device	04/23/2014	07/31/2014	Agreement rebid and awarded to CDW•G
Desert Sands Unified School District	Chromebooks	08/21/2013	08/20/2014	Agreement rebid and awarded to CDW•G
Education Service Center Region VII	Computer Hardware & Supplies Bid Award	08/22/2013	08/22/2014	Agreement rebid and awarded to CDW•G
Amarillo Independent School District	Audio Visual	09/01/2013	08/31/2014	Moved purchasing to local cooperative agreements
Socorro Independent School District	District Interactive Projectors	09/20/2013	09/19/2014	Agreement rebid and awarded to CDW•G
Aldine Independent School District	Instructional Supplies & Equipment	09/21/2011	09/20/2014	Signed VPA Agreement with CDW•G
Mesa Unified School District No. 4	Student Devices	09/24/2013	09/23/2014	Agreement rebid and awarded to CDW•G
School Board of Polk County	Kindle Fire	04/25/2012	11/27/2014	Unknown reason
Hillsborough County Public Schools	Classroom Supplies & Equipment Catalog	12/09/2009	12/08/2014	Unknown reason
National Joint Powers Alliance	Technology Catalog	12/09/2009	12/15/2014	Agreement rebid and awarded to CDW•G
Montana State University	NJPAStretch Agreement	11/06/2013	12/15/2014	Signed a new NJPA Stretch Agreement
Board of Regents of the Nevada System of Higher Education on beh	NJPA Stretch Agreement	05/01/2014	12/15/2014	Signed new Stretch Agreement under new NJPA Agreement
College of Southern Nevada	NJPA Stretch Agreement	06/05/2014	12/15/2014	Signed new Stretch Agreement under new NJPA Agreement
Massapequa Union Free School District	NJPA Stretch Agreement	09/01/2013	12/15/2014	Signed new Stretch Agreement under new NJPA Agreement
West Hempsted Unified Free School District	NJPA Stretch Agreement	09/16/2014	12/15/2014	Agreement not renewed
Ohio Inter-University Council Purchasing Group	Technology Solutions with Related Equipment and Accesories	03/14/2011	12/15/2014	Signed new NJPA Stretch Agreement
Fayette County Board of Education	LocknCharge Carrier Charging Carts	10/01/2014	12/31/2014	Unknown reason
The School Board of Sarasota County	Audio Visual & Video Equipment	01/22/2013	01/21/2015	Unknown reason
Unified School District 229	Master Services Sales Agreement	01/27/2014	01/26/2015	Unknown reason
Adams County School District 14	Microsoft Office 365	08/18/2014	01/30/2015	Unknown reason
Fountain Fort Carson School District 8	Laptop & Ultrabook Contract	03/03/2014	03/02/2015	Unknown reason
Victoria Independent School District	Educational Computer Software	06/01/2013	05/31/2015	Unknown reason
Montgomery County Public Schools	Televisions for Schools and Offices	06/15/2013	06/14/2015	Unknown reason
Region 18 Education Service Center	Catalog Bid	06/23/2014	06/22/2015	Agreement rebid and awarded to CDW•G
Alum Rock Union Elementary School District	Visual and Audio Installation	04/25/2013	06/30/2015	Agreement not rebid
Alum Rock Union Elementary School District	Installation of Interactive Classroom Promethean Boards	05/07/2013	06/30/2015	Agreement not rebid
Pinellas County School Board	Audio Visual & Video Equipment/Materials	01/26/2014	06/30/2015	Unknown reason
Des Moines Independent Community School District	Technology - Electronic Products	07/01/2012	06/30/2015	Unknown reason
Rockford Public Schools	Lenovo ThinkPads	07/01/2012	06/30/2015	Unknown reason
Regional Educational Media Center Association of Michigan	Software 2012	07/01/2012	06/30/2015	Agreement rebid and awarded to CDW•G
Middlesex Regional Educational Services Commission	Technology Catalog	07/01/2013	06/30/2015	Agreement rebid and awarded to CDW•G
Metropolitan Nashville Public Schools	Nutrition Services Computers/Supplies	06/01/2014	06/30/2015	Unknown reason
Birdville Independent School District	Birdville ISD	07/01/2014	06/30/2015	Moved purchasing to local cooperative agreements
Pearland Independent School District	Careet and Technical Education Catalog	07/01/2014	06/30/2015	Unknown reason
Arlington Independent School District	Computer, AV Equipment, Supplies and Services	07/01/2014	06/30/2015	Agreement rebid and awarded to CDW•G
Donna Independent School District	Computer Peripherals & IPads 2014-2015	11/19/2014	06/30/2015	Unknown reason
Jefferson County Public Schools R-1	Projection, A/V and Charging Carts	09/30/2015	07/31/2015	Unknown reason
Pharr-San Juan-Alamo Independent School District	Computer Equipment, Servers, Microsoft Licensing, Services and Fin	08/23/2013	08/22/2015	Unknown reason
Education Service Center Region VII	Computer Hardware & Supplies	08/21/2014	08/22/2015	Agreement rebid and awarded to CDW•G
Academy School District 20	District-wide Peripheral Purchase	08/19/2014	08/31/2015	Agreement rebid and awarded to CDW•G
Edinburg Consolidated Independent School District	Audio Visual Supplies & Equipment	09/01/2013	08/31/2015	Moved purchasing to local cooperative agreements
Pharr-San Juan-Alamo Independent School District	Toner and Ink Cartridges for Printers, Equipment, Services and Supp	09/01/2014	08/31/2015	Unknown reason
Pharr-San Juan-Alamo Independent School District	Computer and Printer Equipment, Services and Supplies Catalog	09/01/2014	08/31/2015	Unknown reason
Portland Water District	Information Technology Supplies	09/12/2014	09/11/2015	Unknown reason
Aldine Independent School District	VPA for Technology Devices	09/17/2014	09/16/2015	Moved purchasing to local cooperative agreements

School Board of Volusia County	IT Hardware and Software - Percent Discount	10/28/2013	09/30/2015	Using other school agreement in Florida
El Paso Independent School District	iPads, Computer, Telephone & AV Repairs	10/11/2012	10/10/2015	Unknown reason
Judson Independent School District	Computer and Networking Equipment	10/23/2014	10/22/2015	Unknown reason
Clear Creek Independent School District	Audio Visual Equipment, Supplies & Discounts	12/01/2011	11/30/2015	Unknown reason
Henrico County Public Schools	Promethean Interactive White Boards	12/01/2010	11/30/2015	Unknown reason
CalSAVE	Technology Catalog	04/01/2011	12/31/2015	Agreement out to RFP
Education Service Center Region 19	Special Education & Assistive Technology Equipment, Supplies, and C	12/09/2012	12/31/2015	Not renewed for lack of sales
Victoria Independent School District	Audio Visual Equipment & Supplies	01/01/2014	12/31/2015	Unknown reason
National Cooperative Purchasing Alliance	Red Hat Software	09/02/2015	12/31/2015	Agreement not renewed
Epson America, Inc.	Epson Brighter Futures Printers	03/20/2005	03/31/2013	Unknown reason
Catholic Purchasing Services	Master Service and Product Sales Agreement	06/23/2009	06/22/2013	Not renewed for lack of sales
California Charter Schools Association	Product Purchase Agreement	06/25/2009	06/25/2013	Moved purchasing to local cooperative agreements
Long Beach Unified School District	Audio Visual Equipment	09/30/2010	06/30/2013	Unknown reason
Education Service Center Region VI	Technology Supplies	07/01/2012	06/30/2013	Unknown reason
South County Support Service Agency	MSPSA	07/07/2009	07/06/2013	Not renewed for lack of sales
Chicago Public Schools	Software Resale and Support Services	08/01/2010	07/31/2013	Signed new agreement with CDW•G using City of Chicago contract
Alabama Joint Purchasing Program	ALJP 2012 - Amazon Kindle & ServiceNet Warranty	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Asus	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Brocade	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - McAfee	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Ruckus	08/15/2012	08/14/2013	Line item rebid and not awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Spectrum	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Trend Micro	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Xerox	08/15/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Belkin	09/10/2012	08/14/2013	Line item rebid and awarded to CDW•G
Alabama Joint Purchasing Program	ALJP 2012 - Tripp Lite	11/02/2012	08/14/2013	Line item rebid and awarded to CDW•G
Education Service Center Region VII	Computer Hardware & Supplies	08/16/2012	08/18/2013	Agreement rebid and awarded to CDW•G
Rockwood School District	Rockwood School District Product Purchase Agreement 92547	10/01/2008	10/01/2013	Unknown reason
Harris County Department of Education	Technology Catalog	12/14/2004	12/14/2013	Agreement rebid and awarded to CDW•G
Victoria Independent School District	Technology RFP	03/01/2011	03/01/2014	Unknown reason
McKinney Independent School District	Technology & Technical Products & Services	03/25/2009	03/24/2014	Unknown reason
Alabama Joint Purchasing Program	ALJP 2011 - Planar	05/16/2011	05/15/2014	Line item rebid and not awarded to CDW•G
Alabama Joint Purchasing Program	ALJP2011-037: AVerMedia	09/25/2012	05/15/2014	Line item rebid and not awarded to CDW•G
Washington Learning Source	Adobe CLP Software	07/13/2007	07/31/2014	Agreement not rebid
Washington Learning Source	Aruba Networking Equipment	05/22/2009	07/31/2014	Agreement not rebid
Management Council Ohio Education Computer Network	MSPSA 41025	02/01/2013	01/31/2015	Unknown reason
The Interlocal Purchasing System	Computer Equipment, Components and Peripherals	06/28/2012	06/29/2015	Agreement rebid and awarded to CDW•G
The Interlocal Purchasing System	TIPS-TAPS Software	08/09/2010	07/23/2015	Agreement rebid and awarded to CDW•G
Digital Edge	Digital Edge Wireless Mobile Devices	05/28/2014	12/31/2015	Agreement rebid and not awarded to CDW•G
State of Alabama Department of Finance	Blackberry Support	04/22/2010	04/21/2015	Contract expired. No reason on file for why this was not renewed.
State of Alabama Department of Finance	Alabama Apple PC and Servers	11/01/2013	10/31/2015	CDW•G was named to a new Contract.
State of Alabama Department of Finance	Alabama Printers and Scanners	12/17/2012	12/16/2015	CDW•G was named to a new Contract.
County of Albany Department of General Services	Albany County Printers, Accessories and Supplies	08/22/2013	08/21/2015	Contract expired and was not renewed. There was no replacement RFP.
Xerox Corporation	State of Arkansas Xerox	04/06/2012	04/30/2015	CDW•G was named to a new Contract.
Baldwin County	Baldwin County Commission Microcomputer	10/21/2014	10/21/2015	CDW•G was named to a new Contract.
State of California, Department of General Services	SLP Adobe	01/24/2014	12/31/2015	CDW•G was named to a new Contract.
City of St. Petersburg	City of St. Petersburg Computers, Ruggedized Laptop	03/07/2011	02/28/2014	Contract expired and was not renewed. There was no replacement RFP.
Commonwealth of Pennsylvania	PA Commonwealth- Networking Equipment	10/01/2013	09/30/2016	Contract was extended until 2016.
County of Ventura	County of Ventura Cisco	12/12/2013	06/30/2015	Contract expired. No reason on file for why this was not renewed.
State of Connecticut, Dept of Information Technology	Audio Visual	08/01/2010	05/30/2014	CDW•G was named to a new Contract.
American Power Conversion	FL APC IT Hardware	09/08/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Cisco Systems, Inc.	Florida Cisco IT Hardware	09/12/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
EMC Corporation	State of Florida EMC	09/13/2005	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Enterasys Networks, Inc.	Florida Enterasys	09/08/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Brocade Communications Systems, Inc.	Florida Brocade IT Hardware	09/08/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Hewlett- Packard Company	Florida HP IT Storage, Network	09/12/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Promark Technology, Inc.	FL Promark IT Hardware	12/18/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.

Aruba Networks, Inc.	Florida Aruba	10/14/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Trippe Manufacturing Co.	Florida Tripp Lite	03/23/2011	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
NetApp	Florida NetApp	09/12/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
IBM Corporation	Florida IBM	09/08/2008	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
immixGroup, Inc.	Florida Immix Riverbed	02/14/2013	09/07/2014	Contract expired and was not renewed. FL wanted to move to WSCA.
Cisco Systems, Inc.	Florida Cisco Audio and Visual Equipment and Accessories	08/19/2011	02/18/2015	Contract expired and was not renewed. FL wanted to move to WSCA.
Cisco Systems, Inc.	Florida Cisco Telephony	12/09/2008	09/02/2015	Contract expired and was not renewed. FL wanted to move to WSCA.
Carahsoft Technology Corp	State of Georgia F5/Carahsoft	12/31/2014	06/30/2015	CDW•G was named to a new Contract.
Extreme Networks, Inc.	State of Georgia Extreme Networks	07/01/2012	06/30/2015	CDW•G was named to a new Contract.
Extreme Networks, Inc.	State of Georgia Enterasys	07/01/2012	06/30/2015	CDW•G was named to a new Contract.
Pace	Microsoft Licenses, Terminal Services CAL and Core CAL Step-up	06/19/2012	12/31/2013	Contract expired and was not renewed. There was no replacement RFP.
Illinois Department of Central Management Services	IL EMC Capacity Expansion/Maint. Contract	06/27/2013	07/01/2015	Contract expired and was not renewed. There was no replacement RFP.
Illinois Department of Central Management Services	Illinois Adobe Master Contract	07/14/2008	06/30/2013	Contract expired and was not renewed. There was no replacement RFP.
Illinois Department of Central Management Services	IL Microsoft EA Agreement	10/01/2011	09/30/2015	CDW•G was named to a new Contract.
Illinois Department of Central Management Services	Illinois Microsoft LAR Agreement	10/01/2011	09/30/2015	CDW•G was named to a new Contract.
Illinois DOT	Illinois DOT Microsoft Premier Support Service	11/24/2013	11/23/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	Indiana HP QPA	03/05/2014	10/31/2015	Contract expired. No reason on file for why this was not renewed.
Kansas Department of Administration	Kansas Cisco Contract	07/23/2007	12/31/2015	CDW•G was named to a new Contract.
Aruba Wireless Networks, Inc.	Louisiana Aruba	08/26/2013	08/25/2015	Contract expired. No reason on file for why this was not renewed.
County of Los Angeles Internal Services Department	County of Los Angeles Cisco Hardware	07/21/2010	10/20/2015	CDW•G was named to a new Contract.
Promethean, Inc.	State of Louisiana Promethean	04/05/2012	10/04/2015	Contract expired. No reason on file for why this was not renewed.
Trippe Manufacturing Company	State of Louisiana Tripp Lite	05/15/2012	11/14/2015	We are still awaiting renewal
Epson America, Inc.	State of Louisiana Epson	10/01/2014	06/10/2015	CDW•G was named to a new Contract.
Lake County	Computer Workstation Hardware	12/01/2011	11/30/2015	Contract expired. No reason on file for why this was not renewed.
Louisville Jefferson County Metro Government	Louisville Jefferson County Metro Government Hardware, Software	05/18/2010	09/30/2015	CDW•G was named to a new Contract.
City of Cambridge	Misc Computer Hardware & Software for the Police Department	12/10/2014	12/09/2015	Contract expired. No reason on file for why this was not renewed.
Mississippi Department of Information Technology Services	Mississippi Microsoft EPL 3640	12/01/2010	06/01/2014	CDW•G was named to a new Contract.
Mississippi Department of Information Technology Services	Software Express Products List	06/23/2009	06/30/2014	CDW•G was named to a new Contract.
Mississippi Department of Information Technology Services	Mississippi IT Hardware EPL 3658	07/01/2011	02/13/2015	CDW•G was named to a new Contract.
Carahsoft Technology Corp	North Carolina Carahsoft VMware	11/20/2014	09/11/2015	Contract expired. No reason on file for why this was not renewed.
Ricoh Americas Corporation	NC Ricoh Printer 204D	08/01/2007	03/31/2013	Contract expired and was not renewed, but Ricoh is looking to award a new contract.
Hewlett- Packard Company	North Carolina HP Thin Client	06/15/2012	06/14/2013	Contract expired. No reason on file for why this was not renewed.
North Carolina Department of Administration	North Carolina Citrix	08/01/2012	07/31/2013	CDW•G chose not to extend the contract for no sales.
North Carolina Department of Administration	NC Ruggedized Accessories 204B	06/01/2007	10/31/2013	CDW•G was named to a new Contract.
Panasonic Computer Solutions Company	NC Panasonic Rugged Computers	06/01/2007	10/31/2013	CDW•G was named to a new Contract.
Hewlett- Packard Company	North Carolina HP Printer	04/01/2013	03/31/2014	CDW•G was named to a new Contract.
Carahsoft Technology Corp.	Carahsoft VMWare Software	09/10/2014	09/09/2015	Contract expired. No reason on file for why this was not renewed.
North Carolina Department of Administration	NC Mass Storage ITS-006498	09/20/2012	03/31/2016	Contract was extended until 2016.
NetApp, Inc.	NC 204J NetApp Mass Storage	09/20/2012	09/20/2015	Contract expired. No reason on file for why this was not renewed.
North Carolina Department of Administration	NC Ruggedized Computers and Accessories	11/01/2013	10/31/2015	Contract expired. No reason on file for why this was not renewed.
Synnex Corporation	North Central EMS Cooperative	04/25/2011	02/09/2014	Contract expired. No reason on file for why this was not renewed.
Synnex Corporation	North Central EMS Cooperative	04/25/2011	02/09/2014	Contract expired. No reason on file for why this was not renewed.
Noble County Clerk	Noble County Office Supplies	07/01/2015	12/31/2015	Still awaiting
3M Projection Systems	NY OGS-3M Projection Systems Audio Visual	11/01/2008	10/31/2013	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Mitsubishi Digital Electronics	NY OGS-Mitsubishi Audio Visual	11/01/2008	10/31/2013	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Optoma Technology, Inc.	NY OGS-Optoma Technology Audio Visual	10/01/2008	10/31/2013	Contract expired and was not renewed. NY OGS did not open up for RFP again.
PolyVision Corporation	NY OGS-Polyvision Audio Visual	05/06/2010	10/31/2013	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Hitachi Data Systems	NY OGS-Hitachi Systems & Peripherals Storage	11/25/2009	02/10/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
ExaGrid Systems, Inc.	NY OGS-ExaGrid Systems Inc Storage Systems and Peripherals	08/17/2011	02/10/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Quantum Corporation	NY OGS-Quantum Corporation Systems and Peripheral (Storage)	02/11/2004	02/11/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Trend Micro, Inc.	NY OGS-Trend Micro Microcomputer Software	03/03/2009	03/02/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
International Business Machines Corporation (IBM)	NY OGS-IBM Enterprise Systems Xseries	07/02/2008	07/01/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Citrix Systems, Inc.	NY OGS-Citrix Microcomputer Software	08/09/2004	08/08/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Epson America, Inc.	NY OGS-Epson Audio Visual	11/01/2008	10/31/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Infocus Corporation	NY OGS-Infocus Audio Visual	11/01/2008	10/31/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
NEC Display Solutions of America	NY OGS-NEC Audio Visual	11/01/2008	10/31/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
AverMedia Technologies, Inc.	NY OGS-AverMedia Technologies Audio Visual	11/01/2008	10/31/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.

Elmo USA Corp.	NY OGS-Elmo Corp Audio Visual	11/01/2008	10/31/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Steelcase, Inc.	NY OGS-NY OGS Steelcase VID#1000009217	08/29/2005	10/31/2014	Contract expired and was not renewed. NY OGS did not open up for RFP again.
EMC Corporation	NY OGS-EMC Storage Systems and Peripherals	03/05/2004	08/31/2015	Contract expired and was not renewed. NY OGS did not open up for RFP again.
NetApp, Inc.	NY OGS-NetApp Inc Systems and Peripheral (Storage)	02/11/2004	08/31/2015	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Hewlett- Packard Company	NY OGS-HP Enterprise Systems	06/17/2011	10/22/2015	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Hewlett- Packard Company	NY OGS-HP Storage Systems and Peripherals	07/19/2007	12/10/2015	Contract expired and was not renewed. NY OGS did not open up for RFP again.
Acer America Corp.	NY OGS-Acer Computer Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Fujitsu Computer Systems, Corporation	NY OGS-Fujitsu Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Hewlett- Packard Company	NY OGS-HP Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Lenovo (United States) Inc.	NY OGS-Lenovo Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Panasonic Computer Solutions Company	NY OGS-Panasonic Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Seneca Data Distributors, Inc.	NY OGS-SenecaData Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Sony Electronics, Inc.	NY OGS-Sony Microcomputer Systems	12/29/2010	12/28/2015	Contract may be renewed, pending NY OGS.
Toshiba America Information Systems, Inc.	NY OGS-Toshiba Microcomputer Systems	02/24/2011	12/28/2015	Contract may be renewed, pending NY OGS.
Asus Computer International	NY OGS-Asus Microcomputer System	04/21/2011	12/28/2015	Contract may be renewed, pending NY OGS.
Department of Information Technology and Telecommunications (D	NYC DOITT Panasonic	04/10/2013	12/29/2015	Contract will expire and not being renewed.
Oakland County, Michigan	Oakland County Microsoft Enterprise	09/01/2010	08/31/2013	Contract expired and was not renewed. There was no replacement RFP.
Oakland County, Michigan	Oakland County Michigan Fujitsu Tablets	10/01/2010	09/30/2013	Contract expired and was not renewed. There was no replacement RFP.
Aruba Wireless Networks, Inc.	State of Oklahoma Aruba Networking	02/20/2014	02/19/2015	CDW•G was named to a new Contract.
State of Pennsylvania, Department of General Services	Costars-3 IT Hardware	09/23/2005	09/08/2015	CDW•G was named to a new Contract.
State of Pennsylvania, Department of General Services	Costars Software	08/01/2008	11/30/2015	CDW•G was named to a new Contract.
Philadelphia Housing Authority	Philadelphia Housing Authority Hardware	04/01/2014	03/31/2015	Contract expired and was not renewed. There was no replacement RFP.
Philadelphia Housing Authority	Philadelphia Housing Authority Software	04/01/2014	03/31/2015	Contract expired and was not renewed. There was no replacement RFP.
Pennsylvania Department of General Services	PA IT Hardware Rugged Toughbooks	01/15/2009	09/30/2013	CDW•G was named to a new Contract.
Pennsylvania Department of General Services	PA IT Networking Contract	08/12/2008	09/30/2013	CDW•G was named to a new Contract.
South Carolina Information Technology Management Office	South Carolina AverMedia	08/03/2011	08/02/2015	CDW•G was named to a new Contract.
Mitsubishi Digital Electronics	South Carolina Mitsubishi AV	08/11/2006	08/05/2015	CDW•G was named to a new Contract.
South Carolina Information Technology Management Office	South Carolina Polyvision	08/03/2011	08/05/2015	CDW•G was named to a new Contract.
South Carolina Information Technology Management Office	South Carolina Enterasys	09/08/2010	09/07/2015	CDW•G was named to a new Contract.
Bretford Manufacturing	South Carolina Bretford	09/03/2009	12/31/2015	Still awaiting
Epson America, Inc.	South Carolina Epson AV	07/10/2006	12/31/2015	Still awaiting
NEC Display Solutions of America	South Carolina NEC Audio Visual	08/02/2006	12/31/2015	Still awaiting
State of Tennessee, Department of General Services	Tennessee Cisco Hardware, Software, and Services	01/01/2013	12/31/2015	CDW•G was named to a new Contract.
EMC Corporation	TX DIR EMC Software	05/04/2011	05/04/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	TX DIR Lexmark	09/27/2012	05/18/2015	CDW•G was named to a new Contract.
Oki Data Americas, Inc.	TX DIR Okidata	05/30/2007	06/07/2015	CDW•G was named to a new Contract.
Xerox Corporation	TX DIR Xerox	03/26/2007	06/07/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	TX DIR Ricoh	08/09/2012	06/10/2015	We are still awaiting renewal
Samsung Electronics America, Inc.	Texas DIR Samsung	03/17/2014	08/07/2015	CDW•G was named to a new Contract.
EMC Corporation	TX DIR EMC	09/10/2014	09/10/2015	CDW•G was named to a new Contract.
Epson America, Inc.	TX DIR Epson Projectors	03/29/2013	12/07/2015	Epson has renewed and is working with DIR to update site soon
Panasonic Computer Solutions Company	TX DIR Panasonic	12/20/2013	12/20/2015	Not technically expired but we are still awaiting renewal
Lenovo (United States) Inc.	TX DIR Lenovo	12/28/2012	12/28/2015	CDW•G was named to a new Contract.
City of Richmond Department of Procurement Services	Richmond Information Technology Supply Schedule	04/16/2008	04/30/2014	CDW•G was named to a new Contract.
Virginia Information Technologies Agency	VITA Statewide Printer Wide Format Device	10/29/2010	04/30/2013	Contract expired and was not renewed. There was no replacement RFP.
Virginia Information Technologies Agency	VITA Hardware and Maintenance Contract	02/06/2009	03/31/2014	CDW•G was named to a new Contract.
Virginia Information Technologies Agency	VITA Software License Contract	02/06/2009	03/31/2014	CDW•G was named to a new Contract.
Virginia Information Technologies Agency	VITA Server and Maintenance Contract	01/11/2010	03/31/2014	Contract expired and was not renewed. There was no replacement RFP.
Virginia Information Technologies Agency	VITA Storage	01/13/2011	11/29/2016	Contract was extended until 2016.
State of Vermont	VT Computer Peripherals	10/12/2011	09/30/2015	Contract expired. No reason on file for why this was not renewed.
Wisconsin Department of Administration, Bureau of Procurement	Wisconsin Microcomputer Software Contact	09/01/2005	02/28/2013	CDW•G was named to a new Contract.
Wisconsin Department of Administration, Bureau of Procurement	Wisconsin Microcomputer Software Contact	09/01/2010	08/31/2015	CDW•G was named to a new Contract.
Hewlett- Packard Company	HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Extreme WSCA	08/14/2009	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Alaska Extreme WSCA	03/15/2011	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	California WSCA Cisco	05/23/2008	05/31/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	California HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.

Hewlett- Packard Company	Colorado HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Colorado Extreme WSCA	03/15/2011	05/31/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	Hawaii HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Iowa WSCA Cisco	08/14/2009	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Iowa Extreme WSCA	10/24/2011	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Kansas Extreme WSCA	10/24/2011	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Kentucky Cisco WSCA	08/01/2011	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Louisiana Cisco WSCA	10/23/2012	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Michigan Cisco WSCA	05/02/2012	05/31/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	Minnesota HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	New Jersey Cisco WSCA	04/21/2009	05/31/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	New Jersey HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Nevada Extreme WSCA	08/14/2009	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Nevada Cisco WSCA	05/13/2013	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Oregon Cisco WSCA	09/01/2009	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	South Dakota Extreme WSCA	10/24/2011	05/31/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	Utah HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Washington Cisco WSCA NASPO	02/08/2010	05/31/2014	CDW•G was named to a new Contract.
Hewlett- Packard Company	Washington HP WSCA Data Communications	04/29/2010	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Washington Extreme WSCA	10/24/2011	05/31/2014	CDW•G was named to a new Contract.
Cisco Systems, Inc.	Wisconsin Cisco WSCA	09/22/2010	05/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	California Extreme WSCA	03/15/2011	08/31/2014	CDW•G was named to a new Contract.
EMC Corporation	Colorado EMC WSCA	10/09/2009	08/31/2014	CDW•G was named to a new Contract.
Extreme Networks, Inc.	Missouri Extreme WSCA	10/24/2011	08/31/2014	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	South Carolina Panasonic WSCA NASPO	12/28/2011	08/31/2014	CDW•G was named to a new Contract.
Lexmark International, Inc.	South Carolina Lexmark WSCA NASPO	09/01/2009	08/31/2014	Lexmark did not sign a new contract.
Lexmark International, Inc.	South Dakota Lexmark WSCA NASPO	09/01/2009	08/31/2014	Lexmark did not sign a new contract.
Lexmark International, Inc.	Utah Lexmark WSCA NASPO	09/01/2009	08/31/2014	Lexmark did not sign a new contract.
Extreme Networks, Inc.	Utah Extreme WSCA	10/24/2011	08/31/2014	CDW•G was named to a new Contract.
Lexmark International, Inc.	Washington Lexmark WSCA NASPO	09/01/2009	08/31/2014	Lexmark did not sign a new contract.
Lexmark International, Inc.	Wisconsin Lexmark WSCA NASPO	09/01/2009	08/31/2014	Lexmark did not sign a new contract.
EMC Corporation	Connecticut EMC WSCA	09/01/2009	12/31/2014	CDW•G was named to a new Contract.
NetApp, Inc.	Georgia NetApp WSCA	10/20/2010	12/31/2014	CDW•G was named to a new Contract.
NetApp, Inc.	Minnesota NetApp WSCA	03/29/2012	12/31/2014	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Ohio Lenovo WSCA NASPO	09/01/2009	12/31/2014	CDW•G was named to a new Contract.
EMC Corporation	Rhode Island EMC WSCA	09/01/2009	12/31/2014	CDW•G was named to a new Contract.
NetApp, Inc.	NetApp WSCA NASPO	09/01/2009	03/31/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Arizona NetApp WSCA	09/08/2010	03/31/2015	CDW•G was named to a new Contract.
EMC Corporation	Florida EMC NVP Computer Equipment	11/30/2015	03/31/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Idaho NetApp WSCA	01/13/2011	03/31/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Alaska HP WSCA NASPO	06/04/2013	06/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Delaware HP WSCA NASPO	06/13/2012	06/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Idaho Fujitsu WSCA NASPO	11/08/2010	06/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Lenovo WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Panasonic WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	EMC WSCA/NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Hewlett Packard Company	HP WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Xerox Corporation	Xerox WSCA NASPO	03/01/2011	09/30/2015	Xerox did not sign a new contract.
Lenovo (United States) Inc.	Alaska Lenovo WSCA NASPO	06/30/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Alaska Panasonic WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Alaska EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Alaska Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Alaska Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Panasonic Systems Communications Company	Arkansas Panasonic WSCA NASPO	11/23/2011	09/30/2015	CDW•G was named to a new Contract.



NetApp, Inc.	Arkansas NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Arkansas HP WSCA NASPO	11/11/2013	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Arizona Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	California Lenovo WSCA NASPO	08/22/2011	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	California EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	California NetApp WSCA	10/13/2010	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	California Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	California Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Fujitsu America, Inc.	California Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	California HP WSCA NASPO	05/09/2013	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Colorado Lenovo WSCA NASPO	07/17/2012	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Colorado Panasonic WSCA NASPO	08/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Colorado NetApp WSCA	09/08/2010	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Colorado Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Fujitsu America, Inc.	Colorado Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Colorado HP WSCA NASPO	06/04/2013	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Delaware Lenovo WSCA NASPO	11/22/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Delaware Panasonic WSCA NASPO	09/02/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Delaware EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Delaware NetApp WSCA	01/13/2011	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Delaware Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Delaware Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Florida Lenovo WSCA NASPO	06/01/2012	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Florida Panasonic WSCA NASPO	06/14/2012	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Florida HP WSCA NASPO	08/30/2013	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Florida Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Florida EMC WSCA	01/27/2015	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Florida NetApp WSCA	03/09/2015	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Georgia EMC WSCA	11/01/2010	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Georgia NetApp WSCA	02/28/2013	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Hawaii Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Iowa Lenovo WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Iowa Panasonic WSCA NASPO	05/04/2010	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Iowa EMC WSCA	11/03/2010	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Iowa NetApp WSCA	09/28/2010	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Iowa Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Fujitsu America, Inc.	Iowa Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Idaho Panasonic WSCA NASPO	08/31/2009	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Kansas Lenovo WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Kansas Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Fujitsu America, Inc.	Kansas Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Louisiana Lenovo WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Louisiana EMC WSCA	12/13/2010	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Louisiana NetApp WSCA	04/18/2011	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Louisiana Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Hewlett Packard Company	Louisiana HP WSCA NASPO	06/05/2013	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Missouri Lenovo WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Missouri Panasonic WSCA NASPO	08/28/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Missouri EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Missouri NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Missouri Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Fujitsu America, Inc.	Missouri Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Missouri Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	Montana Lenovo WSCA NASPO	09/01/2008	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Montana Panasonic WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Montana EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Montana NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.

Ricoh Americas Corporation	Montana Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Montana Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Hewlett Packard Company	Montana HP WSCA NASPO	06/04/2013	09/30/2015	CDW•G was named to a new Contract.
Lenovo (United States) Inc.	North Dakota Lenovo WSCA NASPO	12/09/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	North Dakota Panasonic WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	North Dakota Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
EMC Corporation	North Dakota EMC WSCA	05/10/2013	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Nebraska Panasonic WSCA NASPO	12/28/2011	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Nebraska NetApp WSCA	01/11/2012	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Nebraska EMC WSCA	10/01/2012	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	New Jersey Panasonic WSCA NASPO	02/10/2010	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	New Jersey EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	New Jersey NetApp WSCA	03/23/2011	09/30/2015	CDW•G was named to a new Contract.
Xerox Corporation	New Jersey Xerox WSCA	02/23/2011	09/30/2015	Xerox did not sign a new contract.
Hewlett Packard Company	New Jersey HP WSCA NASPO	11/16/2011	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	New Jersey Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Ricoh Americas Corporation	New Mexico Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Nevada Panasonic WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Nevada EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Nevada NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Nevada Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Nevada Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Fujitsu America, Inc.	Nevada Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Ohio HP WSCA NASPO	11/16/2011	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Oklahoma Panasonic WSCA NASPO	06/14/2012	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	OR PC Peripherals Agreement	07/01/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Oregon Panasonic WSCA NASPO	07/31/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Oregon EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Oregon NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
Xerox Corporation	Oregon Xerox WSCA	03/01/2011	09/30/2015	Xerox did not sign a new contract.
Hewlett Packard Company	Oregon HP WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Lexmark International, Inc.	Oregon Lexmark WSCA NASPO	09/01/2009	09/30/2015	Lexmark did not sign a new contract.
Panasonic Systems Communications Company	South Dakota Panasonic WSCA NASPO	11/23/2011	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	South Dakota EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	South Dakota Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	South Dakota NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Tennessee EMC WSCA	03/22/2013	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Utah Panasonic WSCA NASPO	06/14/2012	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Utah EMC WSCA	09/01/2010	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Utah NetApp WSCA	06/30/2010	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Utah HP WSCA NASPO	06/04/2013	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Vermont HP WSCA NASPO	06/13/2012	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Vermont Panasonic WSCA NASPO	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Vermont EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Vermont Ricoh WSCA NASPO	05/19/2010	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Vermont Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Washington Panasonic WSCA NASPO	08/10/2011	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Washington NetApp WSCA	09/28/2010	09/30/2015	CDW•G was named to a new Contract.
Xerox Corporation	Washington Xerox WSCA	04/25/2011	09/30/2015	Xerox did not sign a new contract.
EMC Corporation	Washington EMC WSCA	09/02/2009	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Washington Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.
Hewlett Packard Company	Washington HP WSCA NASPO	06/26/2013	09/30/2015	CDW•G was named to a new Contract.
Panasonic Systems Communications Company	Wisconsin Panasonic WSCA NASPO	12/28/2011	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Wisconsin EMC WSCA	09/02/2009	09/30/2015	CDW•G was named to a new Contract.
NetApp, Inc.	Wisconsin NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
Ricoh Americas Corporation	Wisconsin Ricoh WSCA NASPO	05/21/2010	09/30/2015	CDW•G was named to a new Contract.
Fujitsu America, Inc.	Wisconsin Fujitsu WSCA NASPO	11/08/2010	09/30/2015	CDW•G was named to a new Contract.

NetApp, Inc.	West Virginia NetApp WSCA	03/29/2012	09/30/2015	CDW•G was named to a new Contract.
EMC Corporation	Wyoming EMC WSCA	09/01/2009	09/30/2015	CDW•G was named to a new Contract.
West Virginia Department of Administration Purchasing Division	West Virginia Personal Computers and Peripherals Blanket Order	05/01/2008	06/30/2013	Contract expired and was not renewed. There was no replacement RFP.
Wyoming Game and Fish Dept	Wyoming Game and Fish Dept. GPS Units	09/02/2011	06/30/2014	Contract expired. No reason on file for why this was not renewed.
Samaritan Health Services	Master Service Sales Agreement	03/28/2012	03/27/2014	Contract expired. No reason on file for why this was not renewed.
Brocade Communications Systems, Inc.	Alaska Brocade WSCA Data Communications	11/01/2012	05/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	California Brocade WSCA Data Communications	11/02/2012	05/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Delaware Brocade WSCA Data Communications	11/01/2012	05/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Washington Brocade WSCA Data Communications	11/01/2012	05/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Brocade WSCA Data Communications	11/01/2012	08/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Colorado Brocade WSCA Data Communications	11/01/2012	08/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Hawaii Brocade WSCA Data Communications	03/21/2013	08/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Missouri Brocade WSCA Data Communications	11/01/2012	08/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	New Jersey Brocade WSCA Data Communications	11/01/2012	08/31/2014	CDW•G was named to a new Contract.
Brocade Communications Systems, Inc.	Utah Brocade WSCA Data Communications	11/01/2012	08/31/2014	CDW•G was named to a new Contract.
Onondaga- Cortland	DATA COMMUNICATIONS EQUIPMENT	11/01/2013	10/31/2014	Contract expired. No reason on file for why this was not renewed.
Harris County	Harris County Virtualization Software Upgrade	10/28/2014	10/27/2015	CDW•G was named to a new Contract.
Technical College System of Georgia	CISCO Unified Communications Products	04/14/2010	04/13/2013	Unknown reason
Ohio Wesleyan University	Master Product Sales Agreement	06/21/2010	06/20/2013	Customer is using other contracts CDW holds
University of Minnesota	Electronic Commerce Agreement between the University of Minnesota	11/15/2008	06/30/2013	New Contract was awarded to CDW
City of Tucson Department of Procurement-EXPIRED	National IPA Technology Solutions	03/01/2009	08/18/2013	New Contract was awarded to CDW
Paine College	Master Product Sales Agreement	09/14/2011	09/14/2013	Not Enough contract spend so Agreement was not extended
Massachusetts Higher Education Consortium	Massachusetts Consortium Contract - Multi-Media Equipment MC10	11/01/2010	09/30/2013	New Contract was awarded to CDW
University of Tennessee	Microcomputers University of Tennessee	10/01/2008	09/30/2013	CDW was not awarded a new agreement
University of Kentucky	Cisco Networking Products and Services	03/08/2010	03/09/2014	Unknown reason
Toccoa Falls College	Managed Print Services	04/13/2011	04/13/2014	Not Enough contract spend so Agreement was not extended
University of New Mexico	Agreement between University of New Mexico and CDWG for techn	04/17/2006	04/16/2014	Unknown reason
Morehouse School of Medicine	Master Product Sales Agreement	04/22/2013	04/22/2014	Agreement was not renewed as they became a member of a co-op
York College of Pennsylvania	York College of Pennsylvania Product Purchase Agreement	09/12/2008	05/20/2014	Spend was not high enough to extend
Universal Technical Institute	Master Product Sales Agreement between CDW Government LLC and	06/07/2010	06/07/2014	Unknown reason
Massachusetts Higher Education Consortium	MHEC Contract #F04, Software	07/01/2012	06/30/2014	New Contract was awarded to CDW•G
University of Connecticut	Invitation to Bid Document B991910-G Network and Security Hardw	07/10/2009	06/30/2014	Unknown reason
University of Connecticut	Network and Security Software	06/16/2010	06/30/2014	Unknown reason
Massachusetts Higher Education Consortium	MHEC Contract #04, Software	07/01/2010	06/30/2014	New Contract was awarded to CDW•G
Stratford University	MPSA between Stratford University and CDWG	07/13/2010	07/13/2014	Unknown reason
Illinois Valley Community College	Managed Print Services Agreement	08/04/2009	08/03/2014	Agreement was not renewed as they use other agreements
Bay De Noc Community College	Managed Print Services	08/19/2009	08/18/2014	Not Enough contract spend so Agreement was not extended
Barry University	Master Product Sales Agreement	08/22/2011	08/21/2014	Agreement was not renewed as they became a member of a co-op
Eastern Illinois University	Product Sales and Service Projects Agreement	04/15/2013	04/14/2015	Agreement was not renewed customer uses other agreements instead
Massachusetts Higher Education Consortium	MHEC Contract #F05, Technology	08/06/2011	07/31/2015	New Contract was awarded to CDW•G
Broome-Tioga BOCES	Broome-Tioga BOCES AV and Related Technology Equipment	01/16/2014	01/15/2015	Unknown reason
City of Hartford - Hartford Public Schools	City of Hartford - Hartford Public Schools Desktop, Laptop, Tablet Devices, Servers, Deployment/Other Technical Services, Device Parts/Peripherals, and Software Licensing	11/19/2012	08/31/2013	Rebid and CDWG was awarded a new contract
Clarkstown Central School District	Clarkstown Central School District Chromebooks (as needed)	01/24/2014	01/23/2014	Unknown reason
Eastern Suffolk BOCES	Eastern Suffolk BOCES Wireless Tablets and Notebooks	01/01/2014	11/30/2014	Unknown reason
Nassau BOCES	Nassau BOCES Computer Hardware, Software, Networking Supplies	01/30/2014	01/29/2015	Unknown reason
Nassau BOCES	Nassau BOCES NASSAU BOCES iPad Cases	05/01/2014	08/09/2015	Unknown reason
New York City Department of Education	New York City Department of Education A/V Equipment	11/06/2008	01/31/2014	Rebid and CDWG was awarded a new contract
New York City Department of Education	New York City Department of Education Interactive Whiteboard	11/06/2008	06/30/2013	Rebid and CDWG was awarded a new contract
New York City Department of Education	New York City Department of Education Printers, Software, Peripherals, Accessories & Related Services	04/01/2012	03/31/2015	Rebid and CDWG was awarded a new contract

Onondaga-Cortland-Madison Board of Cooperative Educational Services	Onondaga-Cortland-Madison Board of Cooperative Educational Services DATA COMMUNICATIONS EQUIPMENT	11/01/2014	11/02/2015	Unknown reason
Onondaga-Cortland-Madison Board of Cooperative Educational Services	Onondaga-Cortland-Madison Board of Cooperative Educational Services COMPUTER PERIPHERALS	04/04/2014	03/31/2015	Unknown reason
Onondaga-Cortland-Madison Board of Cooperative Educational Services	Onondaga-Cortland-Madison Board of Cooperative Educational Services Computers, Storage Systems, Accessories and Replacement Parts	04/04/2014	03/31/2015	Unknown reason
Onondaga-Cortland-Madison Board of Cooperative Educational Services	Onondaga-Cortland-Madison Board of Cooperative Educational Services (BOCES) OCM Data Communications Equip RFB-215-20	11/01/2014	11/02/2015	Unknown reason
Orange Ulster BOCES	Orange Ulster BOCES Google Chromebooks	10/19/2013	10/18/2014	Unknown reason
Patchogue Medford Schools	Patchogue Medford Schools AV Supply Bid	03/27/2015	06/30/2015	Unknown reason
PEPPM	PEPPM General Hardware & Software / Remanufactured Toner & Ink Cartridges	01/01/2010	12/31/2013	Rebid and CDWG was awarded a new contract
PEPPM	PEPPM General Hardware and Software	04/21/2011	12/31/2014	Rebid and CDWG was awarded a new contract
Southern Westchester Board of Cooperative Educational Services	Southern Westchester Board of Cooperative Educational Services Chromebooks	01/17/2013	06/30/2014	Rebid and CDWG was awarded a new contract
Southern Westchester Board of Cooperative Educational Services	Southern Westchester Board of Cooperative Educational Services Misc. Printers	07/11/2013	12/31/2014	Unknown reason
Southern Westchester Board of Cooperative Educational Services	Southern Westchester Board of Cooperative Educational Services Microcomputer Hardware	09/05/2014	06/30/2015	Unknown reason
Southern Westchester Board of Cooperative Educational Services	Southern Westchester Board of Cooperative Educational Services Southern Westchester BOCES AV Pricing	09/01/2014	09/01/2015	Unknown reason
Southern Westchester Board of Cooperative Educational Services	Southern Westchester Board of Cooperative Educational Services Southern Westchester BOCES Chromebook & Google Software	07/10/2014	07/01/2015	Unknown reason
Ulster County BOCES	Ulster County BOCES Chromebook & Chromebox	12/20/2012	08/31/2014	Unknown reason
Western Suffolk BOCES	Western Suffolk BOCES Printer & Toner Cartidges	07/01/2013	06/30/2014	Unknown reason
Western Suffolk BOCES	Western Suffolk BOCES Samsung Series 3 Chromebook/Google MGT License & config services	01/01/2013	12/30/2013	Unknown reason
Western Suffolk BOCES	Western Suffolk BOCES Professional Days for Computer Network Support LAN/WAN	07/01/2013	06/30/2014	Unknown reason

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2013

or

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-35985

CDW CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

200 N. Milwaukee Avenue
Vernon Hills, Illinois

(Address of principal executive offices)

26-0273989

(I.R.S. Employer Identification No.)

60061

(Zip Code)

(847) 465-6000

(Registrant's telephone number, including area code)

None

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class:

Name of each exchange on which registered

Common stock, par value \$0.01 per share

NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. [X] Yes [ ] No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. [ ] Yes [X] No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. [X] Yes [ ] No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). [X] Yes [ ] No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer [ ]

Accelerated filer [ ]

Non-accelerated filer [X] (Do not check if a smaller reporting company)

Smaller reporting company [ ]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). [ ] Yes [X] No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of June 28, 2013, the last business day of the registrant's most recently completed second fiscal quarter, was \$654,984,661, based on the per share closing sale price of \$18.62 on that date (assuming the closing of the registrant's initial public offering).

As of February 28, 2014, there were 171,954,277 shares of common stock, \$0.01 par value, outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement for use in connection with its 2014 Annual Meeting of Shareholders, to be filed not later than 120 days after December 31, 2013, are incorporated by reference into Part III of this report.

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CDW CORPORATION AND SUBSIDIARIES

ANNUAL REPORT ON FORM 10-K  
Year Ended December 31, 2013

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## FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact included in this report are forward-looking statements. These statements relate to analyses and other information, which are based on forecasts of future results and estimates of amounts not yet determinable. These statements also relate to our future prospects, developments and business strategies. We claim the protection of The Private Securities Litigation Reform Act of 1995 for all forward-looking statements in this report.

These forward-looking statements are identified by the use of terms and phrases such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will” and similar terms and phrases, including references to assumptions. However, these words are not the exclusive means of identifying such statements. Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that we will achieve those plans, intentions or expectations. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those that we expected.

Important factors that could cause actual results to differ materially from our expectations, or cautionary statements, are disclosed under the section entitled “Risk Factors” included elsewhere in this report. All written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements contained in the section entitled “Risk Factors” included elsewhere in this report as well as other cautionary statements that are made from time to time in our other Securities and Exchange Commission (“SEC”) filings and public communications. You should evaluate all forward-looking statements made in this report in the context of these risks and uncertainties.

We caution you that the important factors referenced above may not contain all of the factors that are important to you. In addition, we cannot assure you that we will realize the results or developments we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our operations in the way we expect. The forward-looking statements included in this report are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.



## PART I

### Item 1. Business

#### Our Company

CDW is a Fortune 500 company and a leading provider of integrated information technology (“IT”) solutions in the U.S. and Canada. We help our customer base of approximately 250,000 small, medium and large business, government, education and healthcare customers by delivering critical solutions to their increasingly complex IT needs. Our broad array of offerings ranges from discrete hardware and software products to integrated IT solutions such as mobility, security, data center optimization, cloud computing, virtualization and collaboration. We are technology "agnostic," with a product portfolio that includes more than 100,000 products from more than 1,000 brands. We provide our products and solutions through sales force and service delivery teams consisting of more than 4,400 coworkers, including nearly 1,800 field sellers, highly-skilled technology specialists and advanced service delivery engineers.

We are a leading U.S. sales channel partner for many original equipment manufacturers (“OEMs”) and software publishers (collectively, our “vendor partners”), whose products we sell or include in the solutions we offer. We believe we are an important extension of our vendor partners’ sales and marketing capabilities, providing them with a cost-effective way to reach customers and deliver a consistent brand experience through our established end-market coverage and extensive customer access.

We provide value to our customers by simplifying the complexities of technology across design, selection, procurement, integration and management. Our goal is to have our customers, regardless of their size, view us as an indispensable extension of their IT staffs. We seek to achieve this goal by providing our customers with superior service through our large and experienced sales force and service delivery teams. Our multi-brand offering approach enables us to identify the products or combination of products that best address each customer's specific organizational IT requirements and to evolve our offerings as new technologies develop.

We believe we offer the following value proposition to our customers and our vendor partners:

#### **Our value proposition to our customers**

- Broad selection of products and multi-branded IT solutions
- Value-added services with integration capabilities
- Highly-skilled specialists and engineers
- Solutions across a very broad IT landscape

#### **Our value proposition to our vendor partners**

- Access to approximately 250,000 customers throughout the U.S. and Canada
- Large and established customer channels
- Strong distribution and implementation capabilities
- Value-added solutions and marketing programs that generate end-user demand

Our customers include private sector businesses that typically employ fewer than 5,000 employees, government agencies and educational and healthcare institutions. We serve our customers through channel-specific sales teams and service delivery teams with extensive technical skills and knowledge of the specific markets they serve. This market segmentation allows us to customize our offerings and to provide enhanced expertise in designing and implementing IT solutions for our customers. We currently have five dedicated customer channels: medium/large business, small business, government, education and healthcare, each of which generated over \$1 billion in net sales in 2013. The scale and diversity of our customer channels provide us with multiple avenues for growth and a balanced customer base to weather economic and technology cycles.

The following table provides information regarding our reportable segments and our customer channels:

<i>Customer Channels</i>	<b>Corporate Segment</b>		<b>Public Segment</b>			
	<b>Medium/Large Business</b>	<b>Small Business</b>	<b>Government</b>	<b>Education</b>	<b>Healthcare</b>	<b>Other</b>
<i>Target Customers</i>	100 - 5,000 employees	10 - 100 employees	Various federal, state and local agencies	Higher education and K-12	Hospitals, ambulatory service providers and long-term care facilities	Advanced services customers plus Canada
<i>2013 Net Sales (in billions)</i>	\$4.9	\$1.1	\$1.3	\$1.4	\$1.5	\$0.6

For further information on our segments, including financial results, see Note 16 to the accompanying audited consolidated financial statements included elsewhere in this report.

We offer more than 1,000 brands, from well-established companies such as APC, Apple, Cisco, EMC, Hewlett-Packard, IBM, Lenovo, Microsoft, NetApp, Symantec and VMware to emerging vendor partners such as Drobo, Fusion-io, Meraki, Nimble Storage, Salesforce.com, Sophos and Splunk. In 2013, we generated over \$1 billion of revenue for each of four of our vendor partners and over \$100 million of revenue for each of 11 other vendor partners. We have received the highest level of certification from major vendor partners such as Cisco, EMC and Microsoft, which reflects the extensive product and solution knowledge and capabilities that we bring to our customers' IT challenges. These certifications also provide us with access to favorable pricing, tools and resources, including vendor incentive programs, which we use to provide additional value to our customers. Our vendor partners also regularly recognize us with top awards and select us to develop and grow new customer solutions.

## History

CDW was founded in 1984. In 2003, we purchased selected U.S. assets and the Canadian operations of Micro Warehouse, which extended our growth platform into Canada. In 2006, we acquired Berbee Information Networks Corporation, a regional provider of technology products, solutions and customized engineering services in advanced technologies primarily across Cisco, IBM and Microsoft portfolios. This acquisition increased our capabilities in customized engineering services and managed services.

On October 12, 2007, CDW Corporation, an Illinois corporation, was acquired through a merger transaction by an entity controlled by investment funds affiliated with Madison Dearborn Partners, LLC and Providence Equity Partners L.L.C. (the "Acquisition"). CDW Corporation continued as the surviving corporation and same legal entity after the Acquisition, but became a wholly owned subsidiary of VH Holdings, Inc., a Delaware corporation.

On December 31, 2009, CDW Corporation merged into CDWC LLC, an Illinois limited liability company owned by VH Holdings, Inc., with CDWC LLC as the surviving entity. This change had no impact on our operations or management. On December 31, 2009, CDWC LLC was renamed CDW LLC ("CDW LLC"). On August 17, 2010, VH Holdings, Inc. was renamed CDW Corporation ("Parent"), a Delaware corporation.

Throughout this report, the terms "the Company" and "CDW" refer to Parent and its 100% owned subsidiaries subsequent to the Acquisition.

Parent was previously owned directly by CDW Holdings LLC ("CDW Holdings"), a company controlled by investment funds affiliated with Madison Dearborn Partners, LLC and Providence Equity Partners L.L.C. (the "Sponsors"), certain other co-investors and certain members of CDW management. See "Sponsors" below. On July 2, 2013, Parent completed an initial public offering ("IPO") of its common stock. In connection with the IPO, CDW Holdings distributed all of its shares of Parent's common stock to its members in June 2013 in accordance with the members' respective membership interests and was subsequently dissolved in August 2013. See Note 9 to the accompanying audited consolidated financial statements included elsewhere in this report for additional discussion of the IPO.

The Sponsors beneficially owned approximately 63.7% of our common stock as of December 31, 2013.

## Our Market

We operate in the U.S. and Canadian IT market, which is a large and growing market. According to IDC, the overall U.S. IT market generated approximately \$660 billion in sales in 2013. We believe our addressable market in the U.S. in the indirect sales channel represents more than \$200 billion in annual sales and for the year ended December 31, 2013, our U.S. net sales of \$10.3 billion represented approximately 5% of that highly diverse and fragmented market. According to IDC, the overall Canadian IT market generated more than \$50 billion in sales in 2013. We believe our addressable market in Canada in the indirect sales channel represents more than \$10 billion in annual sales and for the year ended December 31, 2013, our net sales of \$475 million in Canada represented approximately 4% of that market. We believe we have the largest market share in our addressable market, with our 2013 net sales exceeding the cumulative North American net sales of our four largest publicly traded sales channel competitors, based upon publicly available information for those companies. New technologies, including cloud, virtualization and mobility, coupled with the resulting increase in demand for data as well as aging infrastructure, are increasingly requiring businesses and institutions to seek integrated solutions to their IT needs. We expect this trend to continue for the foreseeable future, with end-user demand for business efficiency and productivity driving future IT spending growth.

## Our Offerings

Our offerings range from discrete hardware and software products and services to complex integrated solutions that include one or more of these elements. We believe our customers increasingly view technology purchases as integrated solutions rather than discrete product and service categories and we estimate that approximately 51% of our net sales in 2013 came from sales of product categories and services typically associated with solutions. Our hardware products include notebooks/mobile devices (including tablets), network communications, enterprise and data storage, video monitors, printers, desktop computers and servers. Our software products include application suites, security, virtualization, operating systems, network management and Software as a Service (“SaaS”) offerings. We also provide a full suite of value-added-services, which range from basic installation, warranty and repair services to custom configuration, data center and network implementation services, as well as managed services that include Infrastructure as a Service (“IaaS”) offerings.

We also offer a variety of integrated solutions, such as:

- *Mobility:* We assist our customers with the selection, procurement and integration of mobile security software, hardware devices such as smartphones, tablets and notebooks, and cellular wireless activation systems. We also provide mobile device management applications with policy and security management capabilities across a variety of mobile operating systems and platforms.
- *Security:* We assess our customers' security needs and provide them with threat prevention tools in order to protect their networks, servers and applications, such as anti-virus, anti-spam, content filtering, intrusion prevention, firewall and virtual private network services, and network access control. We also design and implement data loss prevention solutions, using data monitoring and encryption across a wide array of devices to ensure the security of customer information, personal employee information and research and development data.
- *Data Center Optimization:* We help our customers evaluate their data centers for convergence and optimization opportunities. Our data center optimization solutions consist of server virtualization, physical server consolidation, data storage management and energy-efficient power and cooling systems.
- *Cloud Computing:* Cloud computing is a combination of software and computing delivered on demand as a service. We provide SaaS and IaaS solutions that reside in the public cloud, meaning any person or organization interested in porting applications and resources to an external “public” cloud system can do so. Likewise, we provide similar private cloud-based solutions to our customers that prefer to avoid running their infrastructure on a shared public platform but want to obtain the flexibility, scalability and access offered by cloud computing and collaboration.
- *Virtualization:* We design and implement server, storage and desktop virtualization solutions. Virtualization enables our customers to efficiently utilize hardware resources by running multiple, independent, virtual operating systems on a single computer and multiple virtual servers simultaneously on a single server. Virtualization also can separate a desktop environment and associated application software from the hardware device that is used to access it, and provides employees with remote desktop access. Our specialists assist customers with the steps of implementing virtualization solutions, including evaluating network environments, deploying shared storage options and licensing platform software.
- *Collaboration:* We provide our customers with communication tools that allow employees to share knowledge, ideas and information among each other and with clients and partners effectively and quickly. Our collaboration solutions unite communications and applications via the integration of products that facilitate the use of

multiple enterprise communication methods including email, instant messaging, presence, social media, voice, video, hardware, software and services. We also host cloud-based collaboration solutions.

While we believe customers increasingly view technology purchases as solutions rather than discrete product and service categories, the following table shows our net sales by major category, based upon our internal category classifications.

	Year Ended December 31, 2013		Year Ended December 31, 2012 <sup>(1)</sup>		Year Ended December 31, 2011 <sup>(1)</sup>	
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales
Notebooks/Mobile Devices	\$ 1,706.0	15.8%	\$ 1,470.1	14.5%	\$ 1,336.9	13.9%
NetComm Products	1,489.1	13.8	1,351.1	13.3	1,237.7	12.9
Enterprise and Data Storage (Including Drives)	998.1	9.3	979.4	9.7	929.9	9.7
Other Hardware	4,173.3	38.8	4,068.8	40.2	3,988.3	41.5
Software	1,994.7	18.5	1,849.4	18.3	1,767.2	18.4
Services	327.1	3.0	284.6	2.8	254.3	2.6
Other <sup>(2)</sup>	80.3	0.8	124.8	1.2	88.1	1.0
Total net sales	<u>\$ 10,768.6</u>	<u>100.0%</u>	<u>\$ 10,128.2</u>	<u>100.0%</u>	<u>\$ 9,602.4</u>	<u>100.0%</u>

(1) Amounts have been reclassified for changes in individual product classifications to conform to the presentation for the year ended December 31, 2013.

(2) Includes items such as delivery charges to customers and certain commission revenue.

## Our Customers

We provide integrated IT solutions to approximately 250,000 small, medium and large business, government, education and healthcare customers throughout the U.S. and Canada. Sales to the U.S. federal government, which are diversified across multiple agencies and departments, collectively accounted for approximately 7%, 10% and 10% of total net sales in 2013, 2012 and 2011, respectively. However, there are several independent purchasing decision-makers across these agencies and departments. Excluding these sales to the federal government, we are not reliant on any one customer, as our next five largest customers cumulatively comprised approximately 3% of our net sales in 2013.

## Inventory Management

We utilize our IT systems to manage our inventory in a cost-efficient manner, resulting in a rapid-turn inventory model. We generally only stock items that have attained a minimum sales volume.

Our distribution process is highly automated. Once a customer order is received and credit approved, orders are automatically routed to one of our distribution centers for picking and shipping as well as configuration and imaging services. We operate two distribution centers: an approximately 450,000 square foot facility in Vernon Hills, Illinois, and an approximately 513,000 square foot facility in North Las Vegas, Nevada. We ship almost 35 million units annually on an aggregate basis from our two distribution centers. We believe that the location of our distribution centers allows us to efficiently ship products throughout the U.S. and provide timely access to our principal distributors. In addition, in the event of weather-related or other disruptions at one of our distribution centers, we are able to shift order processing and fulfillment from one center to the other quickly and efficiently, enabling us to continue to ship products in a timely manner. We believe that competitive sources of supply are available in substantially all of the product categories we offer. We continue to improve the productivity of our distribution centers as measured by key performance indicators such as units shipped per hour worked and bin accuracy.

We also have drop-shipment arrangements with many of our OEMs and wholesale distributors, which permit us to offer products to our customers without having to take physical delivery at either of our distribution centers. These arrangements generally represent approximately 40% to 50% of total net sales, including approximately 10% to 15% related to electronic delivery for software licenses.

## Information Technology Systems

We maintain customized IT and unified communication systems that enhance our ability to provide prompt, efficient and expert service to our customers. In addition, these systems enable centralized management of key functions, including

purchasing, inventory management, billing and collection of accounts receivable, sales and distribution. Our systems provide us with thorough, detailed and real-time information regarding key aspects of our business. This capability helps us to continuously enhance productivity, ship customer orders quickly and efficiently, respond appropriately to industry changes and provide high levels of customer service. We believe that our websites, which provide electronic order processing and advanced tools, such as order tracking, reporting and asset management, make it easy for customers to transact business with us and ultimately strengthen our customer relationships.

## **Product Procurement**

We may purchase all or only some of the products that our vendor partners offer for resale to our customers or for inclusion in the solutions we offer. Each vendor partner agreement provides for specific terms and conditions, which may include one or more of the following: product return privileges, price protection policies, purchase discounts and vendor incentive programs, such as purchase or sales rebates and cooperative advertising reimbursements. We also purchase software from major software publishers for resale to our customers or for inclusion in the solutions we offer. Our agreements with software publishers allow the end-user customer to acquire software or licensed products and services.

In addition to purchasing products directly from our vendor partners, we purchase products from wholesale distributors for resale to our customers or for inclusion in the solutions we offer. These wholesale distributors provide logistics management and supply-chain services for us, as well as for our vendor partners. For the year ended December 31, 2013, we purchased 54% of the products we sold as discrete products or as components of a solution directly from our vendor partners and the remaining 46% from wholesale distributors. Purchases from wholesale distributors Tech Data, SYNEX and Ingram Micro represented 11%, 9% and 9%, respectively, of our total purchases. Sales of products manufactured by Apple, Cisco, EMC, Hewlett-Packard, Lenovo and Microsoft, whether purchased directly from these vendor partners or from a wholesale distributor, represented in the aggregate 56% of our net sales in 2013. Sales of products manufactured by Hewlett-Packard and Cisco represented 20% and 14%, respectively, of our 2013 net sales.

## **Competition**

The market for technology products and services is highly competitive. Competition is based on the ability to tailor specific solutions to customer needs, quality and breadth of product and service offerings, knowledge and expertise of sales force, customer service, price, product availability, speed of delivery and credit availability. Our competition includes:

- resellers such as Dimension Data, ePlus, Insight Enterprises, PC Connection, PCM, Presidio, Softchoice, World Wide Technology and many smaller resellers;
- manufacturers who sell directly to customers, such as Dell, Hewlett-Packard and Apple;
- large service providers and system integrators, such as IBM, Accenture, Hewlett-Packard and Dell;
- e-tailers such as Amazon, Newegg, and TigerDirect.com;
- cloud providers such as AT&T, Amazon Web Services and Box; and
- retailers (including their e-commerce activities) such as Staples and Office Depot.

We expect the competitive landscape in which we compete to continue to change as new technologies are developed. While innovation can help our business as it creates new offerings for us to sell, it can also disrupt our business model and create new and stronger competitors. For a discussion of the risks associated with competition, see “Risk Factors” included elsewhere in this report.

## **Marketing**

We market the CDW brand to both national and local audiences using a variety of channels that include online, broadcast, print, social and other media. This promotion is supported by integrated communication efforts that target decision-makers, influencers and the general public using a combination of news releases, case studies, media interviews and speaking opportunities. We also market to current and prospective customers through integrated marketing programs that include behaviorally targeted email, print, online media, events and sponsorships, as well as broadcast media.

As a result of our relationships with our vendor partners, a significant portion of our advertising and marketing expenses are reimbursed through cooperative advertising reimbursement programs. These programs are at the discretion of our vendor partners and are typically tied to sales or purchasing volumes or other commitments to be met by us within a specified period of time. We believe that our national scale and analytical techniques that measure the efficacy of our marketing programs differentiate us from our competitors.

## **Coworkers**

As of December 31, 2013, we employed nearly 7,000 coworkers, none of whom is covered by collective bargaining agreements. We consider our coworker relations to be good.

## **Intellectual Property**

The CDW trademark and certain variations thereon are registered or subject to pending trademark applications in the U.S., Canada and certain other jurisdictions. We believe our trademarks have significant value and are important factors in our marketing programs. In addition, we own registrations for domain names, including cdw.com and cdwg.com, for certain of our primary trademarks. We also have unregistered copyrights in our website content.

## **Sponsors**

Madison Dearborn Partners, LLC is a leading private equity investment firm based in Chicago, Illinois that has raised over \$18 billion of equity capital. Since its formation in 1992, it has invested in approximately 125 companies across a broad spectrum of industries, including basic industries, business and government services, consumer, financial and transaction services, healthcare and telecom, media and technology services. Madison Dearborn's objective is to invest in companies in partnership with outstanding management teams to achieve significant long-term appreciation in equity value.

Providence Equity Partners L.L.C. ("Providence") is a leading global private equity firm focused on media, communications, education and information investments. Providence manages funds with \$39 billion of commitments and has invested in more than 130 companies over its 25-year history. Providence is headquartered in Providence, Rhode Island and has offices in New York, London, Hong Kong, Beijing and New Delhi. Providence's objective is to build extraordinary companies that will shape the future of the media, communications, education and information industries.

## **Item 1A. Risk Factors**

*There are many factors that affect our business and the results of operations, some of which are beyond our control. The following is a description of some important factors that may cause the actual results of operations in future periods to differ materially from those currently expected or desired.*

### **Risks Related to Our Business**

***General economic conditions could negatively affect technology spending by our customers and put downward pressure on prices, which may have an adverse impact on our business, results of operations or cash flows.***

Weak economic conditions generally, sustained uncertainty about global economic conditions, U.S. federal government spending cuts and the impact of new government programs, or a tightening of credit markets could cause our customers and potential customers to postpone or reduce spending on technology products or services or put downward pressure on prices, which could have an adverse effect on our business, results of operations or cash flows.

***Our financial performance could be adversely affected by decreases in spending on technology products and services by our Public segment customers.***

Our sales to our Public segment customers are impacted by government spending policies, budget priorities and revenue levels. Although our sales to the federal government are diversified across multiple agencies and departments, they collectively accounted for approximately 7% of 2013 net sales. An adverse change in government spending policies (including ongoing budget cuts at the federal level), budget priorities or revenue levels could cause our Public segment customers to reduce their purchases or to terminate or not renew their contracts with us, which could adversely affect our business, results of operations or cash flows. For example, in 2013, as a result of sequestration and related budget uncertainty and the partial shutdown of the federal government for 16 days, we experienced significantly reduced Federal sales in our Public segment.

***Our business depends on our vendor partner relationships and the availability of their products.***

We purchase products for resale from vendor partners, which include OEMs and software publishers, and wholesale distributors. For the year ended December 31, 2013, we purchased approximately 54% of the products we sold directly from vendor partners and the remaining amount from wholesale distributors. We are authorized by vendor partners to sell all or some of their products via direct marketing activities. Our authorization with each vendor partner is subject to specific terms and conditions regarding such things as sales channel restrictions, product return privileges, price protection policies, purchase discounts and vendor partner programs and funding, including purchase rebates, sales volume rebates, purchasing incentives and cooperative advertising reimbursements. However, we do not have any long-term contracts with our vendor partners and many of these arrangements are terminable upon notice by either party. A reduction in vendor partner programs or funding or our failure to timely react to changes in vendor partner programs or funding could have an adverse effect on our business, results of operations or cash flows. In addition, a reduction in the amount of credit granted to us by our vendor partners could increase our need for, and the cost of, working capital and could have an adverse effect on our business, results of operations or cash flows, particularly given our substantial indebtedness.

From time to time, vendor partners may terminate or limit our right to sell some or all of their products or change the terms and conditions or reduce or discontinue the incentives that they offer us. For example, there is no assurance that, as our vendor partners continue to sell directly to end users and through resellers, they will not limit or curtail the availability of their products to solutions providers like us. Any such termination or limitation or the implementation of such changes could have a negative impact on our business, results of operations or cash flows.

Although we purchase from a diverse vendor base, in 2013, products we purchased from distributors Tech Data, SYNEX and Ingram Micro represented 11%, 9% and 9%, respectively, of our total purchases. In addition, sales of Apple, Cisco, EMC, Hewlett-Packard, Lenovo and Microsoft products comprise a substantial portion of our sales, representing approximately 56% of net sales in 2013. Sales of products manufactured by Hewlett-Packard and Cisco represented approximately 20% and 14%, respectively, of our 2013 net sales. The loss of, or change in business relationship with, any of these or any other key vendor partners, the diminished availability of their products, or backlogs for their products leading to manufacturer allocation, could reduce the supply and increase the cost of products we sell and negatively impact our competitive position.

Additionally, the relocation of key distributors utilized in our purchasing model could increase our need for, and the cost of, working capital and have an adverse effect on our business, results of operations or cash flows. Further, the sale, spin-off or combination of any of our vendor partners and/or certain of their business units, including any such sale to or combination with a vendor with whom we do not currently have a commercial relationship or whose products we do not sell, could have an adverse impact on our business, results of operations or cash flows.

***Our sales are dependent on continued innovations in hardware, software and services offerings by our vendor partners and the competitiveness of their offerings, and our ability to partner with new and emerging technology providers.***

The technology industry is characterized by rapid innovation and the frequent introduction of new and enhanced hardware, software and services offerings, such as cloud-based solutions, including SaaS, IaaS and Platform as a Service ("PaaS"). We have been and will continue to be dependent on innovations in hardware, software and services offerings, as well as the acceptance of those innovations by customers. A decrease in the rate of innovation, or the lack of acceptance of innovations by customers, could have an adverse effect on our business, results of operations or cash flows.

In addition, if we are unable to keep up with changes in technology and new hardware, software and services offerings, for example by providing the appropriate training to our account managers, sales technology specialists and engineers to enable them to effectively sell and deliver such new offerings to customers, our business, results of operations or cash flows could be adversely affected.

We also are dependent upon our vendor partners for the development and marketing of hardware, software and services to compete effectively with hardware, software and services of vendors whose products and services we do not currently offer or that we are not authorized to offer in one or more customer channels. In addition, our success is dependent on our ability to develop relationships with and sell hardware, software and services from new emerging vendors and vendors that we have not historically represented in the marketplace. To the extent that a vendor's offering that is highly in demand is not available to us for resale in one or more customer channels, and there is not a competitive offering from another vendor that we are authorized to sell in such customer channels, or we are unable to develop relationships with new technology providers or companies that we have not historically represented, our business, results of operations or cash flows could be adversely impacted.

***Substantial competition could reduce our market share and significantly harm our financial performance.***

Our current competition includes:

- resellers, such as Dimension Data, ePlus, Insight Enterprises, PC Connection, PCM, Presidio, Softchoice, World Wide Technology and many smaller resellers;
- manufacturers who sell directly to customers, such as Dell, Hewlett-Packard and Apple;
- large service providers and system integrators, such as IBM, Accenture, Hewlett-Packard and Dell;
- e-tailers, such as Amazon, Newegg and TigerDirect.com;
- cloud providers, such as AT&T, Amazon Web Services and Box; and
- retailers (including their e-commerce activities), such as Staples and Office Depot.

We expect the competitive landscape in which we compete to continue to change as new technologies are developed. While innovation can help our business as it creates new offerings for us to sell, it can also disrupt our business model and create new and stronger competitors. For instance, technologies that deliver technology solutions as a service, such as cloud-based solutions, could increase the amount of sales directly to customers rather than through solutions providers like us, or could lead to a reduction in our profitability. In addition, some of our hardware and software vendor partners sell, and could intensify their efforts to sell, their products directly to our customers. Moreover, traditional OEMs have increased their services capabilities through mergers and acquisitions with service providers, which could potentially increase competition in the market to provide comprehensive technology solutions to customers. If any of these trends becomes more prevalent, it could adversely affect our business, results of operations or cash flows.

We focus on offering a high level of service to gain new customers and retain existing customers. To the extent we face increased competition to gain and retain customers, we may be required to reduce prices, increase advertising expenditures or take other actions which could adversely affect our business, results of operations or cash flows. Additionally, some of our competitors may reduce their prices in an attempt to stimulate sales, which may require us to reduce prices. This would require us to sell a greater number of products to achieve the same level of net sales and gross profit. If such a reduction in prices occurs and we are unable to attract new customers and sell increased quantities of products, our sales growth and profitability could be adversely affected.

***The success of our business depends on the continuing development, maintenance and operation of our information technology systems.***

Our success is dependent on the accuracy, proper utilization and continuing development of our information technology systems, including our business systems, such as our sales, customer management, financial and accounting, marketing, purchasing, warehouse management, e-commerce and mobile systems, as well as our operational platforms, including voice and data networks and power systems. The quality and our utilization of the information generated by our information technology systems, and our success in implementing new systems and upgrades, affects, among other things, our ability to:

- conduct business with our customers, including delivering services and solutions to them;
- manage our inventory and accounts receivable;
- purchase, sell, ship and invoice our hardware and software products and provide and invoice our services efficiently and on a timely basis; and



- maintain our cost-efficient operating model while scaling our business.

The integrity of our information technology systems is vulnerable to disruption due to forces beyond our control. While we have taken steps to protect our information technology systems from a variety of threats, including computer viruses, malware, phishing, social engineering, unauthorized access and other malicious attacks, both internal and external, and human error, there can be no guarantee that those steps will be effective. Furthermore, although we have redundant systems at a separate location to back up our primary systems, there can be no assurance that these redundant systems will operate properly if and when required. Any disruption to or infiltration of our information technology systems could significantly harm our business and results of operations.

***Breaches of data security could adversely impact our business.***

Our business involves the storage and transmission of proprietary information and sensitive or confidential data, including personal information of coworkers, customers and others. In addition, we operate data centers for our customers which host their technology infrastructure and may store and transmit both business-critical data and confidential information. In connection with our services business, our coworkers also have access to our customers' confidential data and other information. We have privacy and data security policies in place that are designed to prevent security breaches; however, as newer technologies evolve, we could be exposed to increased risk of breaches in security. Breaches in security could expose us, our customers or other individuals to a risk of public disclosure, loss or misuse of this information, resulting in legal claims or proceedings, liability or regulatory penalties under laws protecting the privacy of personal information, as well as the loss of existing or potential customers and damage to our brand and reputation. In addition, the cost and operational consequences of implementing further data protection measures could be significant. Such breaches, costs and consequences could adversely affect our business, results of operations or cash flows.

***The failure to comply with our Public segment contracts or applicable laws and regulations could result in, among other things, termination, fines or other liabilities, and changes in procurement regulations could adversely impact our business, results of operations or cash flows.***

Revenues from our Public segment customers are derived from sales to governmental departments and agencies, educational institutions and healthcare customers, through various contracts and open market sales of products and services. Sales to Public segment customers are highly regulated. Noncompliance with contract provisions, government procurement regulations or other applicable laws or regulations (including but not limited to the False Claims Act and the Medicare and Medicaid Anti-Kickback Statute) could result in civil, criminal and administrative liability, including substantial monetary fines or damages, termination of government contracts or other Public segment customer contracts, and suspension, debarment or ineligibility from doing business with the government and other customers in the Public segment. In addition, generally contracts in the Public segment are terminable at any time for convenience of the contracting agency or group purchasing organization ("GPO") or upon default. Furthermore, our inability to enter into or retain contracts with GPOs may threaten our ability to sell to customers in those GPOs and compete. The effect of any of these possible actions could adversely affect our business, results of operations or cash flows. In addition, the adoption of new or modified procurement regulations and other requirements may increase our compliance costs and reduce our gross margins, which could have a negative effect on our business, results of operations or cash flows.

***If we fail to provide high-quality services to our customers, or if our third-party service providers fail to provide high-quality services to our customers, our reputation, business, results of operations or cash flows could be adversely affected.***

Our service offerings include field services, managed services, warranties, configuration services, partner services and telecom services. Additionally, we deliver and manage mission critical software, systems and network solutions for our customers. We also offer certain services, such as implementation and installation services and repair services, to our customers through various third-party service providers engaged to perform these services on our behalf. If we or our third-party service providers fail to provide high quality services to our customers or such services result in a disruption of our customers' businesses, this could, among other things, result in legal claims and proceedings and liability. Moreover, as we expand our services and solutions business, we may be exposed to additional operational, regulatory and other risks. We also could incur liability for failure to comply with the rules and regulations applicable to the new services and solutions we provide to our customers. If any of the foregoing were to occur, our reputation with our customers, our brand and our business, results of operations or cash flows could be adversely affected.

***If we lose any of our key personnel, or are unable to attract and retain the talent required for our business, our business could be disrupted and our financial performance could suffer.***

Our success is heavily dependent upon our ability to attract, develop, engage and retain key personnel to manage and grow our business, including our key executive, management, sales, services and technical coworkers.

Our future success will depend to a significant extent on the efforts of Thomas E. Richards, our Chairman and Chief Executive Officer, as well as the continued service and support of our other executive officers. Our future success also will depend on our ability to retain our customer-facing coworkers, who have been given critical CDW knowledge regarding, and the opportunity to develop strong relationships with, many of our customers. In addition, as we seek to expand our offerings of value-added services and solutions, our success will even more heavily depend on attracting and retaining highly skilled technology specialists and engineers, for whom the market is extremely competitive.

Our inability to attract, develop and retain key personnel could have an adverse effect on our relationships with our vendor partners and customers and adversely affect our ability to expand our offerings of value-added services and solutions. Moreover, our inability to train our sales, services and technical personnel effectively to meet the rapidly changing technology needs of our customers could cause a decrease in the overall quality and efficiency of such personnel. Such consequences could adversely affect our business, results of operations or cash flows.

***The interruption of the flow of products from suppliers could disrupt our supply chain.***

A significant portion of the products we sell are manufactured or purchased by our vendor partners outside of the U.S., primarily in Asia. Political, social or economic instability in Asia, or in other regions in which our vendor partners purchase or manufacture the products we sell, could cause disruptions in trade, including exports to the U.S. Other events that could also cause disruptions to our supply chain include:

- the imposition of additional trade law provisions or regulations;
- the imposition of additional duties, tariffs and other charges on imports and exports;
- foreign currency fluctuations;
- natural disasters or other adverse occurrences at, or affecting, any of our suppliers' facilities;
- restrictions on the transfer of funds;
- the financial instability or bankruptcy of manufacturers; and
- significant labor disputes, such as strikes.

We cannot predict whether the countries in which the products we sell are purchased or manufactured, or may be purchased or manufactured in the future, will be subject to new or additional trade restrictions or sanctions imposed by the U.S. or foreign governments, including the likelihood, type or effect of any such restrictions. Trade restrictions, including new or increased tariffs or quotas, embargoes, sanctions, safeguards and customs restrictions against the products we sell, as well as foreign labor strikes and work stoppages or boycotts, could increase the cost or reduce the supply of product available to us and adversely affect our business, results of operations or cash flows.

***A natural disaster or other adverse occurrence at one of our primary facilities or customer data centers could damage our business.***

Substantially all of our corporate, warehouse and distribution functions are located at our Vernon Hills, Illinois facilities and our second distribution center in North Las Vegas, Nevada. If the warehouse and distribution equipment at one of our distribution centers were to be seriously damaged by a natural disaster or other adverse occurrence, we could utilize the other distribution center or third-party distributors to ship products to our customers. However, this may not be sufficient to avoid interruptions in our service and may not enable us to meet all of the needs of our customers and would cause us to incur incremental operating costs. In addition, we operate three customer data centers and numerous sales offices which may contain both business-critical data and confidential information of our customers. A natural disaster or other adverse occurrence at any of the customer data centers or at any of our major sales offices could negatively impact our business, results of operations or cash flows.

***We are heavily dependent on commercial delivery services.***

We generally ship hardware products to our customers by FedEx, United Parcel Service and other commercial delivery services and invoice customers for delivery charges. If we are unable to pass on to our customers future increases in the cost of commercial delivery services, our profitability could be adversely affected. Additionally, strikes, inclement weather, natural disasters or other service interruptions by such shippers could adversely affect our ability to deliver products on a timely basis.

***We are exposed to accounts receivable and inventory risks.***

We extend credit to our customers for a significant portion of our net sales, typically on 30-day payment terms. We are subject to the risk that our customers may not pay for the products they have purchased, or may pay at a slower rate than we have historically experienced, the risk of which is heightened during periods of economic downturn or uncertainty or, in the case of Public segment customers, during periods of budget constraints.

We are also exposed to inventory risks as a result of the rapid technological changes that affect the market and pricing for the products we sell. We seek to minimize our inventory exposure through a variety of inventory management procedures and policies, including our rapid-turn inventory model, as well as vendor price protection and product return programs. However, if we were unable to maintain our rapid-turn inventory model, if there were unforeseen product developments that created more rapid obsolescence or if our vendor partners were to change their terms and conditions, our inventory risks could increase. We also from time to time take advantage of cost savings associated with certain opportunistic bulk inventory purchases offered by our vendor partners or we may decide to carry high inventory levels of certain products that have limited or no return privileges due to customer demand or request. These bulk purchases could increase our exposure to inventory obsolescence.

***We could be exposed to additional risks if we make acquisitions or enter into alliances.***

We may pursue transactions, including acquisitions or alliances, in an effort to extend or complement our existing business. These types of transactions involve numerous business risks, including finding suitable transaction partners and negotiating terms that are acceptable to us, the diversion of management's attention from other business concerns, extending our product or service offerings into areas in which we have limited experience, entering into new geographic markets, the potential loss of key coworkers or business relationships and successfully integrating acquired businesses, any of which could adversely affect our operations.

In addition, our financial results could be adversely affected by financial adjustments required by accounting principles generally accepted in the United States of America ("GAAP") in connection with these types of transactions where significant goodwill or intangible assets are recorded. To the extent the value of goodwill or identifiable intangible assets with indefinite lives becomes impaired, we may be required to incur material charges relating to the impairment of those assets.

***Our future operating results may fluctuate significantly.***

We may experience significant variations in our future quarterly results of operations. These fluctuations may cause the market price of our common stock to be volatile and may result from many factors, including the condition of the technology industry in general, shifts in demand and pricing for hardware, software and services and the introduction of new products or upgrades.

Our operating results are also highly dependent on our level of gross profit as a percentage of net sales. Our gross profit percentage fluctuates due to numerous factors, some of which may be outside of our control, including general macroeconomic conditions; pricing pressures; changes in product costs from our vendor partners; the availability of price protection, purchase discounts and incentive programs from our vendor partners; changes in product, order size and customer mix; the risk of some items in our inventory becoming obsolete; increases in delivery costs that we cannot pass on to customers; and general market and competitive conditions.

In addition, our cost structure is based, in part, on anticipated sales and gross margins. Therefore, we may not be able to adjust our cost structure quickly enough to compensate for any unexpected sales or gross margin shortfall, and any such inability could have an adverse effect on our business, results of operations or cash flows.

***We are exposed to risks from legal proceedings and audits.***

We are party to various legal proceedings that arise in the ordinary course of our business, which include commercial, employment, tort and other litigation.

We are subject to intellectual property infringement claims against us in the ordinary course of our business, either because of the products and services we sell or the business systems and processes we use to sell such products and services, in the form of cease-and-desist letters, licensing inquiries, lawsuits and other communications and demands. In our industry, such intellectual property claims have become more frequent as the complexity of technological products and the intensity of competition in our industry have increased. Increasingly, many of these assertions are brought by non-practicing entities whose principal business model is to secure patent licensing revenue, but we may also be subject to suits from inventors, competitors or other patent holders who may seek licensing revenue, lost profits and/or an injunction preventing us from engaging in certain activities, including selling certain products and services.

Because of our significant sales to governmental entities, we also are subject to audits by federal, state and local authorities. We also are subject to audits by various vendor partners and large customers, including government agencies, relating to purchases and sales under various contracts. In addition, we are subject to indemnification claims under various contracts.

Current and future litigation, infringement claims, governmental proceedings, audits or indemnification claims that we face may result in substantial costs and expenses and significantly divert the attention of our management regardless of the outcome. In addition, current and future litigation, infringement claims, governmental proceedings, audits or indemnification claims could lead to increased costs or interruptions of our normal business operations. Litigation, infringement claims, governmental proceedings, audits or indemnification claims involve uncertainties and the eventual outcome of any litigation, infringement claim, governmental proceeding, audit or indemnification claim could adversely affect our business, results of operations or cash flows.

***We have significant deferred cancellation of debt income.***

As a result of a 2009 debt modification, we realized \$395.5 million of cancellation of debt income (“CODI”). We made an election under Code Section 108(i) to defer this CODI from taxable income, pursuant to which we are also required to defer certain original issue discount (“OID”) deductions as they accrue. As of December 31, 2013, we had already deferred approximately \$114.5 million of OID deductions. Starting in 2014, we will be required to include the deferred CODI into taxable income ratably over a five-year period ending in 2018. During this same period, we will also be permitted to benefit from our deferred OID deductions. Because we have more CODI than the aggregate of our deferred and unaccrued OID on the relevant remaining debt instruments, we will have a future cash tax liability associated with our significant deferred CODI. We have reflected the associated cash tax liability in our deferred taxes for financial accounting purposes.

All of our deferred CODI will be accelerated into current taxable income if, prior to 2018, we engage in a so-called “impairment transaction” and the gross value of our assets immediately afterward is less than 110% of the sum of our total liabilities and the tax on the net amount of our deferred CODI and OID (the “110% test”) as determined under the applicable Treasury Regulations. An “impairment transaction” is any transaction that impairs our ability to pay the tax on our deferred CODI, and includes dividends or distributions with respect to our equity and charitable contributions, in each case in a manner that is not consistent with our historical practice within the meaning of the applicable Treasury Regulations.

Prior to 2018, our willingness to pay dividends or make distributions with respect to our equity could be adversely affected if, at the time, we do not meet the 110% test and, as a result, the payment of a dividend or the making of a distribution would accelerate the tax payable with respect to our deferred CODI. We believe that, based on our interpretation of applicable Treasury Regulations, the gross value of our assets exceeds 110% of the sum of our total liabilities and the tax on the net amount of our deferred CODI and OID as of the filing date of this Annual Report on Form 10-K. However, we cannot assure you that this will continue to be true in the future.

**Risks Related to Our Indebtedness**

***We have a substantial amount of indebtedness, which could have important consequences to our business.***

We have a substantial amount of indebtedness. As of December 31, 2013, we had \$3.3 billion of total long-term debt outstanding, as defined by GAAP, and \$256.6 million of obligations outstanding under our inventory financing agreements, and the ability to borrow an additional \$641.1 million under our senior secured asset-based revolving credit facility (the “Revolving Loan”). Our substantial indebtedness could have important consequences, including the following:

- making it more difficult for us to satisfy our obligations with respect to our indebtedness;
- requiring us to dedicate a substantial portion of our cash flow from operations to debt service payments on our and our subsidiaries' debt, which reduces the funds available for working capital, capital expenditures, acquisitions and other general corporate purposes;
- requiring us to comply with restrictive covenants in our senior credit facilities and indentures, which limit the manner in which we conduct our business;
- making it more difficult for us to obtain vendor financing from our vendor partners;
- limiting our flexibility in planning for, or reacting to, changes in the industry in which we operate;
- placing us at a competitive disadvantage compared to any of our less-leveraged competitors;

- increasing our vulnerability to both general and industry-specific adverse economic conditions; and
- limiting our ability to obtain additional debt or equity financing to fund future working capital, capital expenditures, acquisitions or other general corporate requirements and increasing our cost of borrowing.

***Restrictive covenants under our senior credit facilities and indentures may adversely affect our operations and liquidity.***

Our senior credit facilities and our indentures contain, and any future indebtedness of ours may contain, various covenants that limit our ability to, among other things:

- incur or guarantee additional debt;
- pay dividends or make distributions to holders of our capital stock or to make certain other restricted payments or investments;
- repurchase or redeem capital stock;
- make loans, capital expenditures or investments or acquisitions;
- receive dividends or other payments from our subsidiaries;
- enter into transactions with affiliates;
- create liens;
- merge or consolidate with other companies or transfer all or substantially all of our assets;
- transfer or sell assets, including capital stock of subsidiaries; and
- prepay, repurchase or redeem debt.

As a result of these covenants, we are limited in the manner in which we conduct our business and we may be unable to engage in favorable business activities or finance future operations or capital needs. A breach of any of these covenants or any of the other restrictive covenants would result in a default under our senior credit facilities. Upon the occurrence of an event of default under our senior credit facilities, the lenders:

- will not be required to lend any additional amounts to us;
- could elect to declare all borrowings outstanding thereunder, together with accrued and unpaid interest and fees, to be due and payable;
- could require us to apply all of our available cash to repay these borrowings; or
- could prevent us from making payments on our senior subordinated notes due 2017;
- any of which could result in an event of default under the indentures.

If we were unable to repay those amounts, the lenders under our senior credit facilities could proceed against the collateral granted to them to secure our borrowings thereunder. We have pledged a significant portion of our assets as collateral under our senior credit facilities and our senior secured notes due 2018. If the lenders under our senior credit facilities or the holders of our senior secured notes due 2018 accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay our senior credit facilities and our other indebtedness or the ability to borrow sufficient funds to refinance such indebtedness. Even if we were able to obtain new financing, it may not be on commercially reasonable terms, or terms that are acceptable to us.

In addition, under our Revolving Loan, we are permitted to borrow an aggregate amount of up to \$900 million; however, our ability to borrow under our Revolving Loan is limited by a borrowing base and a liquidity condition. The borrowing base at any time equals the sum of up to 85% of CDW LLC and its subsidiary guarantors' eligible accounts receivable (net of accounts reserves) (up to 30% of such eligible accounts receivable which can consist of federal government accounts receivable) plus the lesser of (i) 70% of CDW LLC and its subsidiary guarantors' eligible inventory (valued at cost and net of inventory reserves) and (ii) the product of 85% multiplied by the net orderly liquidation value percentage multiplied by eligible inventory (valued at cost and net of inventory reserves), less reserves (other than accounts reserves and inventory reserves). The borrowing base in effect as of December 31, 2013 was \$1,065.5 million.

Our ability to borrow under our Revolving Loan is also limited by a minimum liquidity condition, which provides that, if excess cash availability is less than the lesser of (i) \$90 million or (ii) the greater of (A) 10% of the borrowing base or (B) \$60 million, the lenders are not required to lend any additional amounts under our Revolving Loan unless the consolidated fixed charge coverage ratio (as defined in the credit agreement for our Revolving Loan) is at least 1.0 to 1.0. Moreover, our Revolving Loan provides discretion to the agent bank acting on behalf of the lenders to impose additional availability reserves, which could materially impair the amount of borrowings that would otherwise be available to us. We cannot assure you that the agent bank will not impose such reserves or, were it to do so, that the resulting impact of this action would not materially and adversely impair our liquidity.

***We will be required to generate sufficient cash to service our indebtedness and, if not successful, we may be forced to take other actions to satisfy our obligations under our indebtedness.***

Our ability to make scheduled payments on or to refinance our debt obligations depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. Our outstanding long-term debt will impose significant cash interest payment obligations on us in 2014 and subsequent years and, accordingly, we will have to generate significant cash flow from operating activities to fund our debt service obligations. We cannot assure you that we will maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations-Liquidity and Capital Resources” included elsewhere in this report.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional debt or equity capital, restructure or refinance our indebtedness, or revise or delay our strategic plan. We cannot assure you that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or satisfy our capital requirements, or that these actions would be permitted under the terms of our existing or future debt agreements, including our senior credit facilities and indentures. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. Our senior credit facilities and indentures restrict our ability to dispose of assets and use the proceeds from the disposition. We may not be able to consummate those dispositions or to obtain the proceeds which we could realize from them and these proceeds may not be adequate to meet any debt service obligations then due. Furthermore, the Sponsors have no obligation to provide us with debt or equity financing.

If we cannot make scheduled payments on our debt, we will be in default and, as a result:

- our debt holders could declare all outstanding principal and interest to be due and payable;
- the lenders under our senior credit facilities could foreclose against the assets securing the borrowings from them and the lenders under our term loan facility could terminate their commitments to lend us money; and
- we could be forced into bankruptcy or liquidation.

***Despite our indebtedness levels, we and our subsidiaries may be able to incur substantially more debt, including secured debt. This could further increase the risks associated with our leverage.***

We and our subsidiaries may be able to incur substantial additional indebtedness in the future. The terms of our senior credit facilities and indentures do not fully prohibit us or our subsidiaries from doing so. To the extent that we incur additional indebtedness or such other obligations, the risks associated with our substantial indebtedness described above, including our possible inability to service our debt, will increase. As of December 31, 2013, we had approximately \$641.1 million available for additional borrowing under our Revolving Loan after taking into account borrowing base limitations (net of \$2.2 million of issued and undrawn letters of credit and \$256.7 million of reserves related to our floorplan sub-facility).

***Variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.***

Certain of our borrowings, primarily borrowings under our senior credit facilities, are at variable rates of interest and expose us to interest rate risk. As of December 31, 2013, we had \$1,528.9 million of variable rate debt outstanding. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income would decrease. Although we have entered into interest rate cap agreements on our term loan facility to reduce interest rate volatility, we cannot assure you we will be able to do so in the future on acceptable terms or that such caps or the caps we have in place now will be effective.

## **Risks Related to Ownership of Our Common Stock**

***Our common stock price may be volatile and may decline regardless of our operating performance, and holders of our common stock could lose a significant portion of their investment.***

The market price for our common stock may be volatile. Our stockholders may not be able to resell their shares of common stock at or above the price at which they purchased such shares, due to fluctuations in the market price of our common stock, which may be caused by a number of factors, many of which we cannot control, including the risk factors described in this Annual Report on Form 10-K and the following:

- changes in financial estimates by any securities analysts who follow our common stock, our failure to meet these estimates or failure of securities analysts to initiate or maintain coverage of our common stock;
- downgrades by any securities analysts who follow our common stock;
- future sales of our common stock by our officers, directors and significant stockholders, including the Sponsors;
- market conditions or trends in our industry or the economy as a whole;
- investors' perceptions of our prospects;
- announcements by us or our competitors of significant contracts, acquisitions, joint ventures or capital commitments;
- changes in key personnel; and
- our limited public float in light of the Sponsors' beneficial ownership of a majority of our common stock, which may result in the trading of relatively small quantities of shares by our stockholders having a disproportionate positive or negative influence on the market price of our common stock.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies, including companies in our industry. In the past, securities class action litigation has followed periods of market volatility. If we were involved in securities litigation, we could incur substantial costs, and our resources and the attention of management could be diverted from our business.

***The Sponsors have the ability to control significant corporate activities and their interests may not align with yours.***

The Sponsors beneficially own approximately 63.7% of our common stock as of February 28, 2014. As a result of their ownership, the Sponsors, so long as they hold a majority of our outstanding common stock, will have the ability to control the outcome of matters submitted to a vote of stockholders and, through our board of directors, the ability to control decision-making with respect to our business direction and policies. Matters over which the Sponsors will, directly or indirectly, exercise control include:

- the election of our board of directors and the appointment and removal of our officers;
- mergers and other business combination transactions, including proposed transactions that would result in our stockholders receiving a premium price for their shares;
- other acquisitions or dispositions of businesses or assets;
- incurrence of indebtedness and the issuance of equity securities;
- repurchase of stock and payment of dividends; and
- the issuance of shares to management under our equity incentive plans.

Even if the Sponsors' ownership of our shares falls below a majority, they may continue to be able to strongly influence or effectively control our decisions. Under our amended and restated certificate of incorporation, the Sponsors and their affiliates do not have any obligation to present to us, and the Sponsors may separately pursue, corporate opportunities of which they become aware, even if those opportunities are ones that we would have pursued if granted the opportunity.

***Future sales of our common stock, or the perception in the public markets that these sales may occur, may depress our stock price.***

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could adversely affect the price of our common stock and could impair our ability to raise capital through the sale of additional shares. As of February 28, 2014, there were 171,954,277 shares of our common stock outstanding. The shares of our common stock sold in our initial public offering and secondary offering in 2013 are freely tradable without restriction under the Securities Act of 1933, as amended (the “Securities Act”), except that any shares of our common stock that may be acquired by our directors, executive officers and other affiliates may be sold only in compliance with certain volume limitations and other restrictions of Rule 144 of the Securities Act.

The remaining shares of our common stock, to the extent not previously sold pursuant to an exemption from registration, will continue to be “restricted shares” within the meaning of Rule 144 of the Securities Act and subject to certain restrictions on resale. Restricted shares may be sold in the public market only if they are registered under the Securities Act or are sold pursuant to an exemption from registration such as Rule 144 or Rule 701 under the Securities Act.

As of February 28, 2014, approximately 119,000,000 shares of our common stock will continue to have the right to require us to register the sales of their shares under the Securities Act, under the terms of an agreement between us and the holders of these securities.

In the future, we may also issue our securities in connection with investments or acquisitions. The number of shares of our common stock issued in connection with an investment or acquisition could constitute a material portion of our then-outstanding shares of our common stock.

***Anti-takeover provisions in our charter documents and Delaware law might discourage or delay acquisition attempts for us that you might consider favorable.***

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may make the acquisition of the Company more difficult without the approval of our board of directors. These provisions:

- authorize the issuance of undesignated preferred stock, the terms of which may be established and the shares of which may be issued without stockholder approval, and which may include super voting, special approval, dividend, or other rights or preferences superior to the rights of the holders of common stock;
- establish a classified board of directors so that not all members of our board of directors are elected at one time;
- generally prohibit stockholder action by written consent, requiring all stockholder actions be taken at a meeting of our stockholders, except that any action required or permitted to be taken by our stockholders may be effected by written consent until such time as the Sponsors cease to beneficially own 50% or more of our common stock;
- provide that special meetings of the stockholders can only be called by or at the direction of (i) our board of directors pursuant to a written resolution adopted by the affirmative vote of the majority of the total number of directors that the Company would have if there were no vacancies or (ii) until such time as the Sponsors cease to beneficially own 50% or more of our common stock (a) the chairman or vice chairman of our board of directors, (b) our chief executive officer, (c) a majority of our board of directors through a special resolution or (d) the holders of at least 10% of our common stock;
- establish advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings; and
- provide that our board of directors is expressly authorized to make, alter or repeal our amended and restated bylaws.

Our amended and restated certificate of incorporation also contains a provision that provides us with protections similar to Section 203 of the Delaware General Corporation Law, and will prevent us from engaging in a business combination with a person who acquires at least 15% of our common stock for a period of three years from the date such person acquired such common stock, unless board or stockholder approval is obtained prior to the acquisition. These anti-takeover provisions and other provisions under Delaware law could discourage, delay or prevent a transaction involving a change in control of the Company, even if doing so would benefit our stockholders. These provisions could also discourage proxy contests and make it more difficult for our stockholders to elect directors of their choosing and to cause us to take other corporate actions our stockholders desire.



***Conflicts of interest may arise because some of our directors are principals of our largest stockholders.***

Paul Finnegan and Robin Selati, who are principals of Madison Dearborn, and Glenn Creamer and Michael Dominguez, who are managing directors of Providence Equity, serve on our board of directors. As of February 28, 2014, the Sponsors continue to hold a majority of our outstanding common stock. The Sponsors and the entities respectively controlled by them may hold equity interests in entities that directly or indirectly compete with us, and companies in which they currently invest may begin competing with us. As a result of these relationships, when conflicts arise between the interests of Madison Dearborn or Providence Equity, on the one hand, and of other stockholders, on the other hand, these directors may not be disinterested. Although our directors and officers have a duty of loyalty to us under Delaware law and our amended and restated certificate of incorporation, transactions that we enter into in which a director or officer has a conflict of interest are generally permissible so long as (1) the material facts relating to the director's or officer's relationship or interest as to the transaction are disclosed to our board of directors and a majority of our disinterested directors approves the transaction, (2) the material facts relating to the director's or officer's relationship or interest as to the transaction are disclosed to our stockholders and a majority of our disinterested stockholders approve the transaction or (3) the transaction is otherwise fair to us. Our amended and restated certificate of incorporation also provides that any principal, officer, member, manager and/or employee of a Sponsor or any entity that controls, is controlled by or under common control with a Sponsor (other than us or any company that is controlled by us) or a Sponsor-managed investment fund will not be required to offer any transaction opportunity of which they become aware to us and could take any such opportunity for themselves or offer it to other companies in which they have an investment, unless such opportunity is offered to them solely in their capacities as our directors.

***We cannot assure you that we will continue to pay dividends on our common stock, and our indebtedness and certain tax considerations could limit our ability to continue to pay dividends on our common stock. If we do not continue to pay dividends, you may not receive any return on investment unless you are able to sell your common stock for a price greater than your purchase price.***

In each of the fourth quarter of 2013 and the first quarter of 2014, our board of directors declared a quarterly cash dividend of \$0.0425 per share of common stock. We expect to continue to pay a cash dividend on our common stock of \$0.0425 per share per quarter, or \$0.17 per share per annum. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend upon our results of operations, financial condition, business prospects, capital requirements, contractual restrictions, including those under our senior credit facilities and indentures, any potential indebtedness we may incur, restrictions imposed by applicable law, tax considerations and other factors our board of directors deems relevant. There can be no assurance that we will continue to pay a dividend at the current rate or at all. Accordingly, if we do not pay dividends in the future, realization of a gain on your investment will depend entirely on the appreciation of the price of our common stock, which may never occur. See “-Risks Related to Our Business-We have significant deferred cancellation of debt income” for a discussion of certain tax considerations that could affect our willingness to pay dividends in the future.

***We are a holding company and rely on dividends, distributions and other payments, advances and transfers of funds from our subsidiaries to meet our obligations.***

We are a holding company that does not conduct any business operations of our own. As a result, we are largely dependent upon cash dividends and distributions and other transfers from our subsidiaries to meet our obligations. The agreements governing the indebtedness of our subsidiaries impose restrictions on our subsidiaries' ability to pay dividends or other distributions to us. The deterioration of the earnings from, or other available assets of, our subsidiaries for any reason could also limit or impair their ability to pay dividends or other distributions to us.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

As of December 31, 2013, we owned or leased a total of approximately 2.0 million square feet of space throughout the U.S. and Canada. We own two properties: a combined office and an approximately 450,000 square foot distribution center in Vernon Hills, Illinois, and an approximately 513,000 square foot distribution center in North Las Vegas, Nevada. In addition, we conduct sales, services and administrative activities in various leased locations throughout the U.S. and Canada, including data centers in Madison, Wisconsin and Minneapolis, Minnesota.

We believe that our facilities are well maintained, suitable for our business and occupy sufficient space to meet our operating needs. As part of our normal business, we regularly evaluate sales center performance and site suitability. Leases

covering our currently occupied leased properties expire at varying dates, generally within the next ten years. We anticipate no difficulty in retaining occupancy through lease renewals, month-to-month occupancy or replacing the leased properties with equivalent properties. We believe that suitable additional or substitute leased properties will be available as required.

### **Item 3. Legal Proceedings**

We are party to various legal proceedings that arise in the ordinary course of our business, which include commercial, intellectual property, employment, tort and other litigation matters. We are also subject to audit by federal, state and local authorities, and by various partners and large customers, including government agencies, relating to purchases and sales under various contracts. In addition, we are subject to indemnification claims under various contracts. From time to time, certain of our customers file voluntary petitions for reorganization or liquidation under the U.S. bankruptcy laws. In such cases, certain pre-petition payments received by us could be considered preference items and subject to return to the bankruptcy administrator.

As of December 31, 2013, we do not believe that there is a reasonable possibility that any material loss exceeding the amounts already recognized for these proceedings and matters, if any, has been incurred. However, the ultimate resolutions of these proceedings and matters are inherently unpredictable. As such, our financial condition and results of operations could be adversely affected in any particular period by the unfavorable resolution of one or more of these proceedings or matters.

We previously filed a claim as part of a class action settlement in a case alleging price fixing during the period of January 1, 1996 through December 31, 2006, by certain manufacturers of thin-film liquid crystal display panels. On July 13, 2013, the United States District Court for the Northern District of California approved distribution of the settlement proceeds, including a net payment to us of \$10.4 million after fees and expenses. We have recognized a pre-tax benefit of \$10.4 million within selling and administrative expenses in the consolidated statement of operations for the year ended December 31, 2013. The first of two settlement payments was received by us on July 29, 2013 in the amount of \$8.5 million. The balance of \$1.9 million was received in February 2014.

### **Item 4. Mine Safety Disclosures**

Not applicable.

## Executive Officers

Name	Age	Position
Thomas E. Richards	59	Chairman, President and Chief Executive Officer, and Director
Dennis G. Berger	49	Senior Vice President and Chief Coworker Services Officer
Neal J. Campbell	52	Senior Vice President and Chief Marketing Officer
Christina M. Corley	46	Senior Vice President - Corporate Sales
Douglas E. Eckrote	49	Senior Vice President - Strategic Solutions and Services
Christine A. Leahy	49	Senior Vice President, General Counsel and Corporate Secretary
Christina V. Rother	50	Senior Vice President - Public and Advanced Technology Sales
Jonathan J. Stevens	44	Senior Vice President - Operations and Chief Information Officer
Matthew A. Troka	43	Senior Vice President - Product and Partner Management
Ann E. Ziegler	55	Senior Vice President and Chief Financial Officer

**Thomas E. Richards** serves as our Chairman, President and Chief Executive Officer, as a member of our board of directors and as a manager of CDW LLC. From October 2011 to December 31, 2012, Mr. Richards served as our Chief Executive Officer. From September 2009 to October 2011, Mr. Richards served as our President and Chief Operating Officer. Prior to joining CDW, Mr. Richards held leadership positions with Qwest Communications, a telecommunications carrier. From 2008 to 2009, he served as Executive Vice President and Chief Operating Officer, where he was responsible for the day-to-day operation and performance of Qwest Communications, and before assuming that role, was the Executive Vice President of the Business Markets Group from 2005 to 2008. Mr. Richards also has served as Chairman and Chief Executive Officer of Clear Communications Corporation and as Executive Vice President of Ameritech Corporation. He currently serves as a board member of Junior Achievement of Chicago, Rush University Medical Center and the University of Pittsburgh. Mr. Richards is also a member of the Economic Club of Chicago and the Executives' Club of Chicago. Mr. Richards is a graduate of the University of Pittsburgh where he earned a bachelor's degree and a graduate of Massachusetts Institute of Technology where he earned a Master of Science in Management as a Sloan Fellow. As a result of these and other professional experiences, Mr. Richards possesses particular knowledge and experience in technology industries, strategic planning and leadership of complex organizations that strengthen the board's collective qualifications, skills and experience.

**Dennis G. Berger** serves as our Senior Vice President and Chief Coworker Services Officer. Mr. Berger joined CDW in September 2005 as Vice President-Coworker Services. In January 2007, he was named Senior Vice President and Chief Coworker Services Officer. Mr. Berger is responsible for leading CDW's programs in coworker learning and development, benefits, compensation, performance management, coworker relations and talent acquisition. Prior to joining CDW, he served as Vice President of Human Resources at PepsiAmericas, a beverage company, from 2002 to 2005. Mr. Berger has also held human resources positions of increasing responsibility at Pepsi Bottling Group, Inc., PepsiCo, Inc. and GTE Corporation. Mr. Berger serves on the board of directors of Glenwood Academy, Anti-Defamation League of Chicago and Skills for Chicagoland's Future. Mr. Berger is a graduate of Northeastern University where he earned a bachelor's degree and a graduate of John M. Olin School of Business at Washington University in St. Louis where he earned a Master of Business Administration.

**Neal J. Campbell** serves as our Senior Vice President and Chief Marketing Officer. Mr. Campbell joined CDW in January 2011, and is responsible for the strategy and development of CDW's advertising, public relations, channel marketing, marketing intelligence and research, merchandising, microsites, creative services and direct marketing content, along with relationship marketing, corporate communications and e-commerce initiatives including content development, online marketing and e-procurement. Prior to joining CDW, Mr. Campbell served as Chief Executive Officer of TrafficCast, a provider of real-time and predictive traffic information to Google, Yahoo and others from 2008 to 2011. From 2006 to 2008, he served as Executive Vice President and General Manager-Strategic Marketing and Next Generation Products for ISCO International, a manufacturer of wireless telecommunications components. Mr. Campbell also spent 17 years with Motorola, most recently as Vice President and General Manager, GSM Portfolio Marketing and Planning for the company's mobile device business. He currently serves as a board member of TrafficCast and Junior Achievement of Chicago, and is on the Executive Advisory Council of Bradley University. Mr. Campbell is a graduate of Bradley University where he earned a bachelor's degree and a graduate of Northwestern University's Kellogg School of Management where he earned a Master of Business Administration.

**Christina M. Corley** serves as our Senior Vice President of Corporate Sales and is responsible for managing all aspects of our corporate sales force, including sales force strategy, structure, goals, operations, revenue generation and training and development. Prior to joining CDW in September 2011, Ms. Corley served as President and Chief Operating Officer of Zones, Inc., a provider of IT products and solutions, from 2006 to 2011. She served as Executive Vice President of Purchasing

and Operations for Zones, Inc. from April 2005 to October 2006. She served as President of Corporate PC Source (“CPCS”), a wholly owned subsidiary of Zones, Inc., from March 2003 to April 2005. Prior to its acquisition by Zones, Inc., Ms. Corley served as Chief Executive Officer of CPCS from 1999 to 2003. Ms. Corley began her career in sales and marketing, holding various positions at IBM, Dataflex and VisionTek. She currently serves as a board member of the Boys and Girls Club of Chicago. Ms. Corley is a graduate of the University of Illinois at Urbana-Champaign where she earned a bachelor’s degree and a graduate of Northwestern University’s Kellogg School of Management where she earned a Master of Business Administration in management and strategy.

**Douglas E. Eckrote** serves as our Senior Vice President of Strategic Solutions and Services and is responsible for our technology specialist teams focusing on servers and storage, unified communications, security, wireless, power and cooling, networking, software licensing and mobility solutions. He also holds responsibility for CDW Canada, Inc. Mr. Eckrote joined CDW in 1989 as an account manager. Mr. Eckrote was appointed Director of Operations in 1996, Vice President of Operations in 1999 and Senior Vice President of Purchasing in April 2001. In October 2001, he was named Senior Vice President of Purchasing and Operations. He was named Senior Vice President of Operations, Services and Canada in 2006 and assumed his current role in 2009. Prior to joining CDW, Eckrote worked in outside sales for Arrow Electronics and Cintas Uniform Company. From 2003 to 2009, Mr. Eckrote served on the board of directors of the Make-A-Wish Foundation of Illinois, completing the last two years as board chair, and currently serves on the Make-A-Wish Foundation of America National Chapter Performance Committee. Mr. Eckrote also served on the board of directors of the Center for Enriched Living from 2002-2011, serving as Vice President from 2004-2005, President from 2006-2008, board emeritus from 2009-2011 and currently serves as a trustee. Mr. Eckrote is a graduate of Purdue University where he earned a bachelor’s degree and a graduate of Northwestern University’s Kellogg School of Management where he earned an Executive Master of Business Administration.

**Christine A. Leahy** serves as our Senior Vice President, General Counsel and Corporate Secretary and is responsible for our legal, corporate governance, enterprise risk management and compliance functions. Ms. Leahy joined CDW in January 2002 as Vice President, General Counsel and Corporate Secretary. In January of 2007, she was named Senior Vice President. Before joining CDW, Ms. Leahy served as a corporate partner in the Chicago office of Sidley Austin LLP where she specialized in corporate governance, securities law, mergers and acquisitions and strategic counseling. Ms. Leahy serves on the board of trustees of Children’s Home and Aid. Ms. Leahy is a graduate of Brown University where she earned a bachelor’s degree and a graduate of Boston College Law School where she earned her Juris Doctor. She also completed the CEO Perspective and Women’s Director Development Programs at Northwestern University’s Kellogg School of Management.

**Christina V. Rother** serves as our Senior Vice President of Public and Advanced Technology Sales and is responsible for managing all aspects of our public sector and advanced technology sales forces, including sales force strategy, structure, goals, operations, revenue generation and training and development. Ms. Rother joined CDW in 1991 as an account manager. In 2002, she was appointed Vice President for Education and State and Local Sales. In 2005, she was chosen to lead our newly formed healthcare sales team. Beginning in 2006, Ms. Rother has held various positions ranging from Group Vice President of CDW Government LLC, President of CDW Government LLC and Senior Vice President of Sales. In September 2011, Ms. Rother assumed her current role as Senior Vice President of Public and Advanced Technology Sales. Prior to joining CDW, Ms. Rother held a number of sales positions with technology companies including Laser Computers and Price Electronics. Ms. Rother currently serves as chair of the board of directors of the Make-A-Wish Foundation of Illinois. Ms. Rother is a graduate of the University of Illinois at Chicago where she earned a bachelor’s degree.

**Jonathan J. Stevens** serves as our Senior Vice President of Operations and Chief Information Officer. Mr. Stevens joined CDW in June 2001 as Vice President-Information Technology, was named Chief Information Officer in January 2002 and Vice President-International and Chief Information Officer from 2005 until December 2006. In January 2007, he was named Senior Vice President and Chief Information Officer and assumed his current role in November 2009. Mr. Stevens is responsible for the strategic direction of our information technology. Additionally, he holds responsibility for our distribution centers, transportation, facilities, customer relations, operational excellence and the business technology center. Prior to joining CDW, Mr. Stevens served as regional technology director for Avanade, an international technology integration company formed through a joint venture between Microsoft and Accenture from 2000 to 2001. Prior to that, Mr. Stevens was a principal with Microsoft Consulting Services and led an information technology group for a corporate division of AT&T/NCR. He currently serves on the board of directors of SingleWire Software, LLC and Northeast Illinois Council: Boy Scouts of America. Mr. Stevens is a graduate of the University of Dayton where he earned a bachelor’s degree.

**Matthew A. Troka** serves as our Senior Vice President of Product and Partner Management. Mr. Troka is responsible for managing our relationships with all of our vendor partners. In addition, he directs the day-to-day operations of our purchasing department. Mr. Troka joined CDW in 1992 as an account manager and became a sales manager in 1995. From 1998 to 2001, he served as Corporate Sales Director. From 2001 to 2004, Mr. Troka was Senior Director of Purchasing. From 2004 to 2006, Mr. Troka served as Vice President of Purchasing. From 2006 to 2011, Mr. Troka was Vice President of Product and Partner Management. On March 3, 2011, Mr. Troka was elected Senior Vice President of Product and Partner Management.

Mr. Troka serves as a member of the board of directors of Encompass Championship Charities. Mr. Troka is a graduate of the University of Illinois where he earned a bachelor's degree.

**Ann E. Ziegler** joined CDW in April 2008 as Senior Vice President and Chief Financial Officer. Prior to joining CDW, Ms. Ziegler spent 15 years at Sara Lee Corporation ("Sara Lee"), a global consumer goods company, in a number of executive roles including finance, mergers and acquisitions, strategy and general management positions in both U.S. and international businesses. Most recently, from 2005 until April 2008, Ms. Ziegler served as Chief Financial Officer and Senior Vice President of Administration for Sara Lee Food and Beverage. Prior to joining Sara Lee, Ms. Ziegler was a corporate attorney at Skadden, Arps, Slate, Meagher & Flom. Ms. Ziegler serves on the board of directors of Hanesbrands, Inc. During the previous five years, Ms. Ziegler also served on the board of directors of Unitrin, Inc. Ms. Ziegler is a graduate of The College of William and Mary where she earned a bachelor's degree and a graduate of the University of Chicago Law School where she earned her Juris Doctor.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

#### Market Information

Our common stock has been listed on the NASDAQ Global Select Market since June 27, 2013 under the symbol "CDW." Prior to that date, there was no public market for our common stock. Shares sold in our initial public offering ("IPO") were priced at \$17.00 per share on June 26, 2013. The following table sets forth the ranges of high and low sales prices per share of our common stock as reported on the NASDAQ Global Select Market for the periods indicated.

Year ended December 31, 2013	High	Low
Second quarter (beginning June 27, 2013).....	\$ 19.17	\$ 17.38
Third quarter.....	\$ 24.51	\$ 18.26
Fourth quarter.....	\$ 23.56	\$ 20.50

#### Holders

As of February 28, 2014, there were 143 holders of record of our common stock. The number of beneficial stockholders is substantially greater than the number of holders of record because a portion of our common stock is held through brokerage firms.

#### Dividends

We expect to continue to pay a quarterly cash dividend on our common stock of \$0.0425 per share, or \$0.17 per annum. The initial quarterly cash dividend of \$0.0425 per share was paid on December 2, 2013 to all common stockholders of record as of the close of business on November 15, 2013. On February 13, 2014, we announced that our board of directors declared a quarterly cash dividend on our common stock of \$0.0425 per share. The dividend will be paid on March 10, 2014 to all stockholders of record as of the close of business on February 25, 2014. The payment of dividends in quarters beyond the first quarter of 2014 remains at the discretion of our board of directors and will depend upon our results of operations, financial condition, business prospects, capital requirements, contractual restrictions, any potential indebtedness we may incur, restrictions imposed by applicable law, tax considerations and other factors that our board of directors deems relevant. In addition, our ability to pay dividends on our common stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to us, in each case, under the terms of our current and any future agreements governing our indebtedness. For a discussion of our cash resources and needs and restrictions on our ability to pay dividends, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" included elsewhere in this report. For additional discussion of restrictions on our ability to pay dividends, see Note 7 "Long-Term Debt", to the accompanying audited consolidated financial statements included elsewhere in this report.

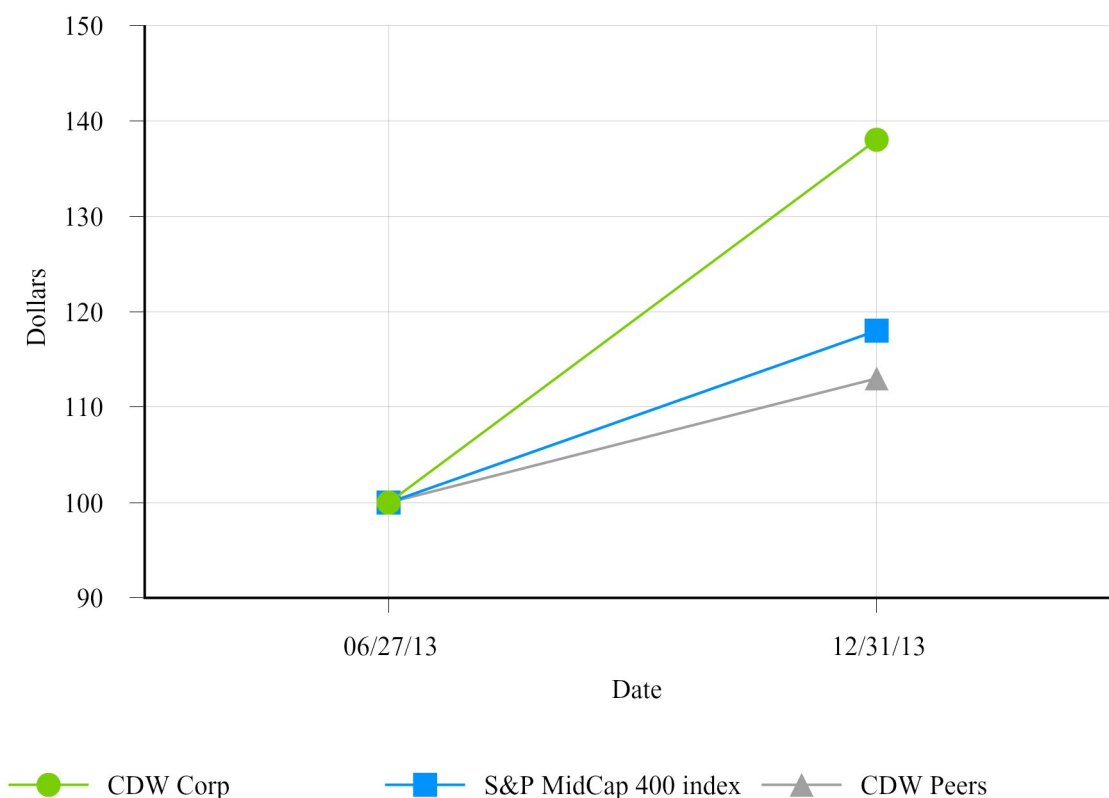
#### Stock Performance Graph

The information contained in this Stock Performance Graph section shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Securities Exchange Act of 1934, except to the extent that CDW specifically incorporates it by reference into a document filed under the Securities Act of 1933 or the Securities Exchange Act of 1934.

The following graph compares the cumulative total shareholder return, calculated on a dividend reinvested basis, on \$100.00 invested at the opening of the market on June 27, 2013, the date our common stock first traded on the NASDAQ Global Select Market, through and including the market close on December 31, 2013, with the cumulative total return for the same time period of the same amount invested in the S&P MidCap 400 index and a peer group index. The Company's peer group index for 2013 consists of the following companies: Accenture plc, Anixter International, Inc., Arrow Electronics, Inc., Avnet, Inc., CGI Group Inc., Genuine Parts Company, Henry Schein, Inc., Insight Enterprises, Inc., Owens & Minor, Inc., Patterson Companies, Inc., SYNnex Corporation, United Stationers Inc., W.W. Grainger, Inc. and Wesco International, Inc. This peer group was selected based on a review of publicly available information about these companies and the Company's determination that they met one or more of the following criteria: (i) similar size in terms of revenue and/or enterprise value (one-third to three times the Company's revenue or enterprise value); (ii) operates in a business-to-business distribution environment; (iii) members of the technology industry; (iv) similar customers (*i.e.*, business, government, healthcare, and education); (v) companies that provide services and/or solutions; and (vi) similar EBITDA and gross margins.

Shareholder returns over the indicated period are based on historical data and should not be considered indicative of future shareholder returns.

### Stock Performance Graph



	June 27, 2013	December 31, 2013
CDW Corp	\$ 100	\$ 138
S&P MidCap 400 index	100	118
CDW Peers	100	113

### Use of Proceeds from Registered Securities

On July 2, 2013, the Company completed an IPO of its common stock in which it issued and sold 23,250,000 shares of common stock. On July 31, 2013, the Company completed the sale of an additional 3,487,500 shares of common stock to the underwriters of the IPO pursuant to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO. Such shares were registered under the Securities Act of 1933, as amended, pursuant to the Company's Registration Statement on Form S-1 (File 333-187472), which was declared effective by the SEC on June 26, 2013.

The shares of common stock are listed on the NASDAQ Global Select Market under the symbol “CDW.” The Company's shares of common stock were sold to the underwriters at a price of \$17.00 per share in the IPO and upon the exercise of the overallotment option, which together, generated aggregate net proceeds of \$424.7 million to the Company after deducting \$29.8 million in underwriting discounts, expenses and transaction costs. Using a portion of the net proceeds from the IPO (exclusive of proceeds from the exercise of the overallotment option), the Company paid a \$24.4 million termination fee to affiliates of Madison Dearborn Partners, LLC and Providence Equity Partners, L.L.C. in connection with the termination of the management services agreement with such entities that was effective upon completion of the IPO, redeemed \$175.0 million aggregate principal amount of senior secured notes due 2018, and redeemed \$146.0 million aggregate principal amount of senior subordinated notes due 2017. The redemption price of the senior secured notes due 2018 was 108.0% of the principal amount redeemed, plus accrued and unpaid interest to the date of redemption. The Company used cash on hand to pay such accrued and unpaid interest. The redemption price of the senior subordinated notes due 2017 was 106.268% of the principal amount redeemed, plus accrued and unpaid interest to the date of redemption. The Company used cash on hand to pay such accrued and unpaid interest. On October 18, 2013, proceeds from the overallotment option exercise of \$56.0 million and cash on hand were used to redeem \$155.0 million aggregate principal amount of senior subordinated notes due 2017. The redemption price of the senior subordinated notes due 2017 was 104.178% of the principal amount redeemed, plus accrued and unpaid interest to the date of redemption. The Company used cash on hand to pay such redemption premium and accrued and unpaid interest.

J.P. Morgan Securities LLC, Barclays Capital Inc. and Goldman, Sachs & Co. acted as joint book-running managers of the IPO and as representatives of the underwriters. Deutsche Bank Securities Inc. and Morgan Stanley & Co. LLC acted as additional book-running managers in the IPO. Robert W. Baird & Co. Incorporated, Raymond James & Associates, Inc., William Blair & Company, L.L.C., Needham & Company, LLC, Stifel, Nicolaus & Company, Incorporated, Loop Capital Markets LLC and The Williams Capital Group, L.P. acted as managing underwriters in the IPO.

## **Item 6. Selected Financial Data**

The selected financial data set forth below are not necessarily indicative of the results of future operations and should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited consolidated financial statements and the related notes included elsewhere in this report.

We have derived the selected financial data presented below as of December 31, 2013 and December 31, 2012 and for the years ended December 31, 2013, 2012, and 2011 from our audited consolidated financial statements and related notes, which are included elsewhere in this report. The selected financial data as of December 31, 2010 and December 31, 2009 have been derived from our audited consolidated financial statements as of and for those periods, which are not included in this report.

The following are some of the items affecting comparability of the selected financial data for the periods presented:

- During the year ended December 31, 2013, we recorded IPO- and secondary-offering related expenses of \$75.0 million.
- During the years ended December 31, 2013, 2012, and 2011, we recorded net losses on extinguishments of long-term debt of \$64.0 million, \$17.2 million, and \$118.9 million, respectively. The losses represented the difference between the amount paid upon extinguishment, including call premiums and expenses paid to the debt holders and agents, and the net carrying amount of the extinguished debt, adjusted for a portion of the unamortized deferred financing costs.
- During the year ended December 31, 2009, we recorded goodwill impairment charges of \$241.8 million. This impairment was primarily attributable to deterioration in macroeconomic conditions and overall declines in net sales.

	Years Ended December 31,				
(dollars and shares in millions, except per share amounts)	2013	2012	2011	2010	2009
<b>Statement of Operations Data:</b>					
Net sales	\$ 10,768.6	\$ 10,128.2	\$ 9,602.4	\$ 8,801.2	\$ 7,162.6
Cost of sales	9,008.3	8,458.6	8,018.9	7,410.4	6,029.7
Gross profit	1,760.3	1,669.6	1,583.5	1,390.8	1,132.9
Selling and administrative expenses	1,120.9	1,029.5	990.1	932.1	821.1
Advertising expense	130.8	129.5	122.7	106.0	101.9
Goodwill impairment	—	—	—	—	241.8
Income (loss) from operations	508.6	510.6	470.7	352.7	(31.9)
Interest expense, net	(250.1)	(307.4)	(324.2)	(391.9)	(431.7)
Net (loss) gain on extinguishments of long-term debt	(64.0)	(17.2)	(118.9)	2.0	—
Other income, net	1.0	0.1	0.7	0.2	2.4
Income (loss) before income taxes	195.5	186.1	28.3	(37.0)	(461.2)
Income tax (expense) benefit	(62.7)	(67.1)	(11.2)	7.8	87.8
Net income (loss)	<u>\$ 132.8</u>	<u>\$ 119.0</u>	<u>\$ 17.1</u>	<u>\$ (29.2)</u>	<u>\$ (373.4)</u>
Net income (loss) per common share:					
Basic	\$0.85	\$0.82	\$0.12	\$(0.20)	\$(2.60)
Diluted	\$0.84	\$0.82	\$0.12	\$(0.20)	\$(2.60)
Weighted-average common shares outstanding:					
Basic	156.6	145.1	144.8	144.4	143.8
Diluted	158.7	145.8	144.9	144.4	143.8
<b>Balance Sheet Data (at period end):</b>					
Cash and cash equivalents	\$ 188.1	\$ 37.9	\$ 99.9	\$ 36.6	\$ 88.0
Working capital	810.9	666.5	538.1	675.4	923.2
Total assets	5,924.6	5,720.0	5,967.7	5,943.8	5,976.0
Total debt and capitalized lease obligations <sup>(1)</sup>	3,251.2	3,771.0	4,066.0	4,290.0	4,621.9
Total shareholders' equity (deficit)	711.7	136.5	(7.3)	(43.5)	(44.7)
<b>Other Financial Data:</b>					
Capital expenditures	\$ 47.1	\$ 41.4	\$ 45.7	\$ 41.5	\$ 15.6
Depreciation and amortization	208.2	210.2	204.9	209.4	218.2
Gross profit as a percentage of net sales	16.3%	16.5%	16.5%	15.8%	15.8%
Ratio of earnings to fixed charges <sup>(2)</sup>	1.8	1.6	1.1	(a)	(a)
EBITDA <sup>(3)</sup>	\$ 653.8	\$ 703.7	\$ 557.4	\$ 564.3	\$ 188.7
Adjusted EBITDA <sup>(3)</sup>	808.5	766.6	717.3	601.8	465.4
Non-GAAP net income (loss) <sup>(4)</sup>	314.3	247.1	198.8	85.7	(14.5)
<b>Statement of Cash Flows Data:</b>					
Net cash provided by (used in):					
Operating activities	\$ 366.3	\$ 317.4	\$ 214.7	\$ 423.7	\$ 107.6
Investing activities	(47.1)	(41.7)	(56.0)	(125.4)	(82.6)
Financing activities	(168.3)	(338.0)	(95.4)	(350.1)	(31.9)

- (1) Excludes borrowings of \$256.6 million, \$249.2 million, \$278.7 million, \$28.2 million and \$25.0 million, as of December 31, 2013, 2012, 2011, 2010 and 2009, respectively, under our inventory financing agreements. We do not include these borrowings in total debt because we have not in the past incurred, and in the future do not expect to incur, any interest expense or late fees under these agreements.



- (2) For purposes of calculating the ratio of earnings to fixed charges, earnings consist of earnings before income taxes minus income from equity investees plus fixed charges. Fixed charges consist of interest expense and the portion of rental expense we believe is representative of the interest component of rental expense.
- (a) For the years ended December 31, 2010 and 2009, earnings available for fixed charges were inadequate to cover fixed charges by \$37.0 million and \$461.2 million, respectively.
- (3) EBITDA is defined as consolidated net income (loss) before interest expense, income tax expense (benefit), depreciation, and amortization. Adjusted EBITDA, which is a measure defined in our credit agreements, is calculated by adjusting EBITDA for certain items of income and expense including (but not limited to) the following: (a) non-cash equity-based compensation; (b) goodwill impairment charges; (c) sponsor fees; (d) certain consulting fees; (e) debt-related legal and accounting costs; (f) equity investment income and losses; (g) certain severance and retention costs; (h) gains and losses from the early extinguishment of debt; (i) gains and losses from asset dispositions outside the ordinary course of business; and (j) non-recurring, extraordinary or unusual gains or losses or expenses.

We have included a reconciliation of EBITDA and Adjusted EBITDA in the table below. Both EBITDA and Adjusted EBITDA are considered non-GAAP financial measures. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that EBITDA and Adjusted EBITDA provide helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our credit agreements.

The following unaudited table sets forth reconciliations of net income (loss) to EBITDA and EBITDA to Adjusted EBITDA for the periods presented:

(in millions)	Years Ended December 31,				
	2013	2012	2011	2010	2009
Net income (loss)	\$ 132.8	\$ 119.0	\$ 17.1	\$ (29.2)	\$ (373.4)
Depreciation and amortization	208.2	210.2	204.9	209.4	218.2
Income tax expense (benefit)	62.7	67.1	11.2	(7.8)	(87.8)
Interest expense, net	250.1	307.4	324.2	391.9	431.7
<b>EBITDA</b>	<b>653.8</b>	<b>703.7</b>	<b>557.4</b>	<b>564.3</b>	<b>188.7</b>
Non-cash equity-based compensation	8.6	22.1	19.5	11.5	15.9
Sponsor fees	2.5	5.0	5.0	5.0	5.0
Consulting and debt-related professional fees	0.1	0.6	5.1	15.1	14.1
Goodwill impairment	—	—	—	—	241.8
Net loss (gain) on extinguishments of long-term debt	64.0	17.2	118.9	(2.0)	—
Litigation, net <sup>(i)</sup>	(4.1)	4.3	—	—	—
IPO- and secondary-offering related expenses	75.0	—	—	—	—
Other adjustments <sup>(ii)</sup>	8.6	13.7	11.4	7.9	(0.1)
<b>Adjusted EBITDA</b>	<b>\$ 808.5</b>	<b>\$ 766.6</b>	<b>\$ 717.3</b>	<b>\$ 601.8</b>	<b>\$ 465.4</b>

- (i) Relates to unusual, non-recurring litigation matters.
- (ii) Includes certain retention costs and equity investment income, certain severance costs in 2009 and a gain related to the sale of the Informacast software and equipment in 2009.

The following unaudited table sets forth a reconciliation of EBITDA to net cash provided by operating activities for the periods presented:

(in millions)	Years Ended December 31,				
	2013	2012	2011	2010	2009
EBITDA	\$ 653.8	\$ 703.7	\$ 557.4	\$ 564.3	\$ 188.7
Depreciation and amortization	(208.2)	(210.2)	(204.9)	(209.4)	(218.2)
Income tax (expense) benefit	(62.7)	(67.1)	(11.2)	7.8	87.8
Interest expense, net	(250.1)	(307.4)	(324.2)	(391.9)	(431.7)
Net income (loss)	132.8	119.0	17.1	(29.2)	(373.4)
Depreciation and amortization	208.2	210.2	204.9	209.4	218.2
Goodwill impairment	—	—	—	—	241.8
Equity-based compensation expense	46.6	22.1	19.5	11.5	15.9
Amortization of deferred financing costs, debt premium, and debt discount, net	8.8	13.6	15.7	18.0	16.2
Deferred income taxes	(48.7)	(56.3)	(10.2)	(4.3)	(94.4)
Allowance for doubtful accounts	—	—	0.4	(1.3)	(0.2)
Realized loss on interest rate swap agreements	—	—	2.8	51.5	103.2
Mark to market loss on interest rate derivatives	0.1	0.9	4.2	4.7	—
Net loss (gain) on extinguishments of long-term debt	64.0	17.2	118.9	(2.0)	—
Net loss (gain) on sale and disposal of assets	—	0.1	0.3	0.7	(1.7)
Changes in assets and liabilities	(47.1)	(9.4)	(158.3)	165.3	(18.0)
Other non-cash items	1.6	—	(0.6)	(0.6)	—
Net cash provided by operating activities	\$ 366.3	\$ 317.4	\$ 214.7	\$ 423.7	\$ 107.6

- (4) Non-GAAP net income (loss) is considered a non-GAAP financial measure. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that non-GAAP net income (loss) provides meaningful information regarding our operating performance and our prospects for the future. This supplemental measure excludes, among other things, charges related to the amortization of Acquisition-related intangibles, non-cash equity-based compensation and gains and losses from the early extinguishment of debt. The following unaudited table sets forth a reconciliation of net income (loss) to non-GAAP net income (loss) for the periods presented:

(in millions)	Years Ended December 31,				
	2013	2012	2011	2010	2009
Net income (loss)	\$ 132.8	\$ 119.0	\$ 17.1	\$ (29.2)	\$ (373.4)
Amortization of intangibles <sup>(i)</sup>	161.2	163.7	165.7	166.8	168.9
Non-cash equity-based compensation	8.6	22.1	19.5	11.5	15.9
Litigation, net <sup>(ii)</sup>	(6.3)	—	—	—	—
Net loss on extinguishments of long-term debt	64.0	17.2	118.9	(2.0)	—
Interest expense adjustment related to extinguishments of long-term debt <sup>(iii)</sup>	(7.5)	(3.3)	(19.4)	(0.7)	—
IPO- and secondary-offering related expenses <sup>(iv)</sup>	75.0	—	—	—	—
Debt-related refinancing costs <sup>(v)</sup>	—	—	3.8	5.6	—
Goodwill impairment	—	—	—	—	241.8
Severance expense	—	—	—	—	1.4
Aggregate adjustment for income taxes <sup>(vi)</sup>	(113.5)	(71.6)	(106.8)	(66.3)	(69.1)
Non-GAAP net income (loss)	<u>\$ 314.3</u>	<u>\$ 247.1</u>	<u>\$ 198.8</u>	<u>\$ 85.7</u>	<u>\$ (14.5)</u>

- (i) Includes amortization expense for Acquisition-related intangible assets, primarily customer relationships and trade names.
- (ii) Relates to unusual, non-recurring litigation matters.
- (iii) Reflects adjustments to interest expense resulting from debt extinguishments. Represents the difference between interest expense previously recognized under the effective interest method and actual interest paid.
- (iv) IPO- and secondary-offering related expenses consist of the following:

(in millions)	Year Ended December 31, 2013
Acceleration charge for certain equity awards and related employer payroll taxes	\$ 40.7
RDU Plan cash retention pool accrual	7.5
Management services agreement termination fee	24.4
Other expenses	2.4
IPO- and secondary-offering related expenses	<u>\$ 75.0</u>

- (v) Represents fees and costs expensed related to the December 2010 and March 2011 amendments to our prior senior secured term loan facility.
- (vi) Based on a normalized effective tax rate of 39.0%.

## **Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

*Unless otherwise indicated or the context otherwise requires, as used in this “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” the terms “we,” “us,” “the Company,” “our,” “CDW” and similar terms refer to CDW Corporation and its subsidiaries. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” should be read in conjunction with the audited consolidated financial statements and the related notes included elsewhere in this report. This discussion contains forward-looking statements that are subject to numerous risks and uncertainties. Actual results may differ materially from those contained in any forward-looking statements. See “Forward-Looking Statements” above.*

### **Overview**

CDW is a Fortune 500 company and a leading provider of integrated information technology (“IT”) solutions in the U.S. and Canada. We help our customer base of approximately 250,000 small, medium and large business, government, education and healthcare customers by delivering critical solutions to their increasingly complex IT needs. Our broad array of offerings ranges from discrete hardware and software products to integrated IT solutions such as mobility, security, data center optimization, cloud computing, virtualization and collaboration. We are technology "agnostic," with a product portfolio that includes more than 100,000 products from more than 1,000 brands. We provide our products and solutions through sales force and service delivery teams consisting of more than 4,400 coworkers, including nearly 1,800 field sellers, highly-skilled technology specialists and advanced service delivery engineers.

We are a leading U.S. sales channel partner for many original equipment manufacturers (“OEMs”) and software publishers (collectively, our “vendor partners”), whose products we sell or include in the solutions we offer. We believe we are an important extension of our vendor partners’ sales and marketing capabilities, providing them with a cost-effective way to reach customers and deliver a consistent brand experience through our established end-market coverage and extensive customer access.

We have two reportable segments: Corporate, which is comprised primarily of private sector business customers, and Public, which is comprised of government agencies and education and healthcare institutions. Our Corporate segment is divided into a medium/large business customer channel, primarily serving customers with more than 100 employees, and a small business customer channel, primarily serving customers with up to 100 employees. We also have two other operating segments, CDW Advanced Services and Canada, which do not meet the reportable segment quantitative thresholds and, accordingly, are combined together as “Other.” The CDW Advanced Services business consists primarily of customized engineering services delivered by technology specialists and engineers, and managed services that include Infrastructure as a Service (“IaaS”) offerings. Revenues from the sale of hardware, software, custom configuration and third-party provided services are recorded within our Corporate and Public segments.

We may sell all or only select products that our vendor partners offer. Each vendor partner agreement provides for specific terms and conditions, which may include one or more of the following: product return privileges, price protection policies, purchase discounts and vendor incentive programs, such as purchase or sales rebates and cooperative advertising reimbursements. We also resell software for major software publishers. Our agreements with software publishers allow the end-user customer to acquire software or licensed products and services. In addition to helping our customers determine the best software solutions for their needs, we help them manage their software agreements, including warranties and renewals. A significant portion of our advertising and marketing expenses is reimbursed through cooperative advertising reimbursement programs with our vendor partners. These programs are at the discretion of our vendor partners and are typically tied to sales or purchasing volumes or other commitments to be met by us within a specified period of time.

### **Trends and Key Factors Affecting our Financial Performance**

We believe the following trends may have an important impact on our financial performance:

- Our Public segment sales are impacted by government spending policies, budget priorities and revenue levels. An adverse change in any of these factors could cause our Public segment customers to reduce their purchases or to terminate or not renew contracts with us, which could adversely affect our business, results of operations or cash flows. Although our sales to the federal government are diversified across multiple agencies and departments, they collectively accounted for approximately 7%, 10% and 10% of our net sales for the years ended December 31, 2013, 2012 and 2011, respectively. Second half 2013 Public segment results were negatively impacted by federal government budget uncertainty, sequestration and the partial shutdown of the federal government for 16 days.

- An important factor affecting our ability to generate sales and achieve our targeted operating results is the impact of general economic conditions on our customers' willingness to spend on information technology. In the second quarter of 2012, we began to see customers take a more cautious approach to spending as increased macroeconomic uncertainty impacted decision-making and led to some customers delaying purchases. As we moved through 2013, we saw improvements in operating results for certain sales channels. We will continue to closely monitor macroeconomic conditions during 2014. Uncertainties related to potential reductions in government spending, requirements associated with implementation of the Affordable Care Act, potential changes in tax and regulatory policy, weakening consumer and business confidence or increased unemployment could result in reduced or deferred spending on information technology products and services by our customers and result in increased competitive pricing pressures.
- We believe that our customers' transition to more complex technology solutions will continue to be an important growth area for us in the future. However, because the market for technology products and services is highly competitive, our success at capitalizing on this transition will be based on our ability to tailor specific solutions to customer needs, the quality and breadth of our product and service offerings, the knowledge and expertise of our sales force, price, product availability and speed of delivery.

### **2013 Initial Public Offering**

On July 2, 2013, we completed an initial public offering ("IPO") of 23,250,000 shares of common stock. On July 31, 2013, we completed the sale of an additional 3,487,500 shares of common stock to the underwriters of the IPO pursuant to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO. Our shares of common stock were sold to the underwriters at a price of \$17.00 per share in the IPO and upon the exercise of the overallotment option, which together, generated aggregate net proceeds of \$424.7 million to the Company after deducting underwriting discounts, expenses and transaction costs.

On November 19, 2013, we completed a secondary public offering, whereby certain selling stockholders sold 15,000,000 shares of common stock. On December 18, 2013, such selling stockholders sold an additional 2,250,000 shares of common stock to the underwriters of the secondary public offering pursuant to the underwriters' December 13, 2013 exercise in full of the overallotment option granted to them in connection with the secondary public offering. We did not receive any proceeds from the sale of shares in the secondary public offering or upon the exercise of the overallotment option.

The consolidated statement of operations for the year ended December 31, 2013 included pre-tax IPO- and secondary-offering related expenses of \$75.0 million. See Note 9 of the accompanying audited consolidated financial statements for additional discussion of our IPO and secondary offering.

### **Key Business Metrics**

Our management monitors a number of financial and non-financial measures and ratios on a regular basis in order to track the progress of our business and make adjustments as necessary. We believe that the most important of these measures and ratios include average daily sales, gross margin, operating margin, net income, Non-GAAP net income, net income per common share, Non-GAAP net income per diluted share, EBITDA and Adjusted EBITDA, return on invested capital, cash and cash equivalents, net working capital, cash conversion cycle (defined to be days of sales outstanding in accounts receivable plus days of supply in inventory minus days of purchases outstanding in accounts payable, based on a rolling three-month average), debt levels including available credit and leverage ratios, sales per coworker and coworker turnover. These measures and ratios are compared to standards or objectives set by management, so that actions can be taken, as necessary, in order to achieve the standards and objectives. Non-GAAP net income and Adjusted EBITDA are non-GAAP financial measures. We believe these measures provide helpful information with respect to the company's operating performance and cash flows including our ability to meet our future debt service, capital expenditures, dividend payments, and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our senior credit facilities. See "Selected Financial Data" included elsewhere in this report for the definitions of Non-GAAP net income and Adjusted EBITDA and reconciliations to net income.

The results of certain key business metrics are as follows:

	Years Ended December 31,		
	2013	2012	2011
Net sales	\$ 10,768.6	\$ 10,128.2	\$ 9,602.4
Gross profit	1,760.3	1,669.6	1,583.5
Income from operations	508.6	510.6	470.7
Net income	132.8	119.0	17.1
Non-GAAP net income	314.3	247.1	198.8
Adjusted EBITDA	808.5	766.6	717.3
Average daily sales	42.4	39.9	37.7
Net debt (defined as total debt minus cash and cash equivalents)	3,063.1	3,733.1	3,966.1
Cash conversion cycle (in days) <sup>(1)</sup>	24	24	28

- (1) Cash conversion cycle is defined as days of sales outstanding in accounts receivable plus days of supply in inventory minus days of purchases outstanding in accounts payable, based on a rolling three-month average.

## Results of Operations

### *Year Ended December 31, 2013 Compared to Year Ended December 31, 2012*

The following table presents our results of operations, in dollars and as a percentage of net sales, for the years ended December 31, 2013 and 2012:

	Year Ended December 31, 2013		Year Ended December 31, 2012	
	Dollars in Millions	Percentage of Net Sales	Dollars in Millions	Percentage of Net Sales
Net sales	\$ 10,768.6	100.0%	\$ 10,128.2	100.0%
Cost of sales	9,008.3	83.7	8,458.6	83.5
Gross profit	1,760.3	16.3	1,669.6	16.5
Selling and administrative expenses	1,120.9	10.4	1,029.5	10.2
Advertising expense	130.8	1.2	129.5	1.3
Income from operations	508.6	4.7	510.6	5.0
Interest expense, net	(250.1)	(2.3)	(307.4)	(3.0)
Net loss on extinguishments of long-term debt	(64.0)	(0.6)	(17.2)	(0.2)
Other income, net	1.0	—	0.1	—
Income before income taxes	195.5	1.8	186.1	1.8
Income tax expense	(62.7)	(0.6)	(67.1)	(0.7)
Net income	\$ 132.8	1.2%	\$ 119.0	1.1%

### Net sales

The following table presents our net sales by segment, in dollars and as a percentage of total net sales, and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2013 and 2012:

	Years Ended December 31,					
	2013		2012		Dollar Change	Percent Change <sup>(1)</sup>
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales		
Corporate	\$ 5,960.1	55.3%	\$ 5,512.8	54.4%	\$ 447.3	8.1%
Public	4,164.5	38.7	4,023.0	39.7	141.5	3.5
Other	644.0	6.0	592.4	5.9	51.6	8.7
Total net sales	<u>\$ 10,768.6</u>	<u>100.0%</u>	<u>\$ 10,128.2</u>	<u>100.0%</u>	<u>\$ 640.4</u>	<u>6.3%</u>

(1) There were 254 selling days in both the years ended December 31, 2013 and 2012.

The following table presents our net sales by customer channel for our Corporate and Public segments and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2013 and 2012:

(dollars in millions)	Years Ended December 31,			
	2013	2012	Dollar Change	Percent Change
<b>Corporate:</b>				
Medium / Large	\$ 4,902.6	\$ 4,448.5	\$ 454.1	10.2 %
Small Business	1,057.5	1,064.3	(6.8)	(0.6)
Total Corporate	<u>\$ 5,960.1</u>	<u>\$ 5,512.8</u>	<u>\$ 447.3</u>	<u>8.1 %</u>
<b>Public:</b>				
Government	\$ 1,250.6	\$ 1,394.1	\$ (143.5)	(10.3)%
Education	1,449.0	1,192.3	256.7	21.5
Healthcare	1,464.9	1,436.6	28.3	2.0
Total Public	<u>\$ 4,164.5</u>	<u>\$ 4,023.0</u>	<u>\$ 141.5</u>	<u>3.5 %</u>

Total net sales in 2013 increased \$640.4 million, or 6.3%, to \$10,768.6 million, compared to \$10,128.2 million in 2012. There were 254 selling days for both the years ended December 31, 2013 and 2012. The increase in total net sales was primarily the result of growth in hardware and software, a more tenured sales force, a continued focus on seller productivity across all areas of the organization and the addition of nearly 120 customer-facing coworkers, the majority in pre- and post-sale technical positions such as technical specialists and service delivery roles. Our total net sales growth for the year ended December 31, 2013 reflected growth in notebooks/mobile devices, netcomm products and software. Software gains were driven by growth in security, document management software and network management software, partially offset by a decline in application suites.

Corporate segment net sales in 2013 increased \$447.3 million, or 8.1%, compared to 2012, driven by sales growth in the medium/large customer channel. Within our Corporate segment, net sales to medium/large customers increased 10.2% between years primarily due to certain of these customers increasing their IT spending, a more tenured sales force, a continued focus on seller productivity and additional customer-facing coworkers, the majority in pre- and post-sale technical positions such as technical specialists and service delivery roles. This increase was led by unit volume growth in netcomm products and growth in notebooks/mobile devices and software. Partially offsetting the growth in the medium/large customer channel was a 0.6% decline in net sales to small business customers, due to certain of these customers taking a more cautious approach to spending as macroeconomic and regulatory uncertainty impacted decision-making. This decrease was led by unit volume declines in notebooks/mobile devices, partially offset by growth in netcomm products.

Public segment net sales in 2013 increased \$141.5 million, or 3.5%, between years, driven by strong performance in the education customer channel. Net sales to education customers increased \$256.7 million, or 21.5%, between years, led by growth in net sales to K-12 customers, reflecting increased sales of notebooks/mobile devices to support new standardized digital testing requirements that will take effect in 2014. Net sales to government customers decreased \$143.5 million, or

10.3%, in 2013 compared to 2012 due to reductions and delays in federal government spending following sequestration, uncertainty over future budget negotiations and the partial shutdown of the federal government. The government customer channel net sales decline was led by decreases in sales of enterprise storage and notebooks/mobile devices, partially offset by growth in software. Net sales to healthcare customers increased \$28.3 million, or 2.0%, between years, driven by growth in notebooks/mobile devices and desktop computers.

#### *Gross profit*

Gross profit increased \$90.7 million, or 5.4%, to \$1,760.3 million in 2013, compared to \$1,669.6 million in 2012. As a percentage of total net sales, gross profit decreased 20 basis points to 16.3% in 2013, down from 16.5% in 2012. Gross profit margin was negatively impacted 30 basis points by unfavorable price/mix changes within product margin, as we experienced product margin compression in transactional product categories such as desktops and notebooks. Partially offsetting this decrease was an increase of 10 basis points due to a higher mix of net service contract revenue. Net service contract revenue, including items such as third-party services and warranties, has a positive impact on gross profit margin as our cost paid to the vendor or third-party service provider is recorded as a reduction to net sales, resulting in net sales being equal to the gross profit on the transaction.

The gross profit margin may fluctuate based on various factors, including vendor incentive and inventory price protection programs, cooperative advertising funds classified as a reduction of cost of sales, product mix, net service contract revenue, commission revenue, pricing strategies, market conditions and other factors, any of which could result in changes in gross profit margins.

#### *Selling and administrative expenses*

Selling and administrative expenses increased \$91.4 million, or 8.9%, to \$1,120.9 million in 2013, compared to \$1,029.5 million in 2012. As a percentage of total net sales, selling and administrative expenses increased 20 basis points to 10.4% in 2013, up from 10.2% in 2012. Sales payroll, including sales commissions and other variable compensation costs, increased \$28.9 million, or 6.4%, between years, consistent with higher sales and gross profit. Additionally, selling and administrative expenses for 2013 included IPO- and secondary-offering related expenses of \$75.0 million, as follows:

- Pre-tax charges of \$36.7 million related to the acceleration of the expense recognition for certain equity awards and \$4.0 million for the related employer payroll taxes. See Note 10 of the accompanying audited consolidated financial statements for additional discussion of the impact of the IPO on our equity awards.
- A pre-tax charge of \$24.4 million related to the payment of a termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities.
- A pre-tax charge of \$7.5 million related to compensation expense in connection with the Restricted Debt Unit Plan. See Note 12 of the accompanying audited consolidated financial statements for additional discussion of this charge.
- Other IPO- and secondary-offering related expenses of \$2.4 million.

We did not record any IPO- or secondary-offering related expenses during 2012. Partially offsetting these increases in 2013, was the favorable resolution of a class action legal proceeding in which we were a claimant, which reduced selling and administrative expenses by \$10.4 million in 2013 compared to 2012. Total coworker count increased by 163 coworkers, from 6,804 at December 31, 2012, to 6,967 at December 31, 2013.

#### *Advertising expense*

Advertising expense increased \$1.3 million, or 0.9%, to \$130.8 million in 2013, compared to \$129.5 million in 2012. As a percentage of net sales, advertising expense was 1.2% in 2013, compared to 1.3% in 2012. The dollar increase in advertising expense was due to a continued focus on advertising our solutions and products, which reinforces our reputation as a leading IT solutions provider.



*Income from operations*

The following table presents income (loss) from operations by segment, in dollars and as a percentage of net sales, and the year-over-year percentage change in income (loss) from operations for the years ended December 31, 2013 and 2012:

	Year Ended December 31, 2013		Year Ended December 31, 2012		Percent Change in Income (Loss) from Operations
	Dollars in Millions	Operating Margin Percentage	Dollars in Millions	Operating Margin Percentage	
Segments: <sup>(1)</sup>					
Corporate	\$ 363.3	6.1%	\$ 349.0	6.3%	4.1 %
Public	246.5	5.9	246.7	6.1	(0.1)
Other	27.2	4.2	18.6	3.1	46.3
Headquarters <sup>(2)</sup>	(128.4)	nm*	(103.7)	nm*	(23.8)
Total income from operations	\$ 508.6	4.7%	\$ 510.6	5.0%	(0.4)%

\* Not meaningful

- (1) Segment income (loss) from operations includes the segment's direct operating income (loss) and allocations for Headquarters' costs, allocations for income and expenses from logistics services, certain inventory adjustments and volume rebates and cooperative advertising from vendors.
- (2) Includes certain Headquarters' function costs that are not allocated to the segments.

Income from operations was \$508.6 million in 2013, a decrease of \$2.0 million, or 0.4%, compared to \$510.6 million in 2012. The decrease in income from operations was driven by higher selling and administrative expenses primarily resulting from \$75.0 million of IPO- and secondary-offering related expenses recorded during 2013, mostly offset by higher net sales and gross profit. Total operating margin percentage decreased 30 basis points to 4.7% in 2013, from 5.0% in 2012. Operating margin percentage was negatively impacted by the increase in selling and administrative expenses as a percentage of net sales and gross profit margin compression, partially offset by a decrease in advertising expense as a percentage of net sales.

Corporate segment income from operations was \$363.3 million in 2013, an increase of \$14.3 million, or 4.1%, compared to \$349.0 million in 2012. Corporate segment operating margin percentage decreased 20 basis points to 6.1% in 2013, from 6.3% in 2012. Results for 2013 included \$26.4 million of IPO- and secondary-offering related expenses, which reduced Corporate segment operating margin by 40 basis points. Higher sales and gross profit dollars offset the effect of IPO- and secondary-offering related expenses on income from operations for 2013.

Public segment income from operations was \$246.5 million in 2013, a decrease of \$0.2 million, or 0.1%, compared to \$246.7 million in 2012. Public segment operating margin percentage decreased 20 basis points to 5.9% in 2013, from 6.1% in 2012. Results for 2013 included \$14.4 million of IPO- and secondary-offering related expenses, which reduced Public segment operating margin by 30 basis points. Higher sales and gross profit dollars nearly offset the effect of IPO- and secondary-offering related expenses on income from operations for 2013.

*Interest expense, net*

At December 31, 2013, our outstanding long-term debt totaled \$3,251.2 million, compared to \$3,771.0 million at December 31, 2012. We reduced long-term debt throughout the year primarily through the use of a portion of the net proceeds from the IPO and cash flows provided by operating activities. Net interest expense in 2013 was \$250.1 million, a decrease of \$57.3 million compared to \$307.4 million in 2012. This decrease was primarily due to lower debt balances and effective interest rates for 2013 compared to 2012 as a result of debt repayments and refinancing activities completed during 2012 and 2013. See "Liquidity and Capital Resources" below.

*Net loss on extinguishments of long-term debt*

During 2013, we recorded a net loss on extinguishments of long-term debt of \$64.0 million compared to \$17.2 million in 2012.

In October 2013, we redeemed \$155.0 million aggregate principal amount of senior subordinated notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$8.5 million, representing the difference

between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In August 2013, we redeemed \$324.0 million aggregate principal amount of senior subordinated notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$24.6 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In July 2013, we redeemed \$175.0 million aggregate principal amount of senior secured notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$16.7 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In April 2013, we entered into a new seven-year, \$1,350.0 million aggregate principal amount senior secured term loan facility. Substantially all of the proceeds were used to repay the \$1,299.5 million outstanding aggregate principal amount of the prior senior secured term loan facility. In connection with this refinancing, we recorded a loss on extinguishment of long-term debt of \$10.3 million, representing a write-off of the remaining unamortized deferred financing costs related to the prior senior secured term loan facility.

In March 2013, we redeemed \$50.0 million aggregate principal amount of senior subordinated notes. We recorded a loss on extinguishment of long-term debt of \$3.9 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In December 2012, we redeemed \$100.0 million aggregate principal amount of senior subordinated notes. We recorded a loss on extinguishment of long-term debt of \$7.8 million representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In February and March 2012, we purchased or redeemed the remaining \$129.0 million of senior notes due 2015, funded with the issuance of an additional \$130.0 million of senior notes due 2019. As a result, we recorded a loss on extinguishment of long-term debt of \$9.4 million, representing the difference between the purchase or redemption price of the senior notes due 2015 and the net carrying amount of the purchased debt, adjusted for the remaining unamortized deferred financing costs.

#### *Income tax expense*

Income tax expense was \$62.7 million in 2013, compared to \$67.1 million in 2012. The effective income tax rate, expressed by calculating income tax expense or benefit as a percentage of income before income taxes, was 32.1% and 36.0% for 2013 and 2012, respectively.

For 2013, the effective tax rate differed from the U.S. federal statutory rate primarily due to state income taxes, including current year state income tax credits and an adjustment to deferred state income taxes due to changes in apportionment factors. For 2012, the effective tax rate differed from the U.S. federal statutory rate primarily due to favorable adjustments to state tax credits which were partially offset by the unfavorable impact of adjustments to deferred state income taxes due to changes in state tax laws and non-deductible expenses, primarily equity-based compensation and meals and entertainment. The lower effective tax rate for 2013 as compared to 2012 was primarily driven by the favorable impact of adjustments to deferred state income taxes due to changes in state tax apportionment factors and lower non-deductible expenses.

#### *Net income*

Net income was \$132.8 million in 2013, compared to \$119.0 million in 2012. Significant factors and events causing the net changes between the periods are discussed above.

#### *Non-GAAP net income*

Non-GAAP net income was \$314.3 million for the year ended December 31, 2013, an increase of \$67.2 million, or 27.2%, compared to \$247.1 million for the year ended December 31, 2012.

We have included a reconciliation of Non-GAAP net income for the years ended December 31, 2013 and 2012 below. Non-GAAP net income excludes, among other things, charges related to the amortization of acquisition-related intangibles, non-cash equity-based compensation, IPO- and secondary-offering related expenses and gains and losses from the early extinguishment of debt. Non-GAAP net income is considered a non-GAAP financial measure. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position, or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that Non-GAAP net income provides helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements.

(in millions)	Years Ended December 31,	
	2013	2012
Net income	\$ 132.8	\$ 119.0
Amortization of intangibles <sup>(1)</sup>	161.2	163.7
Non-cash equity-based compensation	8.6	22.1
Litigation, net <sup>(2)</sup>	(6.3)	—
Net loss on extinguishments of long-term debt	64.0	17.2
Interest expense adjustment related to extinguishments of long-term debt <sup>(3)</sup>	(7.5)	(3.3)
IPO- and secondary-offering related expenses <sup>(4)</sup>	75.0	—
Aggregate adjustment for income taxes <sup>(5)</sup>	(113.5)	(71.6)
Non-GAAP net income	\$ 314.3	\$ 247.1

- (1) Includes amortization expense for acquisition-related intangible assets, primarily customer relationships and trade names.
- (2) Relates to unusual, non-recurring litigation matters.
- (3) Reflects adjustments to interest expense resulting from debt extinguishments. Represents the difference between interest expense previously recognized under the effective interest method and actual interest paid.
- (4) IPO- and secondary-offering related expenses consist of the following:

(in millions)	Years Ended December 31,	
	2013	2012
Acceleration charge for certain equity awards and related employer payroll taxes	\$ 40.7	\$ —
RDU Plan cash retention pool accrual	7.5	—
Management services agreement termination fee	24.4	—
Other expenses	2.4	—
IPO- and secondary-offering related expenses	\$ 75.0	\$ —

- (5) Based on a normalized effective tax rate of 39.0%.

#### Adjusted EBITDA

Adjusted EBITDA was \$808.5 million in 2013, an increase of \$41.9 million, or 5.5%, compared to \$766.6 million in 2012. As a percentage of net sales, Adjusted EBITDA was 7.5% and 7.6% in 2013 and 2012, respectively.

We have included a reconciliation of EBITDA and Adjusted EBITDA for 2013 and 2012 in the table below. EBITDA is defined as consolidated net income before interest expense, income tax expense, depreciation and amortization. Adjusted EBITDA, which is a measure defined in our credit agreements, means EBITDA adjusted for certain items which are described in the table below. Both EBITDA and Adjusted EBITDA are considered non-GAAP financial measures. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used

by other companies, even when similar terms are used to identify such measures. We believe that EBITDA and Adjusted EBITDA provide helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our credit agreements.

(in millions)	Years Ended December 31,	
	2013	2012
Net income	\$ 132.8	\$ 119.0
Depreciation and amortization	208.2	210.2
Income tax expense	62.7	67.1
Interest expense, net	250.1	307.4
EBITDA	653.8	703.7
Adjustments:		
Non-cash equity-based compensation	8.6	22.1
Sponsor fee	2.5	5.0
Consulting and debt-related professional fees	0.1	0.6
Net loss on extinguishments of long-term debt	64.0	17.2
Litigation, net <sup>(1)</sup>	(4.1)	4.3
IPO- and secondary-offering related expenses <sup>(2)</sup>	75.0	—
Other adjustments <sup>(3)</sup>	8.6	13.7
Total adjustments	154.7	62.9
Adjusted EBITDA	\$ 808.5	\$ 766.6

(1) Relates to unusual, non-recurring litigation matters.

(2) As defined under *Non-GAAP net income* above.

(3) Other adjustments primarily include certain retention costs and equity investment income.

The following table sets forth a reconciliation of EBITDA to net cash provided by operating activities for the years ended December 31, 2013 and 2012.

(in millions)	Years Ended December 31,	
	2013	2012
EBITDA	\$ 653.8	\$ 703.7
Depreciation and amortization	(208.2)	(210.2)
Income tax expense	(62.7)	(67.1)
Interest expense, net	(250.1)	(307.4)
Net income	132.8	119.0
Depreciation and amortization	208.2	210.2
Equity-based compensation expense	46.6	22.1
Deferred income taxes	(48.7)	(56.3)
Amortization of deferred financing costs, debt premium, and debt discount, net	8.8	13.6
Net loss on extinguishments of long-term debt	64.0	17.2
Other	1.7	1.0
Changes in assets and liabilities	(47.1)	(9.4)
Net cash provided by operating activities	\$ 366.3	\$ 317.4

**Year Ended December 31, 2012 Compared to Year Ended December 31, 2011**

The following table presents our results of operations, in dollars and as a percentage of net sales, for the years ended December 31, 2012 and 2011:

	Year Ended December 31, 2012		Year Ended December 31, 2011	
	Dollars in Millions	Percentage of Net Sales	Dollars in Millions	Percentage of Net Sales
Net sales	\$ 10,128.2	100.0%	\$ 9,602.4	100.0%
Cost of sales	8,458.6	83.5	8,018.9	83.5
Gross profit	1,669.6	16.5	1,583.5	16.5
Selling and administrative expenses	1,029.5	10.2	990.1	10.3
Advertising expense	129.5	1.3	122.7	1.3
Income from operations	510.6	5.0	470.7	4.9
Interest expense, net	(307.4)	(3.0)	(324.2)	(3.4)
Net loss on extinguishments of long-term debt	(17.2)	(0.2)	(118.9)	(1.2)
Other income, net	0.1	—	0.7	—
Income before income taxes	186.1	1.8	28.3	0.3
Income tax expense	(67.1)	(0.7)	(11.2)	(0.1)
Net income	\$ 119.0	1.1%	\$ 17.1	0.2%

*Net sales*

The following table presents our net sales by segment, in dollars and as a percentage of total net sales, and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2012 and 2011:

	Years Ended December 31,					
	2012		2011		Dollar Change	Percent Change <sup>(1)</sup>
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales		
Corporate	\$ 5,512.8	54.4%	\$ 5,334.4	55.6%	\$ 178.4	3.3%
Public	4,023.0	39.7	3,757.2	39.1	265.8	7.1
Other	592.4	5.9	510.8	5.3	81.6	16.0
Total net sales	\$ 10,128.2	100.0%	\$ 9,602.4	100.0%	\$ 525.8	5.5%

- (1) There were 254 and 255 selling days in the years ended December 31, 2012 and 2011, respectively. On an average daily basis, total net sales increased 5.9%.

The following table presents our net sales by customer channel for our Corporate and Public segments and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2012 and 2011:

(in millions)	Years Ended December 31,		Dollar Change	Percent Change
	2012	2011		
<b>Corporate:</b>				
Medium / Large	\$ 4,448.5	\$ 4,287.1	\$ 161.4	3.8%
Small Business	1,064.3	1,047.3	17.0	1.6
Total Corporate	<u>\$ 5,512.8</u>	<u>\$ 5,334.4</u>	<u>\$ 178.4</u>	<u>3.3%</u>
<b>Public:</b>				
Government	\$ 1,394.1	\$ 1,343.5	\$ 50.6	3.8%
Education	1,192.3	1,197.7	(5.4)	(0.4)
Healthcare	1,436.6	1,216.0	220.6	18.1
Total Public	<u>\$ 4,023.0</u>	<u>\$ 3,757.2</u>	<u>\$ 265.8</u>	<u>7.1%</u>

Total net sales in 2012 increased \$525.8 million, or 5.5%, to \$10,128.2 million, compared to \$9,602.4 million in 2011. There were 254 and 255 selling days in the years ended December 31, 2012 and 2011, respectively. On an average daily basis, total net sales increased 5.9%. The increase in total net sales was the result of general volume growth, market share gains, a more tenured sales force, and a continued focus on seller productivity across all areas of the organization. Our net sales growth for the year ended December 31, 2012 reflected growth in notebooks/mobile devices, netcomm products, software products, desktop computers and enterprise storage.

Corporate segment net sales in 2012 increased \$178.4 million, or 3.3%, compared to 2011. Within our Corporate segment, net sales to medium/large customers increased 3.8% between years, and net sales to small business customers increased 1.6% between years. Customers within the Corporate segment continued to take a more cautious approach to spending as increased macroeconomic uncertainty impacted decision-making and led to some customers delaying purchases. The increases in Corporate segment net sales were primarily a result of hardware growth, most notably in netcomm products, and unit volume growth in desktop computers. Software product growth, led by network management and security software, also contributed to the increase in net sales. Partially offsetting the growth was a decline in net sales of memory products due to several large orders in the second and third quarters of 2011 that did not recur.

Public segment net sales in 2012 increased \$265.8 million, or 7.1%, between years, driven by continued strong performance in the healthcare customer channel. Net sales to healthcare customers increased \$220.6 million, or 18.1%, between years, led by hardware growth, most notably in enterprise storage, and unit volume growth in netcomm products, desktop computers and point of care technology carts. Software product growth also contributed to the increase in net sales in healthcare. The healthcare customer channel growth was primarily the result of deeper relationships with several group purchasing organizations and increased healthcare industry demand for IT products, as the healthcare industry continued its adoption of electronic medical records and point of care technologies. Net sales to government customers increased \$50.6 million, or 3.8%, in 2012 compared to 2011 led by unit volume increases in sales of notebooks/mobile devices, partially offset by a decline in net sales of netcomm products. Net sales to education customers decreased \$5.4 million, or 0.4%, between years, reflecting budget constraints. A decline in sales to K-12 customers was partially offset by growth in sales to higher education customers that was led by increased sales of netcomm products, as higher education customers refreshed and added additional enterprise technology.

*Gross profit*

Gross profit increased \$86.1 million, or 5.4%, to \$1,669.6 million in 2012, compared to \$1,583.5 million in 2011. As a percentage of total net sales, gross profit was 16.5% in both 2012 and 2011. Gross profit margin was positively impacted 10 basis points by a higher mix of commission and net service contract revenue. Fully offsetting these increases in gross profit margin were declines in vendor funding primarily due to program changes for certain vendors. Commission revenue, including agency fees earned on sales of software licenses and software assurance under enterprise agreements, has a positive impact on our gross profit margin, as we record the fee or commission as a component of net sales when earned and there is no corresponding cost of sales. Net service contract revenue, including items such as third-party services and warranties, also has a positive impact on gross profit margin as our cost paid to the vendor or third-party service provider is recorded as a reduction to net sales, resulting in net sales being equal to the gross profit on the transaction. Vendor funding includes purchase discounts, volume rebates and cooperative advertising.

The gross profit margin may fluctuate based on various factors, including vendor incentive and inventory price protection programs, cooperative advertising funds classified as a reduction of cost of sales, product mix, net service contract revenue, commission revenue, pricing strategies, market conditions, and other factors, any of which could result in changes in gross profit margins.

*Selling and administrative expenses*

Selling and administrative expenses increased \$39.4 million, or 4.0%, to \$1,029.5 million in 2012, compared to \$990.1 million in 2011. As a percentage of total net sales, selling and administrative expenses decreased 10 basis points to 10.2% in 2012, down from 10.3% in 2011. The dollar increase in selling and administrative expenses was primarily due to higher payroll costs (excluding bonus compensation tied to Adjusted EBITDA) of \$43.0 million. The higher payroll costs reflected in selling and administrative expenses were driven by increased sales commissions and other variable compensation costs consistent with higher sales and gross profit. While total coworker count increased by 59 coworkers, from 6,745 coworkers at December 31, 2011 to 6,804 coworkers at December 31, 2012, the increase was primarily comprised of service delivery coworkers, the cost of which is reflected in cost of sales. Other factors that increased selling and administrative expenses included a \$5.8 million increase in health benefits due to higher claims costs and a higher average number of participants in 2012 compared to 2011, a \$5.3 million increase in depreciation and amortization expense related primarily to additional capital expenditures for information technology systems, and a \$2.6 million increase in stock compensation expense, primarily due to incremental expense related to a modified Class B Common Unit grant agreement with our former chief executive officer. Partially offsetting these increases was an \$11.8 million decline in bonus compensation tied to Adjusted EBITDA, as performance fell below target, \$3.8 million of expenses related to the modification of our senior secured term loan facility in 2011 that did not recur in 2012, and a \$3.3 million decline in litigation expenses between years.

The decrease in selling and administrative expenses as a percentage of sales of 10 basis points between years was driven by the decline in incentive compensation tied to Adjusted EBITDA performance.

*Advertising expense*

Advertising expense increased \$6.8 million, or 5.6%, to \$129.5 million in 2012, compared to \$122.7 million in 2011. As a percentage of net sales, advertising expense was 1.3% in both 2012 and 2011. The increase in advertising expense was due to a focus on continuing to advertise our solutions and products and to build our reputation as a leading IT solutions provider, primarily through targeted digital advertising, partially offset by decreases in expenditures for print advertising.

*Income from operations*

The following table presents income (loss) from operations by segment, in dollars and as a percentage of net sales, and the year-over-year percentage change in income (loss) from operations for the years ended December 31, 2012 and 2011:

	Year Ended December 31, 2012		Year Ended December 31, 2011		Percent Change in Income (Loss) from Operations
	Dollars in Millions	Operating Margin Percentage	Dollars in Millions	Operating Margin Percentage	
<b>Segments: <sup>(1)</sup></b>					
Corporate	\$ 349.0	6.3%	\$ 331.6	6.2%	5.2%
Public	246.7	6.1	233.3	6.2	5.7
Other	18.6	3.1	17.5	3.4	6.5
Headquarters <sup>(2)</sup>	(103.7)	nm*	(111.7)	nm*	7.2
Total income from operations	\$ 510.6	5.0%	\$ 470.7	4.9%	8.5%

\* Not meaningful

- (1) Segment income (loss) from operations includes the segment's direct operating income (loss) and allocations for Headquarters' costs, allocations for logistics services, certain inventory adjustments, and volume rebates and cooperative advertising from vendors.
- (2) Includes Headquarters' function costs that are not allocated to the segments.

Income from operations was \$510.6 million in 2012, an increase of \$39.9 million, or 8.5%, compared to \$470.7 million in 2011. This increase was driven by higher net sales and gross profit, partially offset by higher selling and administrative expenses and advertising expense. Total operating margin percentage increased 10 basis points to 5.0% in 2012,

compared to 4.9% in 2011. Operating margin percentage was positively impacted by the decrease in selling and administrative expenses as a percentage of net sales.

Corporate segment income from operations was \$349.0 million in 2012, an increase of \$17.4 million, or 5.2%, compared to \$331.6 million in 2011. This increase was primarily driven by higher net sales and gross profit margin, partially offset by higher selling and administrative expenses, resulting in a net increase in segment operating income before allocations of \$14.4 million in 2012 compared to 2011. In addition, Corporate segment income from operations benefited from an increase of \$2.5 million in income allocations from our logistics operations and a decrease of \$0.5 million in Headquarters' expense allocations in 2012 compared to 2011. The improved profitability of our logistics operations was driven by stronger operating leverage given higher purchase volumes while support costs remained flat.

Public segment income from operations was \$246.7 million in 2012, an increase of \$13.4 million, or 5.7%, compared to \$233.3 million in 2011. This increase reflected higher segment operating income before allocations of \$4.0 million as a result of increased net sales and gross profit dollars, partially offset by higher selling and administrative costs. In addition, Public segment income from operations benefited from an increase of \$5.7 million in income allocations from our logistics operations and a decrease in Headquarters' expense allocations of \$3.7 million in 2012 compared to 2011.

#### *Interest expense, net*

At December 31, 2012, our outstanding long-term debt totaled \$3,771.0 million, compared to \$4,066.0 million at December 31, 2011. Net interest expense in 2012 was \$307.4 million, a decrease of \$16.8 million compared to \$324.2 million in 2011. Interest expense in 2011 included a benefit of \$19.4 million, due to an adjustment to the long-term accrued interest liability associated with the extinguishment of \$1,078.0 million of senior notes due 2015. The long-term accrued interest liability represents the difference between interest expense previously recognized under the effective interest method and actual interest paid. Of the remaining net decrease of \$36.2 million, \$27.2 million was due to lower effective interest rates and lower debt balances in 2012 compared to the prior year as a result of debt repayment and refinancing activities completed during 2011 and 2012. The remaining net decrease was primarily attributable to additional interest expense in 2011 related to the interest rate swaps that terminated in January 2011, higher 2011 mark-to-market losses on interest rate caps, higher amortization of deferred financing costs in 2011 compared to 2012 and a 2012 benefit related to an adjustment to the long-term accrued interest liability associated with the extinguishment of \$100.0 million of senior subordinated notes due 2017.

#### *Net loss on extinguishments of long-term debt*

During 2012, we recorded a net loss on extinguishments of long-term debt of \$17.2 million compared to \$118.9 million in 2011.

In February and March 2012, we purchased or redeemed the remaining \$129.0 million of senior notes due 2015, funded with the issuance of an additional \$130.0 million of senior notes due 2019. As a result, we recorded a loss on extinguishment of long-term debt of \$9.4 million, representing the difference between the purchase or redemption price of the senior notes due 2015 and the net carrying amount of the purchased debt, adjusted for the remaining unamortized deferred financing costs.

In December 2012, we redeemed \$100.0 million aggregate principal amount of senior subordinated notes. We recorded a loss on extinguishment of long-term debt of \$7.8 million representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In March 2011, we amended our senior secured term loan facility and recorded a loss on extinguishment of long-term debt of \$3.2 million, representing a write-off of a portion of the unamortized deferred financing costs on this facility.

In April and May 2011, we purchased \$1,078.0 million of senior notes due 2015, funded with the issuance of \$1,175.0 million of senior notes due 2019. As a result, we recorded a loss on extinguishment of long-term debt of \$114.1 million, representing the difference between the purchase price of the senior notes due 2015 at 109% of principal amount and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In June 2011, we entered into a new \$900.0 million senior secured asset-based revolving credit facility, replacing the existing \$800.0 million facility. As a result, we recorded a loss on extinguishment of long-term debt of \$1.6 million representing a write-off of a portion of the unamortized deferred financing costs related to the previous facility.

#### *Income tax expense*

Income tax expense was \$67.1 million in 2012, compared to \$11.2 million in 2011. The effective income tax rate was 36.0% and 39.7% for 2012 and 2011, respectively.



For 2012, the effective tax rate differed from the U.S. federal statutory rate primarily due to favorable adjustments to state tax credits which are partially offset by the unfavorable impact of adjustments to deferred taxes due to changes in state tax laws and permanent differences. For 2011, the effective tax rate differed from the U.S. federal statutory rate primarily due to the unfavorable impact of permanent differences offset by a benefit for state income taxes. The lower effective tax rate for 2012 as compared to 2011 was primarily driven by the impact of favorable adjustments to state tax credits in 2012 and the lower rate impact of permanent differences in 2012 due to the significantly greater amount of pre-tax income.

*Net income*

Net income was \$119.0 million in 2012, compared to \$17.1 million in 2011. The 2012 and 2011 results included after tax losses on extinguishments of long-term debt of \$10.5 million and \$72.5 million, respectively. Other significant factors and events causing the net changes from 2011 to 2012 are discussed above.

*Non-GAAP net income*

Non-GAAP net income was \$247.1 million for the year ended December 31, 2012, an increase of \$48.3 million, or 24.3%, compared to \$198.8 million for the year ended December 31, 2011.

We have included a reconciliation of Non-GAAP net income for the years ended December 31, 2012 and 2011 below. Non-GAAP net income excludes, among other things, charges related to the amortization of acquisition-related intangibles, non-cash equity-based compensation and gains and losses from the early extinguishment of debt. Non-GAAP net income is considered a non-GAAP financial measure. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position, or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that Non-GAAP net income provides helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements.

(in millions)	Years Ended December 31,	
	2012	2011
Net income	\$ 119.0	\$ 17.1
Amortization of intangibles <sup>(1)</sup>	163.7	165.7
Non-cash equity-based compensation	22.1	19.5
Net loss on extinguishments of long-term debt	17.2	118.9
Interest expense adjustment related to extinguishments of long-term debt <sup>(2)</sup>	(3.3)	(19.4)
Debt related refinancing costs <sup>(3)</sup>	—	3.8
Aggregate adjustment for income taxes <sup>(4)</sup>	(71.6)	(106.8)
Non-GAAP net income	\$ 247.1	\$ 198.8

- (1) Includes amortization expense for acquisition-related intangible assets, primarily customer relationships and trade names.
- (2) Reflects adjustments to interest expense resulting from debt extinguishments. Represents the difference between interest expense previously recognized under the effective interest method and actual interest paid.
- (3) Reflects expenses for the March 2011 amendment to the prior term loan facility.
- (4) Based on a normalized effective tax rate of 39.0%.

*Adjusted EBITDA*

Adjusted EBITDA was \$766.6 million in 2012, an increase of \$49.3 million, or 6.9%, compared to \$717.3 million in 2011. As a percentage of net sales, Adjusted EBITDA was 7.6% and 7.5% in 2012 and 2011, respectively.

We have included a reconciliation of EBITDA and Adjusted EBITDA for 2012 and 2011 in the table below. EBITDA is defined as consolidated net income before interest expense, income tax expense, depreciation and amortization. Adjusted EBITDA, which is a measure defined in our credit agreements, means EBITDA adjusted for certain items which are described in the table below. Both EBITDA and Adjusted EBITDA are considered non-GAAP financial measures. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either

excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that EBITDA and Adjusted EBITDA provide helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our credit agreements. See “Selected Financial Data” included elsewhere in this report for a reconciliation of EBITDA to cash flows from operating activities.

(in millions)	Years Ended December 31,	
	2012	2011
Net income	\$ 119.0	\$ 17.1
Depreciation and amortization	210.2	204.9
Income tax expense	67.1	11.2
Interest expense, net	307.4	324.2
EBITDA	703.7	557.4
Adjustments:		
Non-cash equity-based compensation	22.1	19.5
Sponsor fee	5.0	5.0
Consulting and debt-related professional fees	0.6	5.1
Net loss on extinguishments of long-term debt	17.2	118.9
Litigation, net <sup>(1)</sup>	4.3	—
Other adjustments <sup>(2)</sup>	13.7	11.4
Total adjustments	62.9	159.9
Adjusted EBITDA	\$ 766.6	\$ 717.3

(1) Relates to unusual, non-recurring litigation matters.

(2) Other adjustments include certain retention costs and equity investment income.

The following table sets forth a reconciliation of EBITDA to net cash provided by operating activities for the years ended December 31, 2012 and 2011.

(in millions)	Years Ended December 31,	
	2012	2011
EBITDA	\$ 703.7	\$ 557.4
Depreciation and amortization	(210.2)	(204.9)
Income tax expense	(67.1)	(11.2)
Interest expense, net	(307.4)	(324.2)
Net income	119.0	17.1
Depreciation and amortization	210.2	204.9
Equity-based compensation expense	22.1	19.5
Deferred income taxes	(56.3)	(10.2)
Allowance for doubtful accounts	—	0.4
Amortization of deferred financing costs and debt premium	13.6	15.7
Net loss on extinguishments of long-term debt	17.2	118.9
Other	1.0	6.7
Changes in assets and liabilities	(9.4)	(158.3)
Net cash provided by operating activities	\$ 317.4	\$ 214.7

## Seasonality

While we have not historically experienced significant seasonality throughout the year, sales in our Corporate segment, which primarily serves private sector business customers, are typically higher in the fourth quarter than in other quarters due to customers spending their remaining technology budget dollars at the end of the year. Additionally, sales in our Public segment have historically been higher in the third quarter than in other quarters primarily due to the buying patterns of the federal government and education customers.

## Liquidity and Capital Resources

### Overview

We finance our operations and capital expenditures through a combination of internally generated cash from operations and from borrowings under our senior secured asset-based revolving credit facility. We believe that our current sources of funds will be sufficient to fund our cash operating requirements for the next year. In addition, we believe that, in spite of the uncertainty of future macroeconomic conditions, we have adequate sources of liquidity and funding available to meet our longer-term needs. However, there are a number of factors that may negatively impact our available sources of funds. The amount of cash generated from operations will be dependent upon factors such as the successful execution of our business plan and general economic conditions.

On July 2, 2013, we completed an IPO of 23,250,000 shares of common stock. On July 31, 2013, we completed the sale of an additional 3,487,500 shares of common stock to the underwriters of the IPO pursuant to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO. Such shares were registered under the Securities Act of 1933, as amended, pursuant to our Registration Statement on Form S-1, which was declared effective by the SEC on June 26, 2013. Our shares of common stock are listed on the NASDAQ Global Select Market under the symbol "CDW." Our shares of common stock were sold to the underwriters at a price of \$17.00 per share in the IPO and upon the exercise of the overallotment option, which together generated aggregate net proceeds of \$424.7 million to us after deducting underwriting discounts, expenses and transaction costs.

Using a portion of the net proceeds from the IPO, we paid a \$24.4 million termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities that was effective upon completion of the IPO and redeemed \$175.0 million aggregate principal amount of senior secured notes due 2018. The redemption price of the senior secured notes due 2018 was 108.0% of the principal amount redeemed, plus \$0.7 million of accrued and unpaid interest to the date of redemption. We used cash on hand to pay such accrued and unpaid interest. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$16.7 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$14.0 million in redemption premium and \$2.7 million for the write-off of a portion of the remaining deferred financing costs related to the senior secured notes due 2018.

On August 1, 2013, we redeemed \$324.0 million aggregate principal amount of senior subordinated notes due 2017. We used a portion of the net proceeds from the IPO to redeem \$146.0 million aggregate principal amount of senior subordinated notes due 2017 and incremental borrowings of \$190.0 million under the senior secured term loan facility to redeem \$178.0 million aggregate principal amount of senior subordinated notes due 2017. The redemption price of the senior subordinated notes due 2017 was 106.268% of the principal amount redeemed, plus \$12.0 million of accrued and unpaid interest to the date of redemption. We used cash on hand to pay such accrued and unpaid interest. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$24.6 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$20.3 million in redemption premium and \$4.3 million for the write-off of a portion of the remaining deferred financing costs related to the senior subordinated notes due 2017.

On October 18, 2013, we redeemed \$155.0 million aggregate principal amount of senior subordinated notes due 2017 at a redemption price that was 104.178% of the principal amount redeemed plus \$0.2 million in accrued and unpaid interest to the date of redemption. We used a combination of cash on hand and the net proceeds from the sale of shares of common stock related to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO, in the amount of \$56.0 million, to redeem the \$155.0 million aggregate principal amount of senior subordinated notes due 2017, including the redemption premium and accrued and unpaid interest. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$8.5 million in the consolidated statement of operations during the year ended December 31, 2013. This loss represented \$6.5 million in redemption premium and \$2.0 million for the write-off of a portion of the remaining deferred financing costs related to the senior subordinated notes due 2017. See "Subsequent Events" below for a description of refinancing transactions completed during 2014.

On December 2, 2013, we paid a cash dividend on our common stock of \$0.0425 per share to all stockholders of record as of the close of business on November 15, 2013.

On February 13, 2014, we announced that our board of directors declared a quarterly cash dividend on our common stock of \$0.0425 per share. The dividend will be paid on March 10, 2014 to all stockholders of record as of the close of business on February 25, 2014. The payment of any future dividends will be at the discretion of our board of directors and will depend upon our results of operations, financial condition, business prospects, capital requirements, contractual restrictions, any potential indebtedness we may incur, restrictions imposed by applicable law, tax considerations and other factors that our board of directors deems relevant. In addition, our ability to pay dividends on our common stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to us, in each case, under the terms of our current and any future agreements governing our indebtedness.

In connection with the establishment of the MPK Incentive Plan II (the “MPK Plan”) in 2007, we agreed to make charitable contributions in amounts equal to the net income tax benefits derived from payouts to participants under the MPK Plan (net of any related employer payroll tax costs). As of December 31, 2013, we have accrued approximately \$21 million related to this arrangement within other current liabilities. We expect to make the related cash contribution during the first quarter of 2014. See Note 10 of the accompanying audited consolidated financial statements for additional discussion of this arrangement.

### **Cash Flows**

Cash flows from operating, investing and financing activities were as follows:

(in millions)	Years Ended December 31,		
	2013	2012	2011
Net cash provided by (used in):			
Operating activities	\$ 366.3	\$ 317.4	\$ 214.7
Investing activities	(47.1)	(41.7)	(56.0)
Net change in accounts payable - inventory financing	7.4	(29.5)	250.5
Other financing activities	(175.7)	(308.5)	(345.9)
Financing activities	(168.3)	(338.0)	(95.4)
Effect of exchange rate changes on cash and cash equivalents	(0.7)	0.3	—
Net increase (decrease) in cash and cash equivalents	<u>\$ 150.2</u>	<u>\$ (62.0)</u>	<u>\$ 63.3</u>

### **Operating Activities**

Net cash provided by operating activities for 2013 increased \$48.9 million compared to 2012. Net income adjusted for the impact of non-cash items such as depreciation and amortization, equity-based compensation expense and net loss on extinguishments of long-term debt was \$413.4 million during 2013, compared to \$326.8 million during 2012, an increase of \$86.6 million. The increase in cash of \$86.6 million reflected stronger operating results in 2013 compared to 2012. Net changes in assets and liabilities reduced cash by \$47.1 million in 2013 compared to a reduction of \$9.4 million in 2012, resulting in a change of \$37.7 million between periods. While changes in assets and liabilities were relatively flat during 2012, during 2013, accounts receivable and accounts payable balances decreased and increased cash by \$170.8 million and \$146.1 million, respectively, primarily as a result of accelerated sales growth during the final month of 2013. Merchandise inventory also increased during 2013 to support strong sales order volume near the end of 2013.

Net cash provided by operating activities for 2012 increased \$102.7 million compared to 2011. The increase was primarily driven by changes in assets and liabilities, resulting in a \$148.9 million increase in net cash provided by operating activities between periods. Despite a 2012 fourth quarter increase in net sales of 4.9% between years, accounts receivable remained relatively flat from the prior year end driven by improved collection results, particularly within the Public segment. Accounts receivable in 2011 represented a use of cash of \$183.4 million, primarily due to a 2011 fourth quarter increase in net sales of 9.3% from the same period in the prior year. Merchandise inventory also contributed \$36.1 million of the increase in cash between years driven by a return to more normalized inventory levels in 2012 following the build-up at the end of 2011 related to the hard drive shortage from the Thailand floods, along with a higher percentage of drop shipments from vendor partners and distributors in 2012 compared to 2011. Partially offsetting these factors in 2012 was a \$54.1 million decrease in other assets as we collected \$53.3 million in income tax refunds in 2011 that did not repeat in 2012. Net income adjusted for the impact of non-cash items such as losses on extinguishment of long-term debt was \$326.8 million in 2012 compared to \$373.0 million in 2011, or a decrease of \$46.2 million. Improved operating performance in 2012 drove higher net income between years, but also higher net cash income taxes paid. Net cash income taxes paid in 2012 were \$123.2 million compared to a net

cash tax refund of \$20.9 million in 2011. In addition to the \$53.3 million in cash tax refunds received in 2011, we also fully utilized our remaining federal net operating tax loss carryforwards during 2011.

In order to manage our working capital and operating cash needs, we monitor our cash conversion cycle, defined as days of sales outstanding in accounts receivable plus days of supply in inventory minus days of purchases outstanding in accounts payable, based on a rolling three-month average. The following table presents the components of our cash conversion cycle:

(in days)	December 31,		
	2013	2012	2011
Days of sales outstanding (DSO) <sup>(1)</sup>	44	42	45
Days of supply in inventory (DIO) <sup>(2)</sup>	15	14	15
Days of purchases outstanding (DPO) <sup>(3)</sup>	(35)	(32)	(32)
Cash conversion cycle	24	24	28

- (1) Represents the rolling three-month average of the balance of trade accounts receivable, net at the end of the period divided by average daily net sales for the same three-month period. Also incorporates components of other miscellaneous receivables.
- (2) Represents the rolling three-month average of the balance of inventory at the end of the period divided by average daily cost of goods sold for the same three-month period.
- (3) Represents the rolling three-month average of the combined balance of accounts payable-trade, excluding cash overdrafts, and accounts payable-inventory financing at the end of the period divided by average daily cost of goods sold for the same three-month period.

The cash conversion cycle remained flat at 24 days for both December 31, 2013 and 2012. The increase in DSO was primarily driven by an increase in receivables for third-party services such as software assurance and warranties. These services have an unfavorable impact on DSO as the receivable is recognized on the balance sheet on a gross basis while the corresponding sales amount in the statement of operations is recorded on a net basis. The DPO increase was primarily due to an increase in payables for third-party services, which offsets the related increase in DSO discussed above. These services have a favorable impact on DPO as the payable is recognized on the balance sheet without a corresponding cost of sales in the statement of operations because the cost paid to the vendor or third-party service provider is recorded as a reduction to net sales. The timing of quarter-end payments also had a favorable impact on DPO at December 31, 2013. The increase in DIO was primarily due to an increase in inventory to support strong sales order volume near the end of 2013.

The cash conversion cycle decreased to 24 days at December 31, 2012 compared to 28 days at December 31, 2011, driven by improvements in DSO and DIO. The DSO decline was primarily related to improved collections in the Public segment. The DIO decline was primarily related to an increase in the percentage of products delivered to customers via drop-shipment in 2012 compared to 2011, which had the effect of increasing cost of sales without a corresponding increase in inventory-related working capital.

#### *Investing Activities*

Net cash used in investing activities increased \$5.4 million in 2013 compared to 2012. Capital expenditures were \$47.1 million and \$41.4 million for 2013 and 2012, respectively, primarily for improvements to our information technology systems during both years.

Net cash used in investing activities in 2012 decreased \$14.3 million compared to 2011. This decline was primarily due to a reduction in cash payments between years of \$6.6 million related to interest rate swap agreements, as the \$6.6 million paid in 2011 reflected the final payment upon termination of the swap agreements on January 14, 2011. Capital expenditures were \$41.4 million and \$45.7 million for 2012 and 2011, respectively, primarily for improvements to our information technology systems during both years. During 2012 and 2011, we paid \$0.3 million and \$3.7 million, respectively, for new interest rate cap agreements.

#### *Financing Activities*

Net cash used in financing activities decreased \$169.7 million in 2013 compared to 2012. The decrease was primarily driven by various debt transactions during each period and our July 2013 IPO, which generated net proceeds of \$424.7 million after deducting underwriting discounts, expenses and transaction costs. The net impact of our debt transactions resulted in cash outflows of \$569.4 million and \$310.6 million during 2013 and 2012, respectively, as cash was used in each period to reduce

our total long-term debt. Debt transactions impacting each period presented are described below under "Long-Term Debt and Financing Arrangements."

Net cash used in financing activities increased \$242.6 million in 2012 compared to 2011. This change was primarily driven by 2011 net inflows from accounts payable-inventory financing of \$250.5 million compared to 2012 outflows of \$29.5 million, resulting in a total impact on the change in cash used in financing activities of \$280.0 million from accounts payable-inventory financing. The reduction in cash during 2012 from accounts payable-inventory financing was primarily due to the termination of one of our inventory financing agreements in the first quarter of 2012, with amounts owed for subsequent purchases being included in accounts payable-trade on the consolidated balance sheet and classified as cash flows from operating activities on the consolidated statement of cash flows. As discussed below under "Inventory Financing Arrangements," in June 2011 we entered into a new inventory financing agreement with a financial intermediary to facilitate the purchase of inventory from a certain vendor. Inventory purchases from this vendor under the June 2011 inventory financing agreement are included in accounts payable-inventory financing and reported as cash flows from financing activities. The net impact of our debt transactions resulted in cash outflows of \$310.6 million during 2012 and \$346.5 million during 2011 as cash was used in each period to reduce our total long-term debt. Debt transactions impacting each period presented are described below under "Long-Term Debt and Financing Arrangements."

### **Long-Term Debt and Financing Arrangements**

Long-term debt was as follows:

(dollars in millions)	Interest Rate <sup>(1)</sup>	December 31,	
		2013	2012
Senior secured asset-based revolving credit facility	—%	\$ —	\$ —
Senior secured term loan facility	3.25%	1,528.9	1,339.5
Unamortized discount on senior secured term loan facility		(4.4)	—
Senior secured notes due 2018	8.0%	325.0	500.0
Senior notes due 2019	8.5%	1,305.0	1,305.0
Unamortized premium on senior notes due 2019		4.2	5.0
Senior subordinated notes due 2017	12.535%	92.5	621.5
Total long-term debt		3,251.2	3,771.0
Less current maturities of long-term debt		(45.4)	(40.0)
Long-term debt, excluding current maturities		\$ 3,205.8	\$ 3,731.0

(1) Interest rate at December 31, 2013.

At December 31, 2013, we were in compliance with the covenants under our various credit agreements and indentures as described below. Under the indentures governing the 8.5% Senior Notes due 2019 and 8.0% Senior Secured Notes due 2018, which contain the most restrictive restricted payment provisions in our various credit agreements and indentures, CDW LLC and its restricted subsidiaries are generally restricted from paying dividends and making other restricted payments unless CDW LLC could incur an additional dollar of indebtedness under its fixed charges ratio covenant and the amount of such dividend or other restricted payment, together with the amount of all other dividends and restricted payments made from January 1, 2011 through the end of the most recently ended fiscal quarter, is less than the sum of 50% of cumulative consolidated net income or 100% of any consolidated net loss incurred over the period plus the amount of certain other items occurring during that period that increase (and in some cases decrease) the amounts available for such payments. For the purpose of determining restricted payment capacity, consolidated net income or loss includes certain adjustments that are defined in the indentures. At December 31, 2013, the amount of cumulative consolidated net income free of restrictions under the credit agreements and indentures ("Restricted Payment Capacity") was \$148.0 million. However, the transactions described below under "Subsequent Events" have since reduced the Restricted Payment Capacity to approximately \$89 million.

#### *Senior Secured Asset-Based Revolving Credit Facility ("Revolving Loan")*

At December 31, 2013, we had no outstanding borrowings under the Revolving Loan, \$2.2 million of undrawn letters of credit and \$256.7 million reserved related to the floorplan sub-facility.

On June 24, 2011, we entered into the Revolving Loan, a five-year \$900.0 million senior secured asset-based revolving credit facility, with the facility being available to us for borrowings, issuance of letters of credit and floorplan financing for certain vendor products. The Revolving Loan matures on June 24, 2016. The Revolving Loan replaced our previous revolving loan credit facility that was to mature on October 12, 2012. In connection with the termination of the

previous facility, we recorded a loss on extinguishment of long-term debt of \$1.6 million in the consolidated statement of operations for the year ended December 31, 2011, representing a write-off of a portion of unamortized deferred financing costs. Fees of \$7.2 million related to the Revolving Loan were capitalized as deferred financing costs and are being amortized over the term of the facility on a straight-line basis.

As described in Note 5 to the consolidated financial statements, we have entered into agreements with certain financial intermediaries to facilitate the purchase of inventory from various suppliers. In connection with the floorplan sub-facility, we entered into the Revolving Loan inventory financing agreement. Amounts outstanding under the Revolving Loan inventory financing agreement are unsecured and noninterest bearing. We will either pay the outstanding Revolving Loan inventory financing agreement amounts when they become due, or the Revolving Loan's administrative agent will automatically initiate an advance on the Revolving Loan and use the proceeds to pay the balance on the due date. At December 31, 2013, the financial intermediary reported an outstanding balance of \$246.8 million under the Revolving Loan inventory financing agreement. The total amount reported on the consolidated balance sheet as accounts payable-inventory financing related to the Revolving Loan inventory financing agreement is \$9.3 million more than the \$246.8 million owed to the financial intermediary due to differences in the timing of reporting activity under the Revolving Loan inventory financing agreement. The outstanding balance reported by the financial intermediary excludes \$9.9 million in reserves for open orders that reduce the availability under the Revolving Loan. Changes in cash flows from the Revolving Loan inventory financing agreement are reported in financing activities on the consolidated statements of cash flows.

Borrowings under the Revolving Loan bear interest at a variable interest rate plus an applicable margin. The variable interest rate is based on one of two indices, either (i) LIBOR, or (ii) the Alternate Base Rate ("ABR") with the ABR being the greatest of (a) the prime rate, (b) the federal funds effective rate plus 50 basis points or (c) the one-month LIBOR plus 1.00%. The applicable margin varies (2.00% to 2.50% for LIBOR borrowings and 1.00% to 1.50% for ABR borrowings) depending upon our average daily excess cash availability under the agreement and is subject to a reduction of 0.25% if, and for as long as, the senior secured leverage ratio is less than 3.0. The senior secured leverage ratio is defined as the ratio of senior secured debt (including amounts owed under certain inventory floorplan arrangements) less cash and cash equivalents, to Adjusted EBITDA, a non-GAAP measure, for the four most recently ended fiscal quarters. For the four quarters ended December 31, 2013, the senior secured leverage ratio was 2.1.

Availability under the Revolving Loan is limited to (a) the lesser of the revolving commitment of \$900.0 million and the amount of the borrowing base less (b) outstanding borrowings, letters of credit, and amounts outstanding under the Revolving Loan inventory financing agreement plus a reserve of 15% of open orders. The borrowing base is (a) the sum of the products of the applicable advance rates on eligible accounts receivable and on eligible inventory as defined in the agreement less (b) any reserves. At December 31, 2013, the borrowing base was \$1,065.5 million based on the amount of eligible inventory and accounts receivable balances as of November 30, 2013. We could have borrowed up to an additional \$641.1 million under the Revolving Loan at December 31, 2013. The fee on the unused portion of the Revolving Loan ranges from 25 basis points to either 37.5 or 50 basis points, depending on the amount of utilization.

CDW LLC is the borrower under the Revolving Loan. All obligations under the Revolving Loan are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. Borrowings under the Revolving Loan are collateralized by a first priority interest in inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5), deposits, and accounts receivable, and a second priority interest in substantially all other assets. The Revolving Loan contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Revolving Loan also includes maintenance of a minimum average daily excess cash availability requirement. Should we fall below the minimum average daily excess cash availability requirement for five consecutive business days, we become subject to a fixed charge coverage ratio until such time as the daily excess cash availability requirement is met for 30 consecutive business days.

#### *Senior Secured Term Loan Facility*

On April 29, 2013, we entered into a new seven-year, \$1,350.0 million aggregate principal amount senior secured term loan facility (the "Term Loan"). The Term Loan was issued at a price that was 99.75% of par, which resulted in a discount of \$3.4 million. Substantially all of the proceeds from the Term Loan were used to repay the \$1,299.5 million outstanding aggregate principal amount of the prior senior secured term loan facility (the "Prior Term Loan Facility"). In connection with this refinancing, we recorded a loss on extinguishment of long-term debt of \$10.3 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented a write-off of the remaining unamortized deferred financing costs related to the Prior Term Loan Facility.

On July 31, 2013, we borrowed an additional \$190.0 million aggregate principal amount under the Term Loan at a price that was 99.25% of par, which resulted in a discount of \$1.4 million. Such proceeds were used to redeem a portion of outstanding Senior Subordinated Notes. The discounts are reported on the consolidated balance sheet as a reduction to the face amount of the Term Loan and are being amortized to interest expense over the term of the related debt. Fees of \$6.1 million related to the Term Loan were capitalized as deferred financing costs and are being amortized over the term of the facility using the effective interest method.

Borrowings under the Term Loan bear interest at either (a) the alternate base rate ("ABR") plus a margin or (b) LIBOR plus a margin; provided that for the purposes of the Term Loan, LIBOR shall not be less than 1.00% per annum at any time ("LIBOR Floor"). The margin is based upon a net leverage ratio as defined in the agreement governing the Term Loan, ranging from 1.25% to 1.50% for ABR borrowings and 2.25% to 2.50% for LIBOR borrowings. An interest rate of 3.25%, LIBOR Floor plus a 2.25% margin, was in effect during the three-month period ended December 31, 2013.

Unlike the Prior Term Loan Facility, the Term Loan does not include a senior secured leverage ratio requirement or a hedging requirement. Additionally, the definition of debt under the Term Loan was revised to exclude amounts outstanding under our inventory financing agreements. The Term Loan is subject to certain requirements as was the Prior Term Loan Facility to make mandatory annual excess cash flow prepayments under designated circumstances, including (i) a prepayment in an amount equal to 50% of our excess cash flow for a fiscal year (the percentage rate of which decreases to 25% when the total net leverage ratio, as defined in the governing agreement, is less than or equal to 5.5 but greater than 4.5; and decreases to 0% when the total net leverage ratio is less than or equal to 4.5), and (ii) the net cash proceeds from the incurrence of certain additional indebtedness by us or our subsidiaries. The total net leverage ratio was 3.8 at December 31, 2013.

We are required to pay quarterly principal installments equal to 0.25% of the original principal amount of the Term Loan, with the remaining principal amount payable on the maturity date of April 29, 2020. The quarterly principal installment payments commenced during the quarter ended June 30, 2013. At December 31, 2013, the outstanding principal amount of the Term Loan was \$1,528.9 million, excluding \$4.4 million in unamortized discount.

We have interest rate cap agreements in effect through January 14, 2015 with a combined notional amount of \$1,150.0 million. These cap agreements have not been designated as cash flow hedges of interest rate risk for GAAP accounting purposes. Of the total \$1,150.0 million notional amount, \$500.0 million entitle us to payments from the counterparty of the amount, if any, by which three-month LIBOR exceeds 3.5% during the agreement period. The remaining cap agreements with a notional amount of \$650.0 million entitle us to payments from the counterparty of the amount, if any, by which the three-month LIBOR exceeds 1.5% during the agreement period. The fair value of our interest rate cap agreements was zero at December 31, 2013 and \$0.1 million at December 31, 2012.

During the first quarters of 2013, 2012 and 2011, we made principal prepayments totaling \$40.0 million, \$201.0 million and \$132.0 million, respectively, under the Prior Term Loan Facility. These prepayments satisfied the excess cash flow payment provision of the Prior Term Loan Facility with respect to the years ended December 31, 2012, 2011 and 2010, respectively.

On March 11, 2011, we entered into an amendment to the Prior Term Loan Facility, which became effective on March 14, 2011. In connection with this amendment, we recorded a loss on extinguishment of long-term debt of \$3.2 million in the consolidated statement of operations for the year ended December 31, 2011. This loss represented a write-off of a portion of the unamortized deferred financing costs related to the Prior Term Loan Facility.

CDW LLC is the borrower under the Term Loan. All obligations under the Term Loan are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Term Loan is collateralized by a second priority interest in substantially all inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5 to the consolidated financial statements), deposits, and accounts receivable, and by a first priority interest in substantially all other assets. The Term Loan contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates.

#### *8.0% Senior Secured Notes due 2018 ("Senior Secured Notes")*

The Senior Secured Notes were issued on December 17, 2010 and will mature on December 15, 2018. At December 31, 2013, the outstanding principal amount of the Senior Secured Notes was \$325.0 million.



On July 2, 2013, we used a portion of the net proceeds from the IPO to redeem \$175.0 million aggregate principal amount of Senior Secured Notes. The redemption price of the Senior Secured Notes was 108.0% of the principal amount redeemed, plus \$0.7 million of accrued and unpaid interest to the date of redemption. We used cash on hand to pay such accrued and unpaid interest. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$16.7 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$14.0 million in redemption premium and \$2.7 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Secured Notes.

CDW LLC and CDW Finance Corporation are the co-issuers of the Senior Secured Notes and the obligations under the notes are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Senior Secured Notes are secured on a pari passu basis with the Term Loan by a second priority interest in substantially all inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5 to the consolidated financial statements), deposits, and accounts receivable, and by a first priority interest in substantially all other assets. The Senior Secured Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Senior Secured Note indenture does not contain any financial covenants.

*11.0% Senior Exchange Notes due 2015 (“Senior Exchange Notes”); 11.5% / 12.25% Senior PIK Election Exchange Notes due 2015 (“PIK Election Notes” together with the Senior Exchange Notes, the “Senior Notes due 2015”)*

At December 31, 2013, there were no outstanding Senior Notes due 2015.

On April 13, 2011, we completed a cash tender offer (the “Initial Senior Notes due 2015 Tender Offer”) and purchased \$665.1 million aggregate principal amount of Senior Notes due 2015 comprised of \$519.2 million of the Senior Exchange Notes and \$145.9 million of the PIK Election Notes. We concurrently issued \$725.0 million aggregate principal amount of Senior Notes (as defined below). The proceeds from this offering, together with cash on hand and borrowings under the then-outstanding revolving loan credit facility, were used to fund the purchase of the tendered Senior Notes due 2015, including \$665.1 million aggregate principal amount of Senior Notes due 2015, \$59.9 million in tender offer premium and \$36.5 million of accrued and unpaid interest, along with transaction fees and expenses.

On May 20, 2011, we completed a follow-on cash tender offer (the “Follow-on Senior Notes due 2015 Tender Offer,” and together with the Initial Senior Notes due 2015 Tender Offer, the “Senior Notes due 2015 Tender Offers”) and purchased an additional \$412.8 million aggregate principal amount of Senior Notes due 2015 comprised of \$321.4 million of the Senior Exchange Notes and \$91.4 million of the PIK Election Notes. We concurrently issued \$450.0 million in aggregate principal amount of additional Senior Notes. The proceeds from this offering, together with cash on hand and borrowings under the then-outstanding revolving loan credit facility, were used to fund the purchase of the tendered Senior Notes due 2015, including \$412.8 million aggregate principal amount of Senior Notes due 2015, \$37.2 million in tender offer premium and \$4.5 million of accrued and unpaid interest, along with transaction fees and expenses.

In connection with the Senior Notes due 2015 Tender Offers, we recorded a loss on extinguishment of long-term debt of \$114.1 million in the consolidated statement of operations for the year ended December 31, 2011. This loss represented \$97.0 million in tender offer premiums and \$17.1 million for the write-off of a portion of the unamortized deferred financing costs related to the Senior Notes due 2015. In connection with the issuance of Senior Notes, fees of \$19.1 million were capitalized as deferred financing costs and are being amortized over the term of the notes using the effective interest method.

On February 2, 2012, we commenced a tender offer to purchase any and all of the remaining \$129.0 million aggregate principal amount of Senior Notes due 2015. On February 17, 2012, we accepted for purchase \$120.6 million aggregate principal amount of the outstanding Senior Notes due 2015 that were tendered. On March 5, 2012, we accepted for purchase an additional \$0.1 million aggregate principal amount of the outstanding Senior Notes due 2015 that were tendered prior to the expiration of the tender offer on March 2, 2012. On March 19, 2012, we redeemed the remaining \$8.3 million aggregate principal amount that was not tendered.

We funded the purchases and redemptions of the Senior Notes due 2015 with the issuance of \$130.0 million aggregate principal amount of additional Senior Notes on February 17, 2012. The proceeds from this issuance, together with cash on hand and borrowings under the Revolving Loan, funded the payment of \$129.0 million aggregate principal amount of Senior Notes due 2015, \$7.9 million in tender and redemption premiums and \$5.0 million of accrued and unpaid interest, along with transaction fees and expenses.

In connection with these transactions, we recorded a loss on extinguishment of long-term debt of \$9.4 million in the consolidated statement of operations for the year ended December 31, 2012. This loss represented \$7.9 million in tender and redemption premiums and \$1.5 million for the write-off of the remaining unamortized deferred financing costs related to the Senior Notes due 2015.

*8.5% Senior Notes due 2019 (“Senior Notes”)*

At December 31, 2013, the outstanding principal amount of Senior Notes was \$1,305.0 million, excluding \$4.2 million in unamortized premium. The Senior Notes mature on April 1, 2019.

On February 17, 2012, we issued \$130.0 million aggregate principal amount of additional Senior Notes at an issue price of 104.375% of par. The \$5.7 million premium received is reported on the consolidated balance sheet as an addition to the face amount of the Senior Notes and is being amortized as a reduction of interest expense over the term of the related debt.

As discussed above, on April 13, 2011, we issued \$725.0 million aggregate principal amount of Senior Notes and on May 20, 2011, we issued an additional \$450.0 million aggregate principal amount of Senior Notes. The proceeds from these issuances together with cash on hand and borrowings under the then-outstanding revolving loan credit facility were used to fund the Senior Notes due 2015 Tender Offers.

CDW LLC and CDW Finance Corporation are the co-issuers of the Senior Notes. Obligations under the Senior Notes are guaranteed on an unsecured senior basis by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Senior Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Senior Notes do not contain any financial covenants.

*12.535% Senior Subordinated Exchange Notes due 2017 (“Senior Subordinated Notes”)*

At December 31, 2013, the outstanding principal amount of the Senior Subordinated Notes was \$92.5 million. The Senior Subordinated Notes have a maturity date of October 12, 2017.

On October 18, 2013, we redeemed \$155.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 104.178% of the principal amount redeemed. A combination of cash on hand and the net proceeds from the sale of shares of common stock related to the underwriters' July 26, 2013 exercise in full of the over-allotment option granted to them in connection with the IPO, in the amount of \$56.0 million, was used to fund the redemption of \$155.0 million aggregate principal amount, \$6.5 million of redemption premium and \$0.2 million in accrued and unpaid interest to the date of redemption. See Note 9 in the consolidated financial statements for additional discussion of the underwriters' over-allotment option. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$8.5 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$6.5 million in redemption premium and \$2.0 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

On August 1, 2013, we redeemed \$324.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. We used a portion of the net proceeds from the IPO to redeem \$146.0 million aggregate principal amount of Senior Subordinated Notes and incremental borrowings of \$190.0 million under the Term Loan to redeem \$178.0 million aggregate principal amount of Senior Subordinated Notes. We used cash on hand to pay \$12.0 million of accrued and unpaid interest to the date of redemption. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$24.6 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$20.3 million in redemption premium and \$4.3 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Subordinated Notes.

On March 8, 2013, we redeemed \$50.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. Cash on hand was used to fund the redemption of \$50.0 million aggregate principal amount, \$3.1 million of redemption premium and \$2.5 million in accrued and unpaid interest to the date of redemption. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$3.9 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$3.1 million in redemption premium and \$0.8 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

On December 21, 2012, we redeemed \$100.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. Cash on hand was used to fund the redemption of \$100.0 million aggregate principal amount, \$6.3 million of redemption premium and \$2.3 million in accrued and unpaid interest to the date of redemption. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$7.8 million in the consolidated statement of operations for the year ended December 31, 2012. This loss represented \$6.3 million in redemption premium and \$1.5 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

CDW LLC and CDW Finance Corporation are the co-issuers of the Senior Subordinated Notes. Obligations under the Senior Subordinated Notes are guaranteed on an unsecured senior basis by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Senior Subordinated Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Senior Subordinated Notes do not contain any financial covenants.

*Inventory Financing Agreements*

We have entered into agreements with certain financial intermediaries to facilitate the purchase of inventory from various suppliers under certain terms and conditions, as described below. These amounts are classified separately as accounts payable-inventory financing on the consolidated balance sheets. We do not incur any interest expense associated with these agreements as balances are paid when they are due.

The following table presents the amounts included in accounts payable-inventory financing:

(in millions)	December 31,	
	2013	2012
Revolving Loan inventory financing agreement	\$ 256.1	\$ 248.3
Other inventory financing agreements	0.5	0.9
Accounts payable-inventory financing	<u>\$ 256.6</u>	<u>\$ 249.2</u>

We maintain a senior secured asset-based revolving credit facility as described in Note 7 to our consolidated financial statements, which incorporates a \$400.0 million floorplan sub-facility to facilitate the purchase of inventory from a certain vendor. In connection with the floorplan sub-facility, we maintain the Revolving Loan inventory financing agreement. Amounts outstanding under the Revolving Loan inventory financing agreement are unsecured and non-interest bearing. At December 31, 2013 and 2012, we reported \$256.1 million and \$248.3 million, respectively, for this agreement within accounts payable-inventory financing on the consolidated balance sheets.

We also maintain other inventory financing agreements with financial intermediaries to facilitate the purchase of inventory from certain vendors. At December 31, 2013 and 2012, amounts owed under other inventory financing agreements of \$0.5 million and \$0.9 million, respectively, were collateralized by the inventory purchased under these financing agreements and a second lien on the related accounts receivable.

***Contractual Obligations***

We have future obligations under various contracts relating to debt and interest payments, operating leases and asset retirement obligations. The following table presents our estimated future payments under contractual obligations that existed as of December 31, 2013, based on undiscounted amounts.

(in millions)	Payments Due by Period				
	Total	< 1 year	1-3 years	4-5 years	> 5 years
Revolving Loan <sup>(1)</sup>	\$ —	\$ —	\$ —	\$ —	\$ —
Term Loan <sup>(2)</sup>	1,832.7	64.9	128.3	126.3	1,513.2
Senior Secured Notes <sup>(3)</sup>	455.0	26.0	52.0	377.0	—
Senior Notes <sup>(3)</sup>	1,915.1	110.9	221.9	221.9	1,360.4
Senior Subordinated Notes <sup>(3)</sup>	124.8	38.8	15.7	70.3	—
Operating leases <sup>(4)</sup>	89.2	17.9	30.9	19.7	20.7
Asset retirement obligations <sup>(5)</sup>	0.5	—	0.5	—	—
Total	<u>\$ 4,417.3</u>	<u>\$ 258.5</u>	<u>\$ 449.3</u>	<u>\$ 815.2</u>	<u>\$ 2,894.3</u>

- (1) Includes only principal payments. Excludes interest payments and fees related to this facility because of variability with respect to the timing of advances and repayments.
- (2) Includes future principal and cash interest payments on long-term borrowings through scheduled maturity dates. Interest payments for variable rate debt were calculated using interest rates as of December 31, 2013. Excluded from these amounts are the amortization of debt issuance and other costs related to indebtedness.
- (3) Includes future principal and cash interest payments on long-term borrowings through scheduled maturity dates. Interest on the Senior Secured Notes, Senior Notes and Senior Subordinated Notes is calculated using the stated interest rate. Excluded from these amounts are the amortization of debt issuance and other costs related to indebtedness. See "Subsequent Events" for a description of refinancing transactions completed during 2014.
- (4) Includes the minimum lease payments for non-cancelable leases of properties and equipment used in our operations.
- (5) Represent commitments to return property subject to operating leases to original condition upon lease termination.

### **Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements that have or are reasonably likely to have a material current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

### **Inflation**

Inflation has not had a material impact on our operating results. We generally have been able to pass along price increases to our customers, though certain economic factors and technological advances in recent years have tended to place downward pressure on pricing. We also have been able to generally offset the effects of inflation on operating costs by continuing to emphasize productivity improvements and by accelerating our overall cash conversion cycle. There can be no assurances, however, that inflation would not have a material impact on our sales or operating costs in the future.

### **Commitments and Contingencies**

We are party to various legal proceedings that arise in the ordinary course of our business, which include commercial, intellectual property, employment, tort and other litigation matters. We are also subject to audit by federal, state and local authorities, and by various partners and large customers, including government agencies, relating to purchases and sales under various contracts. In addition, we are subject to indemnification claims under various contracts. From time to time, certain of our customers file voluntary petitions for reorganization or liquidation under the U.S. bankruptcy laws. In such cases, certain pre-petition payments received by us could be considered preference items and subject to return to the bankruptcy administrator.

As of December 31, 2013, we do not believe that there is a reasonable possibility that any material loss exceeding the amounts already recognized for these proceedings and matters, if any, has been incurred. However, the ultimate resolutions of these proceedings and matters are inherently unpredictable. As such, our financial condition and results of operations could be adversely affected in any particular period by the unfavorable resolution of one or more of these proceedings or matters.

We previously filed a claim as part of a class action settlement in a case alleging price fixing during the period of January 1, 1996 through December 31, 2006, by certain manufacturers of thin-film liquid crystal display panels. On July 13, 2013, the United States District Court for the Northern District of California approved distribution of the settlement proceeds, including a net payment to us of \$10.4 million after fees and expenses. We have recognized a pre-tax benefit of \$10.4 million within selling and administrative expenses in the consolidated statement of operations for the year ended December 31, 2013.

The first of two settlement payments was received by us on July 29, 2013 in the amount of \$8.5 million. The balance of \$1.9 million was received in February 2014.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in accordance with GAAP requires management to make use of certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reported periods. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

In Note 1 to the accompanying audited consolidated financial statements, we include a discussion of the significant accounting policies used in the preparation of our consolidated financial statements. We believe the following are the most critical accounting policies and estimates that include significant judgments used in the preparation of our financial statements. We consider an accounting policy or estimate to be critical if it requires assumptions to be made that were uncertain at the time they were made, and if changes in these assumptions could have a material impact on our financial condition or results of operations.

#### ***Revenue Recognition***

We are a primary distribution channel for a large group of vendors and suppliers, including OEMs, software publishers and wholesale distributors. We record revenue from sales transactions when title and risk of loss are passed to our customer, there is persuasive evidence of an arrangement for sale, delivery has occurred and/or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. Our shipping terms typically specify F.O.B. destination, at which time title and risk of loss have passed to the customer.

Revenues from the sales of hardware products and software products and licenses are generally recognized on a gross basis with the selling price to the customer recorded as sales and the acquisition cost of the product recorded as cost of sales. These items can be delivered to customers in a variety of ways, including (i) as physical product shipped from our warehouse, (ii) via drop-shipment by the vendor or supplier, or (iii) via electronic delivery for software licenses. At the time of sale, we record an estimate for sales returns and allowances based on historical experience. Our vendor partners warrant most of the products we sell.

We leverage drop-shipment arrangements with many of our vendors and suppliers to deliver products to our customers without having to physically hold the inventory at our warehouses, thereby increasing efficiency and reducing costs. We recognize revenue for drop-shipment arrangements on a gross basis upon delivery to the customer with contract terms that typically specify F.O.B. destination. We recognize revenue on a gross basis as the principal in the transaction because we are the primary obligor in the arrangement, we assume inventory risk if the product is returned by the customer, we set the price of the product charged to the customer, we assume credit risk for the amounts invoiced, and we work closely with our customers to determine their hardware and software specifications. These arrangements generally represent approximately 40% to 50% of total net sales, including approximately 10% to 15% related to electronic delivery for software licenses.

Revenue from professional services is either recognized as provided for services billed at an hourly rate or recognized using a proportional performance model for services provided at a fixed fee. Revenue from cloud computing solutions including Software as a Service ("SaaS") and Infrastructure as a Service ("IaaS") arrangements, as well as data center services such as managed and remote managed services, server co-location, internet connectivity and data backup and storage, is recognized over the period service is provided.

We also sell certain products for which we act as an agent. Products in this category include the sale of third-party services, warranties, software assurance ("SA") and third-party hosted SaaS and IaaS arrangements. SA is a product that allows customers to upgrade, at no additional cost, to the latest technology if new applications are introduced during the period that the SA is in effect. These sales do not meet the criteria for gross sales recognition, and thus are recognized on a net basis at the time of sale. Under net sales recognition, the cost paid to the vendor or third-party service provider is recorded as a reduction to sales, resulting in net sales being equal to the gross profit on the transaction.

Our larger customers are offered the opportunity by certain of our vendors to purchase software licenses and SA under enterprise agreements ("EAs"). Under EAs, customers are considered to be compliant with applicable license requirements for the ensuing year, regardless of changes to their employee base. Customers are charged an annual true-up fee for changes in the number of users over the year. With most EAs, our vendors will transfer the license and bill the customer directly, paying resellers such as us an agency fee or commission on these sales. We record these fees as a component of net sales as earned and

there is no corresponding cost of sales amount. In certain instances, we bill the customer directly under an EA and account for the individual items sold based on the nature of the item. Our vendors typically dictate how the EA will be sold to the customer.

From time to time, we sell some of our products and services as part of bundled contract arrangements containing multiple deliverables, which may include a combination of the products and services. For each deliverable that represents a separate unit of accounting, total arrangement consideration is allocated based upon the relative selling prices of each element. The allocated arrangement consideration is recognized as revenue in accordance with the principles described above. Selling prices are determined by using vendor specific objective evidence (“VSOE”) if it exists. Otherwise, selling prices are determined using third party evidence (“TPE”). If neither VSOE or TPE is available, we use our best estimate of selling prices.

We record freight billed to our customers as net sales and the related freight costs as a cost of sales.

Deferred revenue includes (1) payments received from customers in advance of providing the product or performing services, and (2) amounts deferred if other conditions of revenue recognition have not been met.

We perform an analysis of the estimated number of days of sales in-transit to customers at the end of each period based on a weighted-average analysis of commercial delivery terms that includes drop-shipment arrangements. This analysis is the basis upon which we estimate the amount of sales in-transit at the end of the period and adjust revenue and the related costs to reflect only what has been received by the customer. Changes in delivery patterns may result in a different number of business days used in making this adjustment and could have a material impact on our revenue recognition for the period.

### ***Inventory Valuation***

Inventory is valued at the lower of cost or market value. Cost is determined using a weighted-average cost method. Price protection is recorded when earned as a reduction to the cost of inventory. We decrease the value of inventory for estimated obsolescence equal to the difference between the cost of inventory and the estimated market value, based upon an aging analysis of the inventory on hand, specifically known inventory-related risks, and assumptions about future demand and market conditions. If future demand or actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

### ***Vendor Programs***

We receive incentives from certain of our vendors related to cooperative advertising allowances, volume rebates, bid programs, price protection and other programs. These incentives generally relate to written agreements with specified performance requirements with the vendors and are recorded as adjustments to cost of sales or inventory, depending on the nature of the incentive. Vendors may change the terms of some or all of these programs, which could have an impact on our results of operations.

We record receivables from vendors related to these programs when the amounts are probable and reasonably estimable. Some programs are based on the achievement of specific targets, and we base our estimates on information provided by our vendors and internal information to assess our progress toward achieving those targets. If actual performance does not match our estimates, we may be required to adjust our receivables. We record reserves for vendor receivables for estimated losses due to vendors’ inability to pay or rejections by vendors of claims; however, if actual collections differ from our estimates, we may incur additional losses that could have a material impact on gross margin and operating income.

### ***Goodwill and Other Intangible Assets***

Goodwill is not amortized but is subject to periodic testing for impairment at the reporting unit level. Our reporting units used to assess potential goodwill impairment are the same as our operating segments. We are required to perform an evaluation of goodwill on an annual basis or more frequently if circumstances indicate a potential impairment. The annual test for impairment is conducted as of December 1. We have the option of performing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if it is more likely than not that the reporting unit's goodwill is impaired or performing a quantitative assessment by comparing a reporting unit's estimated fair value to its carrying amount. Under the quantitative assessment, testing for impairment of goodwill is a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill to determine the amount of impairment loss. Fair value of a reporting unit is determined by using a weighted combination of an income approach and a market approach, as this combination is considered the most indicative of the reporting units' fair value in an orderly transaction between market participants. Under the income approach, we determine fair value based on estimated future cash flows of a reporting unit, discounted by an estimated weighted-average cost of capital, which reflects the overall level of inherent risk of a reporting unit and the rate of return an outside investor would expect to earn. Under the market approach, we utilize valuation multiples derived from publicly available information for peer group companies to provide an indication of how much a knowledgeable investor in the marketplace would be willing to pay for a company. We have weighted the income approach and the market approach at 75% and 25%, respectively.

Determining the fair value of a reporting unit (and the allocation of that fair value to individual assets and liabilities within the reporting unit to determine the implied fair value of goodwill in the event a step two analysis is required) is judgmental in nature and requires the use of significant estimates and assumptions. These estimates and assumptions include primarily, but are not limited to, discount rate, terminal growth rate, selection of appropriate peer group companies and control premium applied, and forecasts of revenue growth rates, gross margins, operating margins, and working capital requirements. The allocation requires analysis to determine the fair value of assets and liabilities including, among others, customer relationships, trade names, and property and equipment. Any changes in the judgments, estimates, or assumptions used could produce significantly different results. Although we believe our assumptions are reasonable, actual results may vary significantly and may expose us to material impairment charges in the future.

Intangible assets include customer relationships, trade names, internally developed software and other intangibles. Intangible assets with determinable lives are amortized on a straight-line basis over the estimated useful lives of the assets. The cost of software developed or obtained for internal use is capitalized and amortized on a straight-line basis over the estimated useful life of the software. These intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition. If the carrying amount of an asset exceeds its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value.

### ***Allowance for Doubtful Accounts***

We record an allowance for doubtful accounts related to trade accounts receivable for estimated losses resulting from the inability of our customers to make required payments. We take into consideration historical loss experience, the overall quality of the receivable portfolio and specifically identified customer risks. If actual collections of customer receivables differ from our estimates, additional allowances may be required which could have an impact on our results of operations.

### ***Income Taxes***

Deferred income taxes are provided to reflect the differences between the tax bases of assets and liabilities and their reported amounts in the consolidated financial statements using enacted tax rates in effect for the year in which the differences are expected to reverse. We perform an evaluation of the realizability of our deferred tax assets on a quarterly basis. This evaluation requires us to use estimates and make assumptions and considers all positive and negative evidence and factors, such as the scheduled reversal of temporary differences, the mix of earnings in the jurisdictions in which we operate, and prudent and feasible tax planning strategies.

We account for unrecognized tax benefits based upon our assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities. We report a liability for unrecognized tax benefits resulting from unrecognized tax benefits taken or expected to be taken in a tax return and recognize interest and penalties, if any, related to unrecognized tax benefits in income tax expense.

## **Recent Accounting Pronouncements**

### ***Disclosure of the Effects of Reclassifications from Accumulated Other Comprehensive Income***

In February 2013, the Financial Accounting Standards Board issued Accounting Standards Update 2013-02, which required that the effects of significant reclassifications from accumulated other comprehensive income to net income be shown parenthetically on the face of the consolidated financial statements or disclosed in a note. The adoption of this new guidance on January 1, 2013 did not have an impact on our consolidated financial position, results of operations or cash flows.

### **Subsequent Events**

We redeemed \$30.0 million and \$20.0 million aggregate principal amounts of Senior Subordinated Notes on January 22, 2014 and February 21, 2014, respectively. The redemption prices were 104.178% of the principal amounts redeemed plus \$1.0 million and \$0.9 million in accrued and unpaid interest to the date of each redemption, respectively. Following these redemptions, \$42.5 million aggregate principal amount of the Senior Subordinated Notes remain outstanding, which we expect to fully redeem during the next six months. In connection with these redemptions, we expect to record a loss on extinguishment of long-term debt of \$2.7 million in the consolidated statement of operations during the first quarter of 2014. This loss represents \$2.1 million in redemption premiums and \$0.6 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Subordinated Notes.

On February 13, 2014, we announced that our board of directors declared a cash dividend on our common stock of \$0.0425 per share. The dividend will be paid on March 10, 2014 to all stockholders of record as of the close of business on February 25, 2014. Future dividends will be subject to the approval of our board of directors.



## **Item 7A. Quantitative and Qualitative Disclosures of Market Risks**

Our market risks relate primarily to changes in interest rates. The interest rates on borrowings under our senior secured asset-based revolving credit facility and our senior secured term loan facility are floating and, therefore, are subject to fluctuations. In order to manage the risk associated with changes in interest rates on borrowings under our senior secured term loan facility, we have entered into interest rate derivative agreements to economically hedge a portion of the cash flows associated with the facility. Our objectives in using interest rate derivatives are to add stability to interest expense and to manage our exposure to interest rate fluctuations.

We utilize interest rate caps for the purpose of limiting current and future exposure to interest rate risk on our floating-rate debt under the senior secured term loan facility.

We have interest rate cap agreements in effect through January 14, 2015 with a combined notional amount of \$1,150.0 million. These cap agreements have not been designated as cash flow hedges of interest rate risk for GAAP accounting purposes. Of the total \$1,150.0 million notional amount, \$500.0 million entitle us to payments from the counterparty of the amount, if any, by which three-month LIBOR exceeds 3.5% during the agreement period. The remaining cap agreements with a notional amount of \$650.0 million entitle us to payments from the counterparty of the amount, if any, by which the three-month LIBOR exceeds 1.5% during the agreement period.

See “Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Contractual Obligations” for information on cash flows, interest rates and maturity dates of our debt obligations.

## **Item 8. Financial Statements and Supplementary Data**

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## **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Shareholders of  
CDW Corporation

We have audited the accompanying consolidated balance sheets of CDW Corporation and subsidiaries as of December 31, 2013 and 2012, and the related consolidated statements of operations, comprehensive income, shareholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2013. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of CDW Corporation and subsidiaries at December 31, 2013 and 2012, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2013, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), CDW Corporation and subsidiaries' internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (1992 framework) and our report dated March 5, 2014 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Chicago, Illinois

March 5, 2014

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(in millions, except per-share amounts)

	December 31,	
	2013	2012
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 188.1	\$ 37.9
Accounts receivable, net of allowance for doubtful accounts of \$5.4 and \$5.4, respectively	1,451.0	1,285.0
Merchandise inventory	382.0	314.6
Miscellaneous receivables	146.3	148.5
Deferred income taxes	—	14.1
Prepaid expenses and other	46.1	34.6
Total current assets	<u>2,213.5</u>	<u>1,834.7</u>
Property and equipment, net	131.1	142.7
Goodwill	2,220.3	2,209.3
Other intangible assets, net	1,328.0	1,478.5
Deferred financing costs, net	30.1	53.2
Other assets	1.6	1.6
<b>Total assets</b>	<u><u>\$ 5,924.6</u></u>	<u><u>\$ 5,720.0</u></u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable-trade	\$ 662.8	\$ 518.6
Accounts payable-inventory financing	256.6	249.2
Current maturities of long-term debt	45.4	40.0
Deferred revenue	94.8	57.8
Accrued expenses:		
Compensation	112.2	99.4
Interest	31.8	50.7
Sales taxes	29.2	22.6
Advertising	33.2	33.9
Income taxes	6.3	0.2
Other	130.3	95.8
Total current liabilities	<u>1,402.6</u>	<u>1,168.2</u>
Long-term liabilities:		
Debt	3,205.8	3,731.0
Deferred income taxes	563.5	624.3
Other liabilities	41.0	60.0
Total long-term liabilities	<u>3,810.3</u>	<u>4,415.3</u>
Commitments and contingencies		
Shareholders' equity:		
Preferred shares, \$0.01 par value, 100.0 and no shares authorized, respectively; no shares issued or outstanding for both periods	—	—
Common shares, \$0.01 par value, 1,000.0 and 286.1 shares authorized, respectively; 172.0 and 145.2 shares issued, respectively; 172.0 and 145.1 shares outstanding, respectively	1.7	1.4
Paid-in capital	2,688.1	2,207.7
Accumulated deficit	(1,971.8)	(2,073.0)
Accumulated other comprehensive (loss) income	(6.3)	0.4
Total shareholders' equity	<u>711.7</u>	<u>136.5</u>
<b>Total liabilities and shareholders' equity</b>	<u><u>\$ 5,924.6</u></u>	<u><u>\$ 5,720.0</u></u>

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in millions, except per-share amounts)

	Years Ended December 31,		
	2013	2012	2011
Net sales	\$ 10,768.6	\$10,128.2	\$ 9,602.4
Cost of sales	9,008.3	8,458.6	8,018.9
Gross profit	1,760.3	1,669.6	1,583.5
Selling and administrative expenses	1,120.9	1,029.5	990.1
Advertising expense	130.8	129.5	122.7
Income from operations	508.6	510.6	470.7
Interest expense, net	(250.1)	(307.4)	(324.2)
Net loss on extinguishments of long-term debt	(64.0)	(17.2)	(118.9)
Other income, net	1.0	0.1	0.7
Income before income taxes	195.5	186.1	28.3
Income tax expense	(62.7)	(67.1)	(11.2)
Net income	<u>\$ 132.8</u>	<u>\$ 119.0</u>	<u>\$ 17.1</u>
Net income per common share:			
Basic	\$ 0.85	\$ 0.82	\$ 0.12
Diluted	\$ 0.84	\$ 0.82	\$ 0.12
Weighted-average number of common shares outstanding:			
Basic	156.6	145.1	144.8
Diluted	158.7	145.8	144.9
Cash dividends declared per common share	\$ 0.0425	\$ —	\$ —

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(in millions)

	Years Ended December 31,		
	2013	2012	2011
Net income	\$ 132.8	\$ 119.0	\$ 17.1
Reclassification of realized loss on interest rate swap agreements from accumulated other comprehensive (loss) income to net income, net of tax	—	—	1.9
Foreign currency translation adjustment	(6.7)	2.5	(1.8)
Other comprehensive (loss) income, net of tax	(6.7)	2.5	0.1
Comprehensive income	<u>\$ 126.1</u>	<u>\$ 121.5</u>	<u>\$ 17.2</u>

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (DEFICIT)**  
(in millions)

	Preferred Stock		Common Stock		Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Total Shareholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2010</b>	—	\$ —	144.6	\$ 1.4	\$ 2,165.3	\$ (2,208.0)	\$ (2.2)	\$ (43.5)
Equity-based compensation expense	—	—	—	—	19.5	—	—	19.5
Investment from CDW Holdings LLC	—	—	—	—	1.0	—	—	1.0
Repurchase of common shares	—	—	—	—	—	(0.4)	—	(0.4)
Accrued charitable contribution related to the MPK Coworker Incentive Plan II, net of tax	—	—	0.3	—	(1.1)	—	—	(1.1)
Net income	—	—	—	—	—	17.1	—	17.1
Reclassification of realized loss on interest rate swap agreements from accumulated other comprehensive loss to net income, net of tax	—	—	—	—	—	—	1.9	1.9
Foreign currency translation adjustment	—	—	—	—	—	—	(1.8)	(1.8)
<b>Balance at December 31, 2011</b>	—	\$ —	144.9	\$ 1.4	\$ 2,184.7	\$ (2,191.3)	\$ (2.1)	\$ (7.3)
Equity-based compensation expense	—	—	—	—	22.1	—	—	22.1
Investment from CDW Holdings LLC	—	—	—	—	2.8	—	—	2.8
Repurchase of common shares	—	—	—	—	—	(0.7)	—	(0.7)
Accrued charitable contribution related to the MPK Coworker Incentive Plan II, net of tax	—	—	0.3	—	(1.4)	—	—	(1.4)
Incentive compensation plan units withheld for taxes	—	—	—	—	(0.5)	—	—	(0.5)
Net income	—	—	—	—	—	119.0	—	119.0
Foreign currency translation adjustment	—	—	—	—	—	—	2.5	2.5
<b>Balance at December 31, 2012</b>	—	\$ —	145.2	\$ 1.4	\$ 2,207.7	\$ (2,073.0)	\$ 0.4	\$ 136.5
Equity-based compensation expense	—	—	—	—	46.6	—	—	46.6
Issuance of common shares	—	—	26.8	0.3	424.4	—	—	424.7
Repurchase of common shares	—	—	—	—	—	(0.2)	—	(0.2)
Dividends declared	—	—	—	—	—	(7.3)	—	(7.3)
Reclassification to goodwill for accrued charitable contributions	—	—	—	—	9.4	—	—	9.4
Incentive compensation plan units withheld for taxes	—	—	—	—	—	(24.1)	—	(24.1)
Net income	—	—	—	—	—	132.8	—	132.8
Foreign currency translation adjustment	—	—	—	—	—	—	(6.7)	(6.7)
<b>Balance at December 31, 2013</b>	—	\$ —	172.0	\$ 1.7	\$ 2,688.1	\$ (1,971.8)	\$ (6.3)	\$ 711.7

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in millions)

	Years Ended December 31,		
	2013	2012	2011
<b>Cash flows from operating activities:</b>			
Net income	\$ 132.8	\$ 119.0	\$ 17.1
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	208.2	210.2	204.9
Equity-based compensation expense	46.6	22.1	19.5
Deferred income taxes	(48.7)	(56.3)	(10.2)
Allowance for doubtful accounts	—	—	0.4
Amortization of deferred financing costs, debt premium, and debt discount, net	8.8	13.6	15.7
Net loss on extinguishments of long-term debt	64.0	17.2	118.9
Realized loss on interest rate swap agreements	—	—	2.8
Mark to market loss on interest rate derivatives	0.1	0.9	4.2
Net loss on sale and disposals of assets	—	0.1	0.3
Other	1.6	—	(0.6)
Changes in assets and liabilities:			
Accounts receivable	(170.8)	(10.4)	(183.4)
Merchandise inventory	(67.5)	7.1	(29.0)
Other assets	(10.1)	(3.8)	50.3
Accounts payable-trade	146.1	0.8	(19.8)
Other current liabilities	64.1	(2.1)	39.6
Long-term liabilities	(8.9)	(1.0)	(16.0)
Net cash provided by operating activities	<u>366.3</u>	<u>317.4</u>	<u>214.7</u>
<b>Cash flows from investing activities:</b>			
Capital expenditures	(47.1)	(41.4)	(45.7)
Cash settlements on interest rate swap agreements	—	—	(6.6)
Premium payments on interest rate cap agreements	—	(0.3)	(3.7)
Net cash used in investing activities	<u>(47.1)</u>	<u>(41.7)</u>	<u>(56.0)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from borrowings under revolving credit facility	63.0	289.0	1,295.0
Repayments of borrowings under revolving credit facility	(63.0)	(289.0)	(1,483.2)
Repayments of long-term debt	(51.1)	(201.0)	(132.0)
Proceeds from issuance of long-term debt	1,535.2	135.7	1,175.0
Payments to extinguish long-term debt	(2,047.4)	(243.2)	(1,175.0)
Payments of debt financing costs	(6.1)	(2.1)	(26.3)
Investment from CDW Holdings LLC, net	—	2.8	1.0
Net change in accounts payable-inventory financing	7.4	(29.5)	250.5
Payment of incentive compensation plan withholding taxes	(24.1)	—	—
Net proceeds from issuance of common shares	424.7	—	—
Repurchase of common shares	(0.2)	(0.7)	(0.4)
Dividends paid	(7.3)	—	—
Excess tax benefits from equity-based compensation	0.6	—	—
Net cash used in financing activities	<u>(168.3)</u>	<u>(338.0)</u>	<u>(95.4)</u>
<b>Effect of exchange rate changes on cash and cash equivalents</b>	<u>(0.7)</u>	<u>0.3</u>	<u>—</u>
<b>Net increase (decrease) in cash and cash equivalents</b>	<u>150.2</u>	<u>(62.0)</u>	<u>63.3</u>
<b>Cash and cash equivalents – beginning of period</b>	<u>37.9</u>	<u>99.9</u>	<u>36.6</u>
<b>Cash and cash equivalents – end of period</b>	<u>\$ 188.1</u>	<u>\$ 37.9</u>	<u>\$ 99.9</u>
<b>Supplementary disclosure of cash flow information:</b>			
Interest paid	\$ (267.6)	\$ (302.7)	\$ (332.9)
Taxes (paid) refunded, net	\$ (82.5)	\$ (123.2)	\$ 20.9
<b>Non-cash investing and financing activities:</b>			
Capital expenditures accrued in accounts payable-trade	\$ 0.2	\$ 0.5	\$ 1.1

The accompanying notes are an integral part of the consolidated financial statements.



**CDW CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Description of Business and Summary of Significant Accounting Policies**

Description of Business

CDW is a Fortune 500 company and a leading provider of integrated information technology (“IT”) solutions to small, medium and large business, government, education and healthcare customers in the U.S. and Canada. The Company’s offerings range from discrete hardware and software products to integrated IT solutions such as mobility, security, data center optimization, cloud computing, virtualization and collaboration.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”) and the rules and regulations of the U.S. Securities and Exchange Commission (“SEC”).

On October 12, 2007, CDW Corporation, an Illinois corporation, was acquired through a merger transaction by an entity controlled by investment funds affiliated with Madison Dearborn Partners, LLC and Providence Equity Partners L.L.C. (the “Acquisition”). CDW Corporation continued as the surviving corporation and same legal entity after the Acquisition, but became a wholly owned subsidiary of VH Holdings, Inc., a Delaware corporation.

On December 31, 2009, CDW Corporation merged into CDWC LLC, an Illinois limited liability company owned by VH Holdings, Inc., with CDWC LLC as the surviving entity. This change had no impact on the operations or management of the Company. On December 31, 2009, CDWC LLC was renamed CDW LLC (“CDW LLC”). On August 17, 2010, VH Holdings, Inc. was renamed CDW Corporation (“Parent”).

Parent has two 100% owned subsidiaries, CDW LLC and CDW Finance Corporation. CDW LLC is an Illinois limited liability company that, together with its 100% owned subsidiaries, holds all material assets and conducts all business activities and operations of the Company. On August 6, 2010, CDW Finance Corporation, a Delaware corporation, was formed for the sole purpose of acting as co-issuer of certain debt obligations as described in Note 17 and does not hold any material assets or engage in any business activities or operations.

Throughout this report, the terms “the Company” and “CDW” refer to Parent and its 100% owned subsidiaries.

Parent was previously owned directly by CDW Holdings LLC (“CDW Holdings”), a company controlled by investment funds affiliated with Madison Dearborn Partners, LLC (“Madison Dearborn”) and Providence Equity Partners L.L.C. (“Providence Equity,” and together with Madison Dearborn, the “Sponsors”), certain other co-investors and certain members of CDW management. On July 2, 2013, Parent completed an initial public offering (“IPO”) of its common stock. In connection with the IPO, CDW Holdings distributed all of its shares of Parent’s common stock to its members in June 2013 in accordance with the members’ respective membership interests and was subsequently dissolved in August 2013. See Note 9 for additional discussion of the IPO.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Parent and its 100% owned subsidiaries. All intercompany transactions and accounts are eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements in accordance with GAAP requires management to make use of certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reported periods. The Company bases its estimates on historical experience and on various other assumptions that management believes are reasonable under the circumstances, the results of which form the basis for making judgments about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

Reclassifications

Certain reclassifications have been made to the prior period consolidated financial statements to conform to the current period presentation.

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Cash and Cash Equivalents

Cash and cash equivalents include all deposits in banks and short-term (original maturities of three months or less), highly liquid investments that are readily convertible to known amounts of cash and are so near maturity that there is insignificant risk of changes in value due to interest rate changes.

Accounts Receivable

Trade accounts receivable are recorded at the invoiced amount and typically do not bear interest. The Company provides allowances for doubtful accounts related to accounts receivable for estimated losses resulting from the inability of its customers to make required payments. The Company takes into consideration the overall quality of the receivable portfolio along with specifically-identified customer risks.

Merchandise Inventory

Inventory is valued at the lower of cost or market value. Cost is determined using a weighted-average cost method. Price protection is recorded when earned as a reduction to the cost of inventory. The Company decreases the value of inventory for estimated obsolescence equal to the difference between the cost of inventory and the estimated market value, based upon an aging analysis of the inventory on hand, specifically known inventory-related risks, and assumptions about future demand and market conditions.

Miscellaneous Receivables

Miscellaneous receivables generally consist of amounts due from vendors. The Company receives incentives from vendors related to cooperative advertising allowances, volume rebates, bid programs, price protection and other programs. These incentives generally relate to written vendor agreements with specified performance requirements and are recorded as adjustments to cost of sales or inventory, depending on the nature of the incentive.

Property and Equipment

Property and equipment are stated at cost. The Company calculates depreciation expense using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the shorter of their useful lives or the initial lease term. Expenditures for major renewals and improvements that extend the useful life of property and equipment are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred. The following table shows estimated useful lives of property and equipment:

Classification	Estimated Useful Lives
Machinery and equipment	5 to 10 years
Building and leasehold improvements	5 to 25 years
Computer and data processing equipment	3 to 5 years
Computer software	3 to 5 years
Furniture and fixtures	5 to 10 years

The Company has asset retirement obligations associated with commitments to return property subject to operating leases to its original condition upon lease termination. The Company's asset retirement liability was \$0.5 million as of December 31, 2013 and 2012.

Goodwill and Other Intangible Assets

The Company is required to perform an evaluation of goodwill on an annual basis or more frequently if circumstances indicate a potential impairment. The annual test for impairment is conducted as of December 1. The Company's reporting units used to assess potential goodwill impairment are the same as its operating segments. The Company has the option of performing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if it is more likely than not that the reporting unit's goodwill is impaired or performing a quantitative assessment by comparing a reporting unit's estimated fair value to its carrying amount. Under the quantitative assessment, testing for impairment of goodwill is a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill to determine the amount of impairment loss. Fair value of a reporting unit is determined by using a weighted

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

combination of an income approach and a market approach, as this combination is considered the most indicative of the Company's fair value in an orderly transaction between market participants. This assessment uses significant accounting judgments, estimates and assumptions. Any changes in the judgments, estimates or assumptions used could produce significantly different results. During the years ended December 31, 2013, 2012 and 2011, the Company recorded no goodwill impairment charges. See Note 4 for more information on the Company's evaluations of goodwill for impairment.

Intangible assets with determinable lives are amortized on a straight-line basis over their respective estimated useful lives. The cost of computer software developed or obtained for internal use is capitalized and amortized on a straight-line basis over the estimated useful life of the software. These intangible assets are reviewed for impairment when indicators are present using undiscounted cash flows. The Company uses the undiscounted cash flows, excluding interest charges, to assess the recoverability of the carrying value of such assets. To the extent carrying value exceeds the undiscounted cash flows, an impairment loss is recorded based upon the excess of the carrying value over fair value. In addition, each quarter, the Company evaluates whether events and circumstances warrant a revision to the remaining estimated useful life of each of these intangible assets. If the Company were to determine that a change to the remaining estimated useful life of an intangible asset was necessary, then the remaining carrying amount of the intangible asset would be amortized prospectively over that revised remaining useful life. During the years ended December 31, 2013, 2012 and 2011, no impairment existed with respect to the Company's intangible assets with determinable lives and no significant changes to the remaining useful lives were necessary. The following table shows estimated useful lives of definite-lived intangible assets:

Classification	Estimated Useful Lives
Customer relationships	11 to 14 years
Trade name	20 years
Internally developed software	3 to 5 years
Other	1 to 10 years

#### Deferred Financing Costs

Deferred financing costs, such as underwriting, financial advisory, professional fees and other similar fees are capitalized and recognized in interest expense over the estimated life of the related debt instrument using the effective interest method or straight-line method, as applicable.

#### Derivatives

The Company has entered into interest rate cap agreements for the purpose of economically hedging its exposure to fluctuations in interest rates. These derivatives are recorded at fair value in the Company's consolidated balance sheets.

The Company's interest rate cap agreements are not designated as cash flow hedges of interest rate risk. Changes in fair value of the derivatives are recorded directly to interest expense, net in the Company's consolidated statements of operations.

#### Fair Value Measurements

Fair value is defined under GAAP as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A fair value hierarchy has been established for valuation inputs to prioritize the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels which is determined by the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

Level 1 – observable inputs such as quoted prices for identical instruments traded in active markets.

Level 2 – inputs are based on quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

**CDW CORPORATION AND SUBSIDIARIES**  
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Level 3 – inputs are generally unobservable and typically reflect management’s estimates of assumptions that market participants would use in pricing the asset or liability. The fair values are therefore determined using model-based techniques that include option pricing models, discounted cash flow models and similar techniques.

Accumulated Other Comprehensive (Loss) Income

Foreign currency translation adjustments are included in shareholders’ equity under accumulated other comprehensive (loss) income.

The components of accumulated other comprehensive (loss) income are as follows:

(in millions)	December 31,		
	2013	2012	2011
Foreign currency translation adjustment	\$ (6.3)	\$ 0.4	\$ (2.1)
Accumulated other comprehensive (loss) income	<u>\$ (6.3)</u>	<u>\$ 0.4</u>	<u>\$ (2.1)</u>

Revenue Recognition

The Company is a primary distribution channel for a large group of vendors and suppliers, including original equipment manufacturers (“OEMs”), software publishers and wholesale distributors. The Company records revenue from sales transactions when title and risk of loss are passed to the customer, there is persuasive evidence of an arrangement for sale, delivery has occurred and/or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. The Company's shipping terms typically specify F.O.B. destination, at which time title and risk of loss have passed to the customer.

Revenues from the sales of hardware products and software products and licenses are generally recognized on a gross basis with the selling price to the customer recorded as sales and the acquisition cost of the product recorded as cost of sales. These items can be delivered to customers in a variety of ways, including (i) as physical product shipped from the Company's warehouse, (ii) via drop-shipment by the vendor or supplier, or (iii) via electronic delivery for software licenses. At the time of sale, the Company records an estimate for sales returns and allowances based on historical experience. The Company's vendor partners warrant most of the products the Company sells.

The Company leverages drop-shipment arrangements with many of its vendors and suppliers to deliver products to its customers without having to physically hold the inventory at its warehouses, thereby increasing efficiency and reducing costs. The Company recognizes revenue for drop-shipment arrangements on a gross basis upon delivery to the customer with contract terms that typically specify F.O.B. destination.

Revenue from professional services is either recognized as provided for services billed at an hourly rate or recognized using a proportional performance model for services provided at a fixed fee. Revenue from cloud computing solutions including Software as a Service (“SaaS”) and Infrastructure as a Service (“IaaS”) arrangements, as well as data center services such as managed and remote managed services, server co-location, internet connectivity and data backup and storage, is recognized over the period service is provided.

The Company also sells certain products for which it acts as an agent. Products in this category include the sale of third-party services, warranties, software assurance (“SA”) and third-party hosted SaaS and IaaS arrangements. SA is a product that allows customers to upgrade, at no additional cost, to the latest technology if new applications are introduced during the period that the SA is in effect. These sales do not meet the criteria for gross sales recognition, and thus are recognized on a net basis at the time of sale. Under net sales recognition, the cost paid to the vendor or third-party service provider is recorded as a reduction to sales, resulting in net sales being equal to the gross profit on the transaction.

The Company's larger customers are offered the opportunity by certain of its vendors to purchase software licenses and SA under enterprise agreements (“EAs”). Under EAs, customers are considered to be compliant with applicable license requirements for the ensuing year, regardless of changes to their employee base. Customers are charged an annual true-up fee for changes in the number of users over the year. With most EAs, the Company's vendors will transfer the license and bill the customer directly, paying resellers such as the Company an agency fee or commission on these sales. The Company records these fees as a component of net sales as earned and there is no corresponding cost of sales amount. In certain instances, the Company bills the customer directly under an EA and accounts for the individual items sold based on the nature of the item. The Company's vendors typically dictate how the EA will be sold to the customer.

**CDW CORPORATION AND SUBSIDIARIES**  
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From time to time, the Company sells some of its products and services as part of bundled contract arrangements containing multiple deliverables, which may include a combination of products and services. For each deliverable that represents a separate unit of accounting, total arrangement consideration is allocated based upon the relative selling prices of each element. The allocated arrangement consideration is recognized as revenue in accordance with the principles described above. Selling prices are determined by using vendor specific objective evidence (“VSOE”) if it exists. Otherwise, selling prices are determined using third party evidence (“TPE”). If neither VSOE or TPE is available, the Company uses its best estimate of selling prices.

The Company records freight billed to its customers as net sales and the related freight costs as a cost of sales.

Deferred revenue includes (1) payments received from customers in advance of providing the product or performing services, and (2) amounts deferred if other conditions of revenue recognition have not been met.

The Company performs an analysis of the estimated number of days of sales in-transit to customers at the end of each period based on a weighted-average analysis of commercial delivery terms that includes drop-shipment arrangements. This analysis is the basis upon which the Company estimates the amount of sales in-transit at the end of the period and adjusts revenue and the related costs to reflect only what has been received by the customer. Changes in delivery patterns may result in a different number of business days used in making this adjustment and could have a material impact on the Company's revenue recognition for the period.

Sales Taxes

Sales tax amounts collected from customers for remittance to governmental authorities are presented on a net basis in the Company's consolidated statements of operations.

Advertising

Advertising costs are generally charged to expense in the period incurred. Cooperative reimbursements from vendors are recorded in the period the related advertising expenditure is incurred. The Company classifies vendor consideration as a reduction to cost of sales.

Equity-Based Compensation

The Company measures all equity-based payments using a fair-value-based method and records compensation expense over the requisite service period in its consolidated financial statements. Forfeiture rates have been developed based upon historical experience.

Interest Expense

Interest expense is typically recognized in the period incurred at the applicable interest rate in effect. For increasing-rate debt, the Company determines the periodic interest cost using the effective interest method over the estimated outstanding term of the debt. The difference between interest expense recorded and cash interest paid is reflected as short-term or long-term accrued interest in the Company's consolidated balance sheets.

Foreign Currency Translation

The Company's functional currency is the U.S. dollar. The functional currency of the Company's Canadian subsidiary is the local currency, the Canadian dollar. Assets and liabilities of this subsidiary are translated at the spot rate in effect at the applicable reporting date and the consolidated results of operations are translated at the average exchange rates in effect during the applicable period. The resulting foreign currency translation adjustment is recorded as accumulated other comprehensive (loss) income, which is reflected as a separate component of shareholders' equity.

Income Taxes

Deferred income taxes are provided to reflect the differences between the tax bases of assets and liabilities and their reported amounts in the consolidated financial statements using enacted tax rates in effect for the year in which the differences are expected to reverse. The Company performs an evaluation of the realizability of deferred tax assets on a quarterly basis. This evaluation requires management to make use of estimates and assumptions and considers all positive and negative evidence and factors, such as the scheduled reversal of temporary differences, the mix of earnings in the jurisdictions in which the Company operates, and prudent and feasible tax planning strategies.

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The Company accounts for unrecognized tax benefits based upon its assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities. The Company reports a liability for unrecognized tax benefits resulting from unrecognized tax benefits taken or expected to be taken in a tax return and recognizes interest and penalties, if any, related to its unrecognized tax benefits in income tax expense.

**2. Recent Accounting Pronouncements**

Disclosure of the Effects of Reclassifications from Accumulated Other Comprehensive Income

In February 2013, the Financial Accounting Standards Board issued Accounting Standards Update 2013-02, which required that the effects of significant reclassifications from accumulated other comprehensive income to net income be shown parenthetically on the face of the consolidated financial statements or disclosed in a note. The adoption of this new guidance on January 1, 2013 did not have an impact on the Company's consolidated financial position, results of operations or cash flows.

**3. Property and Equipment**

Property and equipment consisted of the following:

	December 31,	
	2013	2012
(in millions)		
Land	\$ 27.7	\$ 27.7
Machinery and equipment	53.0	50.9
Building and leasehold improvements	104.8	104.0
Computer and data processing equipment	61.2	56.4
Computer software	30.9	30.2
Furniture and fixtures	21.6	21.6
Construction in progress	10.9	11.9
Total property and equipment	310.1	302.7
Less accumulated depreciation	179.0	160.0
Net property and equipment	<u>\$ 131.1</u>	<u>\$ 142.7</u>

During 2013, 2012 and 2011, the Company recorded disposals of \$7.9 million, \$12.2 million and \$10.5 million, respectively, to remove assets that were no longer in use from property and equipment. The Company recorded a pre-tax loss of \$0.0 million, \$0.1 million and \$0.3 million in 2013, 2012 and 2011, respectively, for certain disposed assets that were not fully depreciated.

Depreciation expense for the years ended December 31, 2013, 2012 and 2011 was \$27.2 million, \$32.0 million and \$31.3 million, respectively.

**4. Goodwill and Other Intangible Assets**

As described in Note 1, the Company is required to perform an evaluation of goodwill on an annual basis or more frequently if circumstances indicate a potential impairment. The annual test for impairment is conducted as of December 1. The Company's reporting units used to assess potential goodwill impairment are the same as its operating segments. The Company has two reportable segments: Corporate, which is comprised primarily of business customers, and Public, which is comprised of government entities and education and healthcare institutions. The Company also has two other operating segments, CDW Advanced Services and Canada, which do not meet the reportable segment quantitative thresholds and, accordingly, are combined together as "Other" for segment reporting purposes. The Company has the option of performing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if it is more likely than not that the reporting unit's goodwill is impaired or performing a quantitative assessment by comparing a reporting unit's estimated fair value to its carrying amount. Under the quantitative assessment, testing for impairment of goodwill is a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill to determine the amount of impairment loss. Fair value of a reporting unit is determined by using a weighted combination of an income approach and a market approach, as this combination is considered the most indicative of the Company's fair value in an orderly transaction between market participants. Under the income

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approach, the Company determined fair value based on estimated future cash flows of a reporting unit, discounted by an estimated weighted-average cost of capital, which reflects the overall level of inherent risk of a reporting unit and the rate of return an outside investor would expect to earn. Under the market approach, the Company utilized valuation multiples derived from publicly available information for guideline companies to provide an indication of how much a knowledgeable investor in the marketplace would be willing to pay for a company. The valuation multiples were applied to the reporting units. Determining the fair value of a reporting unit is judgmental in nature and requires the use of significant estimates and assumptions, including revenue growth rates, gross margins, operating margins, discount rates and future market conditions, among others.

December 1, 2013 Evaluation

The Company performed its annual evaluation of goodwill as of December 1, 2013 by utilizing a quantitative assessment for all reporting units. All reporting units passed the first step of the goodwill evaluation (with the fair value exceeding the carrying value by 107%, 82%, 167% and 168% for the Corporate, Public, Canada and CDW Advanced Services reporting units, respectively) and, accordingly, the Company was not required to perform the second step of the goodwill evaluation.

To determine the fair value of the reporting units, the Company used a 75%/25% weighting of the income approach and market approach, respectively. Under the income approach, the Company estimated future cash flows of each reporting unit based on internally generated forecasts for the remainder of 2013 and the next six years. The Company used a 3.5% long-term assumed consolidated annual revenue growth rate for periods after the six-year forecast. The estimated future cash flows for the Corporate and Public reporting units were discounted at 10.0%; cash flows for the Canada and CDW Advanced Services reporting units were discounted at 10.3% and 10.5%, respectively, based on the future growth rates assumed in the discounted cash flows. Discount rates utilized during the 2013 goodwill evaluation declined compared to those used in 2012 as a result of the market performance of the Company's common stock and a lower equity risk premium.

December 1, 2012 Evaluation

The Company performed its annual evaluation of goodwill as of December 1, 2012 by utilizing a quantitative assessment for all reporting units. All reporting units passed the first step of the goodwill evaluation (with the fair value exceeding the carrying value by 49%, 44%, 104% and 17% for the Corporate, Public, Canada and CDW Advanced Services reporting units, respectively) and, accordingly, the Company was not required to perform the second step of the goodwill evaluation.

To determine the fair value of the reporting units, the Company used a 75%/25% weighting of the income approach and market approach, respectively. Under the income approach, the Company estimated future cash flows of each reporting unit based on internally generated forecasts for the remainder of 2012 and the next six years. The Company used a 3.5% long-term assumed consolidated annual revenue growth rate for periods after the six-year forecast. The estimated future cash flows for the Corporate and Public reporting units were discounted at 11.5%; cash flows for the Canada and CDW Advanced Services reporting units were discounted at 11.8% and 12.0%, respectively, based on the future growth rates assumed in the discounted cash flows.

December 1, 2011 Evaluation

The Company performed its annual evaluation of goodwill as of December 1, 2011 by utilizing a quantitative assessment for all reporting units. All reporting units passed the first step of the goodwill evaluation (with the fair value exceeding the carrying value by 43%, 27%, 159% and 17%, for the Corporate, Public, Canada and CDW Advanced Services reporting units, respectively) and, accordingly, the Company was not required to perform the second step of the goodwill evaluation.

To determine the fair value of the reporting units, the Company used a 75%/25% weighting of the income approach and market approach, respectively. Under the income approach, the Company estimated future cash flows of each reporting unit based on internally generated forecasts for the remainder of 2011 and the next six years. The Company used a 3.5% long-term assumed consolidated annual revenue growth rate for periods after the six-year forecast. The estimated future cash flows for the Corporate, Public and CDW Advanced Services reporting units were discounted at 11.5%; cash flows for the Canada reporting unit were discounted at 12.0% given inherent differences in the business model and risk profile.

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The following table presents the change in goodwill by segment for the years ended December 31, 2013 and 2012:

(in millions)	Corporate	Public	Other <sup>(1)</sup>	Consolidated
Balances as of December 31, 2011:				
Goodwill	\$ 2,794.4	\$ 1,261.4	\$ 106.4	\$ 4,162.2
Accumulated impairment charges	(1,571.4)	(354.1)	(28.3)	(1,953.8)
	<u>\$ 1,223.0</u>	<u>\$ 907.3</u>	<u>\$ 78.1</u>	<u>\$ 2,208.4</u>
2012 Activity:				
Translation adjustment	\$ —	\$ —	\$ 0.9	\$ 0.9
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 0.9</u>	<u>\$ 0.9</u>
Balances as of December 31, 2012:				
Goodwill	\$ 2,794.4	\$ 1,261.4	\$ 107.3	\$ 4,163.1
Accumulated impairment charges	(1,571.4)	(354.1)	(28.3)	(1,953.8)
	<u>\$ 1,223.0</u>	<u>\$ 907.3</u>	<u>\$ 79.0</u>	<u>\$ 2,209.3</u>
2013 Activity:				
Translation adjustment	\$ —	\$ —	\$ (2.1)	\$ (2.1)
Contingent consideration <sup>(2)</sup>	8.8	4.0	0.3	13.1
	<u>\$ 8.8</u>	<u>\$ 4.0</u>	<u>\$ (1.8)</u>	<u>\$ 11.0</u>
Balances as of December 31, 2013:				
Goodwill	\$ 2,803.2	\$ 1,265.4	\$ 105.5	\$ 4,174.1
Accumulated impairment charges	(1,571.4)	(354.1)	(28.3)	(1,953.8)
	<u><u>\$ 1,231.8</u></u>	<u><u>\$ 911.3</u></u>	<u><u>\$ 77.2</u></u>	<u><u>\$ 2,220.3</u></u>

- (1) Other is comprised of CDW Advanced Services and Canada reporting units.
- (2) During 2013, the Company recorded a \$13.1 million net-of-tax addition to goodwill in connection with the settlement of the MPK Coworker Incentive Plan II and related charitable contribution. The charitable contribution was accounted for as additional purchase price (goodwill) in accordance with pre-2009 business combinations accounting guidance. See Note 10 for additional discussion of this transaction.

The following table presents a summary of intangible assets at December 31, 2013 and 2012:

(in millions)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
December 31, 2013			
Customer relationships	\$ 1,860.8	\$ 872.8	\$ 988.0
Trade name	421.0	130.9	290.1
Internally developed software	128.5	79.8	48.7
Other	3.1	1.9	1.2
Total	<u><u>\$ 2,413.4</u></u>	<u><u>\$ 1,085.4</u></u>	<u><u>\$ 1,328.0</u></u>
December 31, 2012			
Customer relationships	\$ 1,861.7	\$ 733.3	\$ 1,128.4
Trade name	421.0	109.9	311.1
Internally developed software	97.4	60.1	37.3
Other	3.3	1.6	1.7
Total	<u><u>\$ 2,383.4</u></u>	<u><u>\$ 904.9</u></u>	<u><u>\$ 1,478.5</u></u>

Amortization expense related to intangible assets for the years ended December 31, 2013, 2012 and 2011 was \$181.0 million, \$178.2 million and \$173.5 million, respectively.



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Estimated future amortization expense related to intangible assets for the next five years is as follows:

(in millions)

Years ending December 31,

2014	\$ 179.0
2015	171.7
2016	163.9
2017	161.5
2018	161.3

**5. Inventory Financing Agreements**

The Company has entered into agreements with certain financial intermediaries to facilitate the purchase of inventory from various suppliers under certain terms and conditions, as described below. These amounts are classified separately as accounts payable-inventory financing on the accompanying consolidated balance sheets. The Company does not incur any interest expense associated with these agreements as balances are paid when they are due.

The following table presents the amounts included in accounts payable-inventory financing:

(in millions)

	December 31,	
	2013	2012
Revolving Loan inventory financing agreement	\$ 256.1	\$ 248.3
Other inventory financing agreements	0.5	0.9
Accounts payable-inventory financing	<u>\$ 256.6</u>	<u>\$ 249.2</u>

The Company maintains a senior secured asset-based revolving credit facility as described in Note 7, which incorporates a \$400.0 million floorplan sub-facility to facilitate the purchase of inventory from a certain vendor. In connection with the floorplan sub-facility, the Company maintains an inventory financing agreement on an unsecured basis with a financial intermediary to facilitate the purchase of inventory from this vendor (the “Revolving Loan inventory financing agreement”). Amounts outstanding under the Revolving Loan inventory financing agreement are unsecured and non-interest bearing. At December 31, 2013 and 2012, the Company reported \$256.1 million and \$248.3 million, respectively, for this agreement within accounts payable-inventory financing on the consolidated balance sheets.

The Company also maintains other inventory financing agreements with financial intermediaries to facilitate the purchase of inventory from certain vendors. At December 31, 2013 and 2012, amounts owed under other inventory financing agreements of \$0.5 million and \$0.9 million, respectively, were collateralized by the inventory purchased under these financing agreements and a second lien on the related accounts receivable.

**6. Lease Commitments**

The Company is obligated under various non-cancelable operating lease agreements for office facilities that generally provide for minimum rent payments and a proportionate share of operating expenses and property taxes and include certain renewal and expansion options. For the years ended December 31, 2013, 2012 and 2011, rent expense under these lease arrangements was \$20.7 million, \$22.4 million and \$21.6 million, respectively.

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Future minimum lease payments are as follows:

(in millions)	
Years ending December 31,	
2014	\$ 17.9
2015	17.7
2016	13.2
2017	10.7
2018	9.0
Thereafter	20.7
<b>Total future minimum lease payments</b>	<b>\$ 89.2</b>

**7. Long-Term Debt**

Long-term debt was as follows:

(dollars in millions)	Interest Rate <sup>(1)</sup>	December 31,	
		2013	2012
Senior secured asset-based revolving credit facility	—%	\$ —	\$ —
Senior secured term loan facility	3.25%	1,528.9	1,339.5
Unamortized discount on senior secured term loan facility		(4.4)	—
Senior secured notes due 2018	8.0%	325.0	500.0
Senior notes due 2019	8.5%	1,305.0	1,305.0
Unamortized premium on senior notes due 2019		4.2	5.0
Senior subordinated notes due 2017	12.535%	92.5	621.5
<b>Total long-term debt</b>		<b>3,251.2</b>	<b>3,771.0</b>
<b>Less current maturities of long-term debt</b>		<b>(45.4)</b>	<b>(40.0)</b>
<b>Long-term debt, excluding current maturities</b>		<b>\$ 3,205.8</b>	<b>\$ 3,731.0</b>

(1) Interest rate at December 31, 2013.

At December 31, 2013, the Company was in compliance with the covenants under its various credit agreements and indentures as described below. Under the indentures governing the 8.5% Senior Notes due 2019 and 8.0% Senior Secured Notes due 2018, which contain the most restrictive restricted payment provisions in the Company's various credit agreements and indentures, CDW LLC and its restricted subsidiaries are generally restricted from paying dividends and making other restricted payments unless CDW LLC could incur an additional dollar of indebtedness under its fixed charges ratio covenant and the amount of such dividend or other restricted payment, together with the amount of all other dividends and restricted payments made from January 1, 2011 through the end of the most recently ended fiscal quarter, is less than the sum of 50% of cumulative consolidated net income or 100% of any consolidated net loss incurred over the period plus the amount of certain other items occurring during that period that increase (and in some cases decrease) the amounts available for such payments. For the purpose of determining restricted payment capacity, consolidated net income or loss includes certain adjustments that are defined in the indentures. At December 31, 2013, the amount of cumulative consolidated net income free of restrictions under the credit agreements and indentures ("Restricted Payment Capacity") was \$148.0 million. However, the subsequent events transactions described in Note 19 have since reduced the Restricted Payment Capacity to approximately \$89 million.

**Senior Secured Asset-Based Revolving Credit Facility ("Revolving Loan")**

At December 31, 2013, the Company had no outstanding borrowings under the Revolving Loan, \$2.2 million of undrawn letters of credit and \$256.7 million reserved related to the floorplan sub-facility.

On June 24, 2011, the Company entered into the Revolving Loan, a five-year \$900.0 million senior secured asset-based revolving credit facility, with the facility being available to the Company for borrowings, issuance of letters of credit and floorplan financing for certain vendor products. The Revolving Loan matures on June 24, 2016. The Revolving Loan replaced the Company's previous revolving loan credit facility that was to mature on October 12, 2012. In connection with the termination of the previous facility, the Company recorded a loss on extinguishment of

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long-term debt of \$1.6 million in the Company's consolidated statement of operations for the year ended December 31, 2011, representing a write-off of a portion of unamortized deferred financing costs. Fees of \$7.2 million related to the Revolving Loan were capitalized as deferred financing costs and are being amortized over the term of the facility on a straight-line basis.

As described in Note 5, the Company has entered into agreements with certain financial intermediaries to facilitate the purchase of inventory from various suppliers. In connection with the floorplan sub-facility, the Company entered into the Revolving Loan inventory financing agreement. Amounts outstanding under the Revolving Loan inventory financing agreement are unsecured and noninterest bearing. The Company will either pay the outstanding Revolving Loan inventory financing agreement amounts when they become due, or the Revolving Loan's administrative agent will automatically initiate an advance on the Revolving Loan and use the proceeds to pay the balance on the due date. At December 31, 2013, the financial intermediary reported an outstanding balance of \$246.8 million under the Revolving Loan inventory financing agreement. The total amount reported on the Company's consolidated balance sheet as accounts payable-inventory financing related to the Revolving Loan inventory financing agreement is \$9.3 million more than the \$246.8 million owed to the financial intermediary due to differences in the timing of reporting activity under the Revolving Loan inventory financing agreement. The outstanding balance reported by the financial intermediary excludes \$9.9 million in reserves for open orders that reduce the availability under the Revolving Loan. Changes in cash flows from the Revolving Loan inventory financing agreement are reported in financing activities on the Company's consolidated statements of cash flows.

Borrowings under the Revolving Loan bear interest at a variable interest rate plus an applicable margin. The variable interest rate is based on one of two indices, either (i) LIBOR, or (ii) the Alternate Base Rate ("ABR") with the ABR being the greatest of (a) the prime rate, (b) the federal funds effective rate plus 50 basis points or (c) the one-month LIBOR plus 1.00%. The applicable margin varies (2.00% to 2.50% for LIBOR borrowings and 1.00% to 1.50% for ABR borrowings) depending upon the Company's average daily excess cash availability under the agreement and is subject to a reduction of 0.25% if, and for as long as, the senior secured leverage ratio is less than 3.0. The senior secured leverage ratio is defined as the ratio of senior secured debt (including amounts owed under certain inventory floorplan arrangements) less cash and cash equivalents, to Adjusted EBITDA, a non-GAAP measure, for the four most recently ended fiscal quarters. For the four quarters ended December 31, 2013, the senior secured leverage ratio was 2.1.

Availability under the Revolving Loan is limited to (a) the lesser of the revolving commitment of \$900.0 million and the amount of the borrowing base less (b) outstanding borrowings, letters of credit, and amounts outstanding under the Revolving Loan inventory financing agreement plus a reserve of 15% of open orders. The borrowing base is (a) the sum of the products of the applicable advance rates on eligible accounts receivable and on eligible inventory as defined in the agreement less (b) any reserves. At December 31, 2013, the borrowing base was \$1,065.5 million based on the amount of eligible inventory and accounts receivable balances as of November 30, 2013. The Company could have borrowed up to an additional \$641.1 million under the Revolving Loan at December 31, 2013. The fee on the unused portion of the Revolving Loan ranges from 25 basis points to either 37.5 or 50 basis points, depending on the amount of utilization.

CDW LLC is the borrower under the Revolving Loan. All obligations under the Revolving Loan are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. Borrowings under the Revolving Loan are collateralized by a first priority interest in inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5), deposits, and accounts receivable, and a second priority interest in substantially all other assets. The Revolving Loan contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Revolving Loan also includes maintenance of a minimum average daily excess cash availability requirement. Should the Company fall below the minimum average daily excess cash availability requirement for five consecutive business days, the Company becomes subject to a fixed charge coverage ratio until such time as the daily excess cash availability requirement is met for 30 consecutive business days.

#### Senior Secured Term Loan Facility

On April 29, 2013, the Company entered into a new seven-year, \$1,350.0 million aggregate principal amount senior secured term loan facility (the "Term Loan"). The Term Loan was issued at a price that was 99.75% of par, which

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resulted in a discount of \$3.4 million. Substantially all of the proceeds from the Term Loan were used to repay the \$1,299.5 million outstanding aggregate principal amount of the prior senior secured term loan facility (the "Prior Term Loan Facility"). In connection with this refinancing, the Company recorded a loss on extinguishment of long-term debt of \$10.3 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented a write-off of the remaining unamortized deferred financing costs related to the Prior Term Loan Facility.

On July 31, 2013, the Company borrowed an additional \$190.0 million aggregate principal amount under the Term Loan at a price that was 99.25% of par, which resulted in a discount of \$1.4 million. Such proceeds were used to redeem a portion of outstanding Senior Subordinated Notes. The discounts are reported on the consolidated balance sheet as a reduction to the face amount of the Term Loan and are being amortized to interest expense over the term of the related debt. Fees of \$6.1 million related to the Term Loan were capitalized as deferred financing costs and are being amortized over the term of the facility using the effective interest method.

Borrowings under the Term Loan bear interest at either (a) the alternate base rate ("ABR") plus a margin or (b) LIBOR plus a margin; provided that for the purposes of the Term Loan, LIBOR shall not be less than 1.00% per annum at any time ("LIBOR Floor"). The margin is based upon a net leverage ratio as defined in the agreement governing the Term Loan, ranging from 1.25% to 1.50% for ABR borrowings and 2.25% to 2.50% for LIBOR borrowings. An interest rate of 3.25%, LIBOR Floor plus a 2.25% margin, was in effect during the three-month period ended December 31, 2013.

Unlike the Prior Term Loan Facility, the Term Loan does not include a senior secured leverage ratio requirement or a hedging requirement. Additionally, the definition of debt under the Term Loan was revised to exclude amounts outstanding under the Company's inventory financing agreements. The Term Loan is subject to certain requirements as was the Prior Term Loan Facility to make mandatory annual excess cash flow prepayments under designated circumstances, including (i) a prepayment in an amount equal to 50% of the Company's excess cash flow for a fiscal year (the percentage rate of which decreases to 25% when the total net leverage ratio, as defined in the governing agreement, is less than or equal to 5.5 but greater than 4.5; and decreases to 0% when the total net leverage ratio is less than or equal to 4.5), and (ii) the net cash proceeds from the incurrence of certain additional indebtedness by the Company or its subsidiaries. The total net leverage ratio was 3.8 at December 31, 2013.

The Company is required to pay quarterly principal installments equal to 0.25% of the original principal amount of the Term Loan, with the remaining principal amount payable on the maturity date of April 29, 2020. The quarterly principal installment payments commenced during the quarter ended June 30, 2013. At December 31, 2013, the outstanding principal amount of the Term Loan was \$1,528.9 million, excluding \$4.4 million in unamortized discount.

The Company has interest rate cap agreements in effect through January 14, 2015 with a combined notional amount of \$1,150.0 million. These cap agreements have not been designated as cash flow hedges of interest rate risk for GAAP accounting purposes. Of the total \$1,150.0 million notional amount, \$500.0 million entitle the Company to payments from the counterparty of the amount, if any, by which three-month LIBOR exceeds 3.5% during the agreement period. The remaining cap agreements with a notional amount of \$650.0 million entitle the Company to payments from the counterparty of the amount, if any, by which the three-month LIBOR exceeds 1.5% during the agreement period. The fair value of the Company's interest rate cap agreements was zero at December 31, 2013 and \$0.1 million at December 31, 2012.

During the first quarters of 2013, 2012 and 2011, the Company made principal prepayments totaling \$40.0 million, \$201.0 million and \$132.0 million, respectively, under the Prior Term Loan Facility. These prepayments satisfied the excess cash flow payment provision of the Prior Term Loan Facility with respect to the years ended December 31, 2012, 2011 and 2010, respectively.

On March 11, 2011, the Company entered into an amendment to the Prior Term Loan Facility, which became effective on March 14, 2011. In connection with this amendment, the Company recorded a loss on extinguishment of long-term debt of \$3.2 million in the Company's consolidated statement of operations for the year ended December 31, 2011. This loss represented a write-off of a portion of the unamortized deferred financing costs related to the Prior Term Loan Facility.

CDW LLC is the borrower under the Term Loan. All obligations under the Term Loan are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Term Loan is collateralized by a second priority interest in substantially all inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5), deposits, and accounts receivable, and by a first priority interest in substantially all other assets. The Term Loan contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of

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assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates.

8.0% Senior Secured Notes due 2018 (“Senior Secured Notes”)

The Senior Secured Notes were issued on December 17, 2010 and will mature on December 15, 2018. At December 31, 2013, the outstanding principal amount of the Senior Secured Notes was \$325.0 million.

On July 2, 2013, the Company used a portion of the net proceeds from the IPO to redeem \$175.0 million aggregate principal amount of Senior Secured Notes. The redemption price of the Senior Secured Notes was 108.0% of the principal amount redeemed, plus \$0.7 million of accrued and unpaid interest to the date of redemption. The Company used cash on hand to pay such accrued and unpaid interest. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$16.7 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$14.0 million in redemption premium and \$2.7 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Secured Notes.

CDW LLC and CDW Finance Corporation are the co-issuers of the Senior Secured Notes and the obligations under the notes are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Senior Secured Notes are secured on a pari passu basis with the Term Loan by a second priority interest in substantially all inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5), deposits, and accounts receivable, and by a first priority interest in substantially all other assets. The Senior Secured Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Senior Secured Note indenture does not contain any financial covenants.

11.0% Senior Exchange Notes due 2015 (“Senior Exchange Notes”); 11.5% / 12.25% Senior PIK Election Exchange Notes due 2015 (“PIK Election Notes” together with the Senior Exchange Notes, the “Senior Notes due 2015”)

At December 31, 2013, there were no outstanding Senior Notes due 2015.

On April 13, 2011, the Company completed a cash tender offer (the “Initial Senior Notes due 2015 Tender Offer”) and purchased \$665.1 million aggregate principal amount of Senior Notes due 2015 comprised of \$519.2 million of the Senior Exchange Notes and \$145.9 million of the PIK Election Notes. The Company concurrently issued \$725.0 million aggregate principal amount of Senior Notes (as defined below). The proceeds from this offering, together with cash on hand and borrowings under the then-outstanding revolving loan credit facility, were used to fund the purchase of the tendered Senior Notes due 2015, including \$665.1 million aggregate principal amount of Senior Notes due 2015, \$59.9 million in tender offer premium and \$36.5 million of accrued and unpaid interest, along with transaction fees and expenses.

On May 20, 2011, the Company completed a follow-on cash tender offer (the “Follow-on Senior Notes due 2015 Tender Offer,” and together with the Initial Senior Notes due 2015 Tender Offer, the “Senior Notes due 2015 Tender Offers”) and purchased an additional \$412.8 million aggregate principal amount of Senior Notes due 2015 comprised of \$321.4 million of the Senior Exchange Notes and \$91.4 million of the PIK Election Notes. The Company concurrently issued \$450.0 million in aggregate principal amount of additional Senior Notes. The proceeds from this offering, together with cash on hand and borrowings under the then-outstanding revolving loan credit facility, were used to fund the purchase of the tendered Senior Notes due 2015, including \$412.8 million aggregate principal amount of Senior Notes due 2015, \$37.2 million in tender offer premium and \$4.5 million of accrued and unpaid interest, along with transaction fees and expenses.

In connection with the Senior Notes due 2015 Tender Offers, the Company recorded a loss on extinguishment of long-term debt of \$114.1 million in the Company's consolidated statement of operations for the year ended December 31, 2011. This loss represented \$97.0 million in tender offer premiums and \$17.1 million for the write-off of a portion of the unamortized deferred financing costs related to the Senior Notes due 2015. In connection with the issuance of Senior Notes, fees of \$19.1 million were capitalized as deferred financing costs and are being amortized over the term of the notes using the effective interest method.

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On February 2, 2012, the Company commenced a tender offer to purchase any and all of the remaining \$129.0 million aggregate principal amount of Senior Notes due 2015. On February 17, 2012, the Company accepted for purchase \$120.6 million aggregate principal amount of the outstanding Senior Notes due 2015 that were tendered. On March 5, 2012, the Company accepted for purchase an additional \$0.1 million aggregate principal amount of the outstanding Senior Notes due 2015 that were tendered prior to the expiration of the tender offer on March 2, 2012. On March 19, 2012, the Company redeemed the remaining \$8.3 million aggregate principal amount that was not tendered.

The Company funded the purchases and redemptions of the Senior Notes due 2015 with the issuance of \$130.0 million aggregate principal amount of additional Senior Notes on February 17, 2012. The proceeds from this issuance, together with cash on hand and borrowings under the Revolving Loan, funded the payment of \$129.0 million aggregate principal amount of Senior Notes due 2015, \$7.9 million in tender and redemption premiums and \$5.0 million of accrued and unpaid interest, along with transaction fees and expenses.

In connection with these transactions, the Company recorded a loss on extinguishment of long-term debt of \$9.4 million in the Company's consolidated statement of operations for the year ended December 31, 2012. This loss represented \$7.9 million in tender and redemption premiums and \$1.5 million for the write-off of the remaining unamortized deferred financing costs related to the Senior Notes due 2015.

8.5% Senior Notes due 2019 ("Senior Notes")

At December 31, 2013, the outstanding principal amount of Senior Notes was \$1,305.0 million, excluding \$4.2 million in unamortized premium. The Senior Notes mature on April 1, 2019.

On February 17, 2012, the Company issued \$130.0 million aggregate principal amount of additional Senior Notes at an issue price of 104.375% of par. The \$5.7 million premium received is reported on the consolidated balance sheet as an addition to the face amount of the Senior Notes and is being amortized as a reduction of interest expense over the term of the related debt.

As discussed above, on April 13, 2011, the Company issued \$725.0 million aggregate principal amount of Senior Notes and on May 20, 2011, the Company issued an additional \$450.0 million aggregate principal amount of Senior Notes. The proceeds from these issuances together with cash on hand and borrowings under the then-outstanding revolving loan credit facility were used to fund the Senior Notes due 2015 Tender Offers.

CDW LLC and CDW Finance Corporation are the co-issuers of the Senior Notes. Obligations under the Senior Notes are guaranteed on an unsecured senior basis by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Senior Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Senior Notes do not contain any financial covenants.

12.535% Senior Subordinated Exchange Notes due 2017 ("Senior Subordinated Notes")

At December 31, 2013, the outstanding principal amount of the Senior Subordinated Notes was \$92.5 million. The Senior Subordinated Notes have a maturity date of October 12, 2017.

On October 18, 2013, the Company redeemed \$155.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 104.178% of the principal amount redeemed. A combination of cash on hand and the net proceeds from the sale of shares of common stock related to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO, in the amount of \$56.0 million, was used to fund the redemption of \$155.0 million aggregate principal amount, \$6.5 million of redemption premium and \$0.2 million in accrued and unpaid interest to the date of redemption. See Note 9 for additional discussion of the underwriters' overallotment option. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$8.5 million in the Company's consolidated statement of operations for the year ended December 31, 2013. This loss represented \$6.5 million in redemption premium and \$2.0 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

On August 1, 2013, the Company redeemed \$324.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. The Company used a portion of the net

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proceeds from the IPO to redeem \$146.0 million aggregate principal amount of Senior Subordinated Notes and incremental borrowings of \$190.0 million under the Term Loan to redeem \$178.0 million aggregate principal amount of Senior Subordinated Notes. The Company used cash on hand to pay \$12.0 million of accrued and unpaid interest to the date of redemption. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$24.6 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$20.3 million in redemption premium and \$4.3 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Subordinated Notes.

On March 8, 2013, the Company redeemed \$50.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. Cash on hand was used to fund the redemption of \$50.0 million aggregate principal amount, \$3.1 million of redemption premium and \$2.5 million in accrued and unpaid interest to the date of redemption. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$3.9 million in the Company's consolidated statement of operations for the year ended December 31, 2013. This loss represented \$3.1 million in redemption premium and \$0.8 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

On December 21, 2012, the Company redeemed \$100.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. Cash on hand was used to fund the redemption of \$100.0 million aggregate principal amount, \$6.3 million of redemption premium and \$2.3 million in accrued and unpaid interest to the date of redemption. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$7.8 million in the Company's consolidated statement of operations for the year ended December 31, 2012. This loss represented \$6.3 million in redemption premium and \$1.5 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

CDW LLC and CDW Finance Corporation are the co-issuers of the Senior Subordinated Notes. Obligations under the Senior Subordinated Notes are guaranteed on an unsecured senior basis by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Senior Subordinated Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Senior Subordinated Notes do not contain any financial covenants.

Long-Term Debt Maturities

As of December 31, 2013, the maturities of long-term debt were as follows:

(in millions)	
Years ending December 31,	
2014	\$ 45.4
2015	15.4
2016	15.4
2017	77.9
2018	340.4
Thereafter	2,756.9
	<u>\$ 3,251.4</u>

See Note 19 for a description of refinancing transactions completed during 2014.

Fair Value

The fair value of the Company's long-term debt instruments at December 31, 2013 was \$3,415.2 million. The fair value of the Senior Secured Notes, Senior Notes and Senior Subordinated Notes is estimated using quoted market prices for identical assets or liabilities that are traded in over-the-counter secondary markets that are not considered active. The fair value of the Term Loan is estimated using dealer quotes for identical assets or liabilities in markets that are not considered active. Consequently, the Company's long-term debt is classified as Level 2 within the fair value hierarchy.

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At December 31, 2013, the carrying value of the Company's long-term debt was \$3,251.4 million, excluding \$4.2 million in unamortized premium and \$4.4 million in unamortized discount.

Deferred Financing Costs

The following table summarizes the deferred financing costs activity for the years ended December 31, 2013 and 2012:

(in millions)	December 31,	
	2013	2012
Beginning balance	\$ 53.2	\$ 68.5
Additional costs capitalized	6.1	2.1
Recognized in interest expense	(9.1)	(14.4)
Write-off of unamortized deferred financing costs	(20.1)	(3.0)
Ending balance	<u>\$ 30.1</u>	<u>\$ 53.2</u>

As of December 31, 2013 and December 31, 2012, the weighted-average remaining life of unamortized deferred financing costs was 4.9 and 5.1 years, respectively.

**8. Income Taxes**

Income before income taxes was taxed under the following jurisdictions:

(in millions)	Years Ended December 31,		
	2013	2012	2011
Domestic	\$ 179.4	\$ 170.3	\$ 11.4
Foreign	16.1	15.8	16.9
Total	<u>\$ 195.5</u>	<u>\$ 186.1</u>	<u>\$ 28.3</u>

Components of the income tax expense (benefit) consisted of the following:

(in millions)	Years Ended December 31,		
	2013	2012	2011
<b>Current:</b>			
Federal	\$ 96.7	\$ 110.3	\$ 17.9
State	10.1	8.0	(0.6)
Foreign	4.6	5.1	4.1
Total current	<u>111.4</u>	<u>123.4</u>	<u>21.4</u>
<b>Deferred:</b>			
Domestic	(48.6)	(56.2)	(9.9)
Foreign	(0.1)	(0.1)	(0.3)
Total deferred	<u>(48.7)</u>	<u>(56.3)</u>	<u>(10.2)</u>
Income tax expense	<u>\$ 62.7</u>	<u>\$ 67.1</u>	<u>\$ 11.2</u>



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The reconciliation between the statutory tax rate expressed as a percentage of income before income taxes and the effective tax rate is as follows:

(dollars in millions)	Years Ended December 31,					
	2013		2012		2011	
Statutory federal income tax rate	\$ 68.4	35.0%	\$ 65.1	35.0%	\$ 9.9	35.0%
State taxes, net of federal effect	(5.0)	(2.6)	0.4	0.2	(3.4)	(11.8)
Equity-based compensation	1.5	0.7	5.7	3.1	5.1	17.9
Effect of rates different than statutory	(1.4)	(0.7)	(1.4)	(0.8)	(1.1)	(4.0)
Valuation allowance	—	—	—	—	(0.9)	(3.1)
Other	(0.8)	(0.3)	(2.7)	(1.5)	1.6	5.7
Effective tax rate	<u>\$ 62.7</u>	<u>32.1%</u>	<u>\$ 67.1</u>	<u>36.0%</u>	<u>\$ 11.2</u>	<u>39.7%</u>

The tax effect of temporary differences that give rise to the net deferred income tax liability is presented below:

(in millions)	December 31,	
	2013	2012
<b>Deferred Tax Assets:</b>		
Deferred interest	\$ 42.5	\$ 58.3
State net operating loss and credit carryforwards, net	20.6	18.0
Payroll and benefits	16.2	16.7
Rent	6.4	1.2
Accounts receivable	5.4	4.2
Equity compensation plans	1.6	10.3
Trade credits	1.5	1.8
Interest rate caps	0.8	1.8
Charitable contribution carryforward	0.5	4.1
Deferred financing costs	0.2	2.3
Other	7.1	7.2
Total deferred tax assets	<u>102.8</u>	<u>125.9</u>
<b>Deferred Tax Liabilities:</b>		
Software and intangibles	486.2	551.4
Deferred income	145.5	146.3
Property and equipment	25.0	29.3
Other	11.6	9.1
Total deferred tax liabilities	<u>668.3</u>	<u>736.1</u>
Deferred tax asset valuation allowance	<u>—</u>	<u>—</u>
Net deferred tax liability	<u>\$ 565.5</u>	<u>\$ 610.2</u>

The Company has state income tax net operating loss carryforwards of \$202.8 million, which will expire at various dates from 2014 through 2033 and state tax credit carryforwards of \$17.0 million, which expire at various dates from 2016 through 2018.

The Company has not provided for U.S. federal income taxes or tax benefits on the undistributed earnings of its international subsidiary because such earnings are reinvested and it is currently intended that they will continue to be reinvested indefinitely. At December 31, 2013, the Company has not provided for federal income taxes on earnings of approximately \$52.5 million from its international subsidiary.

The Company had no unrecognized tax benefits at December 31, 2013, 2012 and 2011.

In the ordinary course of business, the Company is subject to review by domestic and foreign taxing authorities, including the Internal Revenue Service (“IRS”). In general, the Company is no longer subject to audit by the IRS for

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tax years through 2010 and state, local or foreign taxing authorities for tax years through 2008. Various other taxing authorities are in the process of auditing income tax returns of the Company and its subsidiaries. The Company does not anticipate that any adjustments from the audits would have a material impact on its consolidated financial position, results of operations or cash flows.

The Company accrues net interest and penalties related to unrecognized tax benefits in income tax expense in its consolidated statements of operations. For the years ended December 31, 2013, 2012 and 2011, the Company had no liability recorded for the payment of interest and penalties on unrecognized tax benefits and did not recognize any such interest and penalty expense.

**9. Shareholders' Equity**

On July 2, 2013, the Company completed an IPO of 23,250,000 shares of common stock. On July 31, 2013, the Company completed the sale of an additional 3,487,500 shares of common stock to the underwriters of the IPO pursuant to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO. Such shares were registered under the Securities Act of 1933, as amended, pursuant to the Company's Registration Statement on Form S-1, which was declared effective by the SEC on June 26, 2013. The shares of common stock are listed on the NASDAQ Global Select Market under the symbol "CDW." The Company's shares of common stock were sold to the underwriters at a price of \$17.00 per share in the IPO and upon the exercise of the overallotment option, which together, generated aggregate net proceeds of \$424.7 million to the Company after deducting underwriting discounts, expenses and transaction costs.

On November 19, 2013, the Company completed a secondary public offering, whereby certain selling stockholders sold 15,000,000 shares of common stock. On December 18, 2013, such selling stockholders sold an additional 2,250,000 shares of common stock to the underwriters of the secondary public offering pursuant to the underwriters' December 13, 2013 exercise in full of the overallotment option granted to them in connection with the secondary public offering. The Company did not receive any proceeds from the sale of shares in the secondary public offering or upon the exercise of the overallotment option.

The following pre-tax IPO- and secondary-offering related expenses were included within selling and administrative expenses in the consolidated statement of operations for the year ended December 31, 2013:

(in millions)	Year Ended December 31, 2013
Acceleration charge for certain equity awards and related employer payroll taxes <sup>(1)</sup>	\$ 40.7
RDU Plan cash retention pool accrual <sup>(2)</sup>	7.5
Management services agreement termination fee <sup>(3)</sup>	24.4
Other expenses	2.4
<b>IPO- and secondary-offering related expenses</b>	<b>\$ 75.0</b>

(1) See Note 10 for additional discussion of the impact of the IPO on the Company's equity awards.

(2) See Note 12 for additional discussion of this transaction.

(3) Represents the payment of a termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities.

In June 2013, the Company's Board of Directors and the Company's sole shareholder at that time, CDW Holdings, approved the reclassification of the Company's Class A common shares and Class B common shares into a single class of common shares and a 143.0299613-for-1 stock split, effective immediately. The par value of the common shares was maintained at \$0.01 per share. All references to common shares and per share amounts in the accompanying consolidated financial statements have been adjusted to reflect the reclassification and stock split on a retroactive basis.

In June 2013, the Company amended and restated its certificate of incorporation to authorize the issuance of 100,000,000 shares of preferred stock with a par value of \$0.01. No shares of preferred stock have been issued or are outstanding as of December 31, 2013. Additionally, the amended and restated certificate of incorporation increased the number of authorized common shares to 1,000,000,000.

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On December 2, 2013, the Company paid a cash dividend on the Company's common stock of \$0.0425 per share, or \$7.3 million, to all stockholders of record as of the close of business on November 15, 2013. See Note 19 for a discussion of the dividend declared during the first quarter of 2014. Future dividends will be subject to the approval of the Company's board of directors.

**10. Equity-Based Compensation**

**Equity-Based Compensation Plan Descriptions**

CDW has established certain equity-based compensation plans for the benefit of the Company's coworkers and senior management.

Pre-IPO Equity Awards

Prior to the IPO, the Company had the following equity-based compensation plans in place:

*Class B Common Units*

The Board of Managers of CDW Holdings adopted the CDW Holdings LLC 2007 Incentive Equity Plan (the "Plan") for coworkers, managers, consultants and advisors of the Company and its subsidiaries. The Plan permitted a committee designated by the Board of Managers of CDW Holdings (the "Committee") to grant or sell to any participant Class A Common Units or Class B Common Units of CDW Holdings in such quantity, at such price, on such terms and subject to such conditions that were consistent with the Plan and as established by the Committee.

The Class B Common Units that were granted vested daily on a pro rata basis between the date of grant and the fifth anniversary thereof and were subject to repurchase by, with respect to vested units, or forfeiture to, with respect to unvested units, the Company upon the coworker's separation from service as was set forth in each holder's Class B Common Unit Grant Agreement.

On June 30, 2011, the Board of Managers approved the terms of a modified Class B Common Unit grant agreement with the Company's former Chief Executive Officer, who retired as the Company's Chief Executive Officer effective October 1, 2011 but continued to serve as Chairman of the Board through December 31, 2012. As a result of this modification, the Company recorded incremental equity-based compensation expense of \$6.6 million and \$3.3 million during the years ended December 31, 2012 and 2011, respectively.

*MPK II Units*

Contemporaneous with the Acquisition, the Company agreed with Michael P. Krasny, CDW Corporation founder, former chairman and CEO and significant selling shareholder, to establish the MPK Coworker Incentive Plan II (the "MPK Plan") for the benefit of all of the coworkers of the Company other than members of senior management who received incentive equity awards under the Plan.

The MPK Plan established an "account" for each eligible participant which was notionally credited with a number of Class A Common Units of CDW Holdings LLC on October 15, 2007, the day the plan was established. The notional units credited to participants' accounts were to cliff-vest at the end of ten years, subject to acceleration upon the occurrence of certain events.

On July 2, 2013, the Company completed an IPO of its common shares. Under the terms of the MPK Plan, vesting accelerated for all unvested units upon completion of the IPO. The Company recorded a pre-tax charge of \$36.7 million for compensation expense related to the acceleration of the expense recognition for MPK Plan units in the year ended December 31, 2013. In connection with the completion of the IPO, the Company distributed common stock to each participant and withheld the number of shares of common stock equal to the required tax withholding for each participant. The Company paid required withholding taxes of \$24.0 million to federal, state and foreign taxing authorities. This amount is reported as a financing activity in the consolidated statement of cash flows and as an increase to accumulated deficit in the consolidated statement of shareholders' equity for the year ended December 31, 2013. In addition, the Company paid \$4.0 million of employer payroll taxes that are included as an operating activity in the consolidated statement of cash flows for the year ended December 31, 2013.

In connection with the establishment of the MPK Plan, the Company agreed to make charitable contributions in amounts equal to the net income tax benefits derived from payouts to participants under the MPK Plan (net of any related employer payroll tax costs). The contributions of these amounts are due by March 15 of the calendar year

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following the year in which the Company realizes the benefits of the deductions. This arrangement has been accounted for as contingent consideration. Pre-2009 business combinations were accounted for under a former accounting standard which, among other aspects, precluded the recognition of certain contingent consideration as of the business combination date. Instead, under the former accounting standard, contingent consideration is accounted for as additional purchase price (goodwill) at the time the contingency is resolved. As of December 31, 2013, the Company has accrued approximately \$21 million related to this arrangement within other current liabilities, as the Company expects to realize the tax benefit of the compensation deductions during the 2013 tax year. The Company expects to make the related cash contribution during the first quarter of 2014.

#### Post-IPO Equity Awards

##### *2013 Long-Term Incentive Plan (the "2013 LTIP")*

In June 2013, the Company adopted the 2013 Long-Term Incentive Plan (the "2013 LTIP"). The 2013 LTIP provides for the grant of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, restricted stock units, bonus stock and performance awards. The maximum aggregate number of shares that may be issued under the 2013 LTIP is 11,700,000 shares of the Company's common stock, in addition to the 3,798,508 shares of restricted stock granted in exchange for unvested Class B Common Units in connection with the Company's IPO, as discussed below.

##### *Restricted Stock*

In connection with the IPO, CDW Holdings distributed all of its shares of the Company's common stock to its existing members in accordance with their respective membership interests. Common stock received by holders of Class B Common Units in connection with the distribution is subject to any vesting provisions previously applicable to the holder's Class B Common Units. Class B Common Unit holders received 3,798,508 shares of restricted stock with respect to Class B Common Units that had not yet vested at the time of the distribution. For the year ended December 31, 2013, 1,200,544 shares of such restricted stock vested/settled and 5,931 shares were forfeited. As of December 31, 2013, 2,592,033 shares of restricted stock were outstanding.

##### *Stock Options*

In addition, in connection with the IPO, the Company issued 1,268,986 stock options to the Class B Common Unit holders to preserve their fully diluted equity ownership percentage. These options were issued with a per-share exercise price equal to the IPO price of \$17.00 and are also subject to the same vesting provisions as the Class B Common Units to which they relate. The Company also granted 19,412 stock options under the 2013 LTIP during the year ended December 31, 2013.

##### *Restricted Stock Units ("RSUs")*

In connection with the IPO, the Company granted 1,416,543 RSUs under the 2013 LTIP at a weighted-average grant-date fair value of \$17.03 per unit. The RSUs cliff-vest at the end of four years.

#### **Valuation Information**

The Company attributes the value of equity-based compensation awards to the various periods during which the recipient must perform services in order to vest in the award using the straight-line method.

#### Post-IPO Equity Awards

The Company has elected to use the Black-Scholes option pricing model to estimate the fair value of stock options granted. The Black-Scholes option pricing model incorporates various assumptions including volatility, expected term, risk-free interest rates and dividend yields. The assumptions used to value the stock options granted during the year ended December 31, 2013 are presented below.

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Assumptions	Year Ended December 31,	
	2013	
Weighted-average grant date fair value	\$	4.75
Weighted-average volatility <sup>(1)</sup>		35.00%
Weighted-average risk-free rate <sup>(2)</sup>		1.58%
Dividend yield		1.00%
Expected term (in years) <sup>(3)</sup>		5.4

- (1) Based upon an assessment of the two-year, five-year and implied volatility for the Company's selected peer group, adjusted for the Company's leverage.
- (2) Based on a composite U.S. Treasury rate.
- (3) The expected term is calculated using the simplified method. The simplified method defines the expected term as the average of the option's contractual term and the option's weighted-average vesting period. The Company utilizes this method as it has limited historical stock option data that is sufficient to derive a reasonable estimate of the expected stock option term.

The following table sets forth a summary of the Company's stock option activity for the year ended December 31, 2013:

Options	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value (millions)
Outstanding at January 1, 2013	—	\$ —		
Granted	1,288,398	\$ 17.00		
Forfeited/Expired	(8,143)	\$ 17.00		
Exercised	—	\$ —		N/A
Outstanding at December 31, 2013	1,280,255	\$ 17.00	8.4	\$ 8.1
Vested at December 31, 2013	393,517	\$ 17.00	8.0	\$ 2.5
Exercisable at December 31, 2013	393,517	\$ 17.00	8.0	\$ 2.5
Expected to vest at December 31, 2013	852,713	\$ 17.00	8.6	\$ 5.4

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The following table sets forth a summary of the Company's RSU activity for the year ended December 31, 2013:

	Number of Units	Weighted- Average Grant-Date Fair Value
Nonvested at January 1, 2013	—	\$ —
Granted	1,416,543	17.03
Vested/Settled	(1,844)	17.00
Forfeited	(63,127)	17.01
Nonvested at December 31, 2013	1,351,572	\$ 17.04

The aggregate fair value of restricted stock and RSUs that vested during the year ended December 31, 2013, was \$26.7 million.

Pre-IPO Equity Awards

The grant date fair value of Class B Common Unit grants was calculated using the Option-Pricing Method. This method considered Class A Common Units and Class B Common Units as call options on the total equity value, giving consideration to liquidation preferences and conversion of the preferred units. Such Class A Common Units and Class B Common Units were modeled as call options that gave their owners the right, but not the obligation, to buy the underlying equity value at a predetermined (or exercise) price. Class B Common Units were considered to be call options with a claim on equity value at an exercise price equal to the remaining value immediately after the Class A Common Units and Class B Common Units with a lower participation threshold were liquidated. The Option-Pricing Method is highly sensitive to key assumptions, such as the volatility assumption. As such, the use of this method can be applied when the range of possible future outcomes is difficult to predict.

The following table summarizes the assumptions and resulting fair value of the Class B Common Unit grants for the years ended December 31, 2013, 2012 and 2011:

<u>Assumptions</u>	Class B Common Units		
	Years Ended December 31,		
	2013	2012	2011
Weighted-average grant date fair value	\$ 119.00	\$ 125.65	\$ 148.89
Weighted-average volatility	65.50%	65.26%	82.87%
Weighted-average risk-free rate	0.18%	0.19%	0.84%
Dividend yield	0.00%	0.00%	0.00%

The Company calculated the expected future volatility based upon an assessment of the two-year, five-year and implied volatility for the Company's selected peer group, adjusted for the Company's leverage.

The risk-free interest rate of return used is based on a composite U.S. Treasury rate.

Notional units granted under the MPK Plan were valued on the grant date at \$1,000 per unit, the fair value equivalent of the Class A Common Units at the time the awards were granted.

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The following table sets forth a summary of equity plan activity for the year ended December 31, 2013:

	Class B Common Units	MPK Plan Units
Outstanding at January 1, 2013	216,483	66,137
Granted	400	—
Forfeited	(860)	(2,228)
Converted/Settled <sup>(1)</sup>	(216,023)	(63,909)
Outstanding at December 31, 2013	—	—
Vested at December 31, 2013	—	—

(1) As discussed above, the Class B Common Units and MPK Plan Units were converted/settled into shares of the Company's common stock upon completion of the IPO. The converted Class B Common Units, to the extent unvested at the time of the IPO, relate to the grants of restricted stock disclosed above.

**Expense Information**

The Company's net income included \$46.6 million, \$22.1 million and \$19.5 million of compensation cost and \$16.5 million, \$2.3 million and \$1.9 million of income tax benefits related to the Company's equity-based compensation arrangements for the years ended December 31, 2013, 2012 and 2011, respectively. No portion of equity-based compensation was capitalized. Equity-based compensation expense for the year ended December 31, 2013 included incremental expense of \$36.7 million related to the acceleration of the expense recognition for MPK units as discussed above. Equity-based compensation expense included incremental expense of \$6.6 million and \$3.3 million related to the Class B Common Unit modification for the Company's former Chief Executive Officer for the years ended December 31, 2012 and 2011, respectively.

As of December 31, 2013, the Company estimated there was \$24.9 million of total unrecognized compensation cost to be recognized over the next 3.3 years.

11. **Earnings per Share**

The numerator for both basic and diluted earnings per share is net income. The denominator for basic earnings per share is the weighted-average number of common shares outstanding during the period. The 2013 denominator was impacted by the common shares issued during both the IPO and the underwriters' exercise in full of the overallotment option granted to them in connection with the IPO. Because such common shares were issued on July 2, 2013 and July 31, 2013, respectively, they are only partially reflected in the 2013 denominator. Such shares will be fully reflected in the 2014 denominator. See Note 9 for additional discussion of the IPO.

The dilutive effect of outstanding restricted stock, restricted stock units, stock options and MPK Plan units is reflected in the denominator for diluted earnings per share using the treasury stock method.

The following is a reconciliation of basic shares to diluted shares:

(in millions)	Years Ended December 31,		
	2013	2012	2011
Weighted-average shares - basic	156.6	145.1	144.8
Effect of dilutive securities	2.1	0.7	0.1
Weighted-average shares - diluted	158.7	145.8	144.9

For the years ended December 31, 2013, 2012 and 2011, diluted earnings per share excludes the impact of 0.0 million, 0.0 million, and 4.3 million potential common shares, respectively, as their inclusion would have had an anti-dilutive effect.

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**12. Deferred Compensation Plan**

On March 10, 2010, in connection with the Company's purchase of \$28.5 million principal amount of its outstanding senior subordinated debt, the Company established the Restricted Debt Unit Plan (the "RDU Plan"), an unfunded nonqualified deferred compensation plan. The total number of RDUs that can be granted under the RDU Plan is 28,500. At December 31, 2013, 28,500 RDUs were outstanding. RDUs that are outstanding vest daily on a pro rata basis over the three-year period from January 1, 2012 (or, if later, the date of hire or the date of a subsequent RDU grant) through December 31, 2014. Participants have no rights to the underlying debt.

The total amount of compensation available to be paid under the RDU Plan was initially to be based on two components, a principal component and an interest component. The principal component credits the RDU Plan with a notional amount equal to the \$28.5 million face value of the Senior Subordinated Notes (the "Debt Pool"), together with certain redemption premium equivalents as noted below. The interest component credits the RDU Plan with amounts equal to the interest that would have been earned on the Debt Pool from March 10, 2010 through maturity on October 12, 2017, except as discussed below. Interest amounts for 2010 and 2011 were deferred until 2012, and thereafter, interest amounts were paid to participants semi-annually on the interest payment due dates. Payments totaling \$1.7 million and \$1.3 million were made to participants under the RDU Plan in April and October 2013, respectively, in connection with the semi-annual interest payments due.

The Company used a portion of the IPO proceeds together with incremental borrowings to redeem \$324.0 million of the total Senior Subordinated Notes outstanding on August 1, 2013. In connection with the IPO and the partial redemption of the Senior Subordinated Notes, the Company amended the RDU Plan to increase the retentive value of the plan. In accordance with the original terms of the RDU Plan, the principal component of the RDUs converted to a cash-denominated pool upon the redemption of the Senior Subordinated Notes. In addition, the Company added \$1.4 million to the principal component in the year ended December 31, 2013 as redemption premium equivalents in accordance with the terms of the RDU plan. Under the terms of the amended RDU Plan, upon the partial redemption of outstanding Senior Subordinated Notes, the RDUs ceased to accrue the proportionate related interest component credits. The amended RDU Plan provides participants the opportunity to share on a pro rata basis in cash retention pools payable to participants who satisfy certain retention requirements. The aggregate amount of the retention pools was determined to be \$15.0 million based upon the amount of interest component credits that would have been allocated to the RDU Plan if the Senior Subordinated Notes had remained outstanding from August 1, 2013 through maturity. The Company recorded a pre-tax charge of \$7.5 million in the year ended December 31, 2013 for payment of the first cash retention pool. The second cash retention pool payment is expected to be made to participants who remain employed through December 31, 2015 in the first quarter of 2016. Participants continue to accrue an interest component credit for the proportionate amount of Senior Subordinated Notes still outstanding, payable on the aforementioned semi-annual due dates; such payments, however, will be deducted from the second retention pool payment amount of \$7.5 million.

Unrecognized compensation expense as of December 31, 2013 of approximately \$9 million is expected to be recognized through 2014 and approximately \$7 million in 2015 through 2017. Payments under the RDU Plan may be impacted if certain significant events occur or circumstances change that would impact the financial condition or structure of the Company.

Compensation expense of \$16.8 million, \$8.4 million, and \$8.1 million related to the RDU Plan was recognized in the years ended December 31, 2013, 2012 and 2011, respectively. At December 31, 2013 and 2012, the Company had \$21.8 million and \$15.5 million of liabilities related to the RDU Plan recorded on the consolidated balance sheets, respectively.

Payment of the principal component of the RDU Plan is expected to be made on October 12, 2017, unless accelerated due to a sale of the Company.

**13. Profit Sharing and 401(k) Plan**

The Company has a profit sharing plan that includes a salary reduction feature established under the Internal Revenue Code Section 401(k) covering substantially all coworkers. Company contributions to the profit sharing plan are made in cash and determined at the discretion of the Board of Directors. For the years ended December 31, 2013, 2012 and 2011, the amounts charged to expense for this plan totaled \$17.3 million, \$14.6 million and \$15.3 million, respectively.



**CDW CORPORATION AND SUBSIDIARIES  
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**14. Commitments and Contingencies**

The Company is party to various legal proceedings that arise in the ordinary course of its business, which include commercial, intellectual property, employment, tort and other litigation matters. The Company is also subject to audit by federal, state and local authorities, and by various partners and large customers, including government agencies, relating to purchases and sales under various contracts. In addition, the Company is subject to indemnification claims under various contracts. From time to time, certain customers of the Company file voluntary petitions for reorganization or liquidation under the U.S. bankruptcy laws. In such cases, certain pre-petition payments received by the Company could be considered preference items and subject to return to the bankruptcy administrator.

As of December 31, 2013, the Company does not believe that there is a reasonable possibility that any material loss exceeding the amounts already recognized for these proceedings and matters, if any, has been incurred. However, the ultimate resolutions of these proceedings and matters are inherently unpredictable. As such, the Company's financial condition and results of operations could be adversely affected in any particular period by the unfavorable resolution of one or more of these proceedings or matters.

The Company previously filed a claim as part of a class action settlement in a case alleging price fixing during the period of January 1, 1996 through December 31, 2006, by certain manufacturers of thin-film liquid crystal display panels. On July 13, 2013, the United States District Court for the Northern District of California approved distribution of the settlement proceeds, including a net payment to the Company of \$10.4 million after fees and expenses. The Company has recognized a pre-tax benefit of \$10.4 million within selling and administrative expenses in the consolidated statement of operations for the year ended December 31, 2013. The first of two settlement payments was received by the Company on July 29, 2013 in the amount of \$8.5 million. The balance of \$1.9 million was received in February 2014.

**15. Related Party Transactions**

The Company had previously entered into a management services agreement with the Sponsors pursuant to which they had agreed to provide it with management and consulting services and financial and other advisory services. Pursuant to such agreement, the Sponsors received an annual management fee of \$5.0 million and reimbursement of out-of-pocket expenses incurred in connection with the provision of such services. Such amounts were classified as selling and administrative expenses within the consolidated statements of operations. The management services agreement included customary indemnification and provisions in favor of the Sponsors.

On July 2, 2013, the Company completed an IPO of its common stock. Using a portion of the net proceeds from the IPO, the Company paid a \$24.4 million termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities that was effective upon completion of the IPO. The Company paid an annual management fee of \$2.5 million, \$5.0 million and \$5.0 million in the years ended December 31, 2013, 2012 and 2011, respectively.

**16. Segment Information**

Segment information is presented in accordance with a "management approach," which designates the internal reporting used by the chief operating decision-maker for making decisions and assessing performance as the source of the Company's reportable segments. The Company's segments are organized in a manner consistent with which separate financial information is available and evaluated regularly by the chief operating decision-maker in deciding how to allocate resources and in assessing performance.

The Company has two reportable segments: Corporate, which is comprised primarily of business customers, and Public, which is comprised of government entities and education and healthcare institutions. The Company also has two other operating segments, CDW Advanced Services and Canada, which do not meet the reportable segment quantitative thresholds and, accordingly, are combined together as "Other."

The Company has centralized logistics and headquarters functions that provide services to the segments. The logistics function includes purchasing, distribution and fulfillment services to support both the Corporate and Public segments. As a result, costs and intercompany charges associated with the logistics function are fully allocated to both of these segments based on a percent of sales. The centralized headquarters function provides services in areas such as accounting, information technology, marketing, legal and coworker services. Headquarters' function costs that are not allocated to the segments are included under the heading of "Headquarters" in the tables below. Depreciation expense is included in Headquarters as it is not allocated among segments or used in measuring segment performance.

**CDW CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

IPO- and secondary-offering related expenses primarily relating to coworker compensation were included within operating segment results for the year ended December 31, 2013. See Note 9 for additional discussion of IPO- and secondary-offering related expenses.

The Company allocates resources to and evaluates performance of its segments based on net sales, income (loss) from operations and Adjusted EBITDA, a non-GAAP measure as defined in the Company's credit agreements. However, the Company has concluded that income (loss) from operations is the more useful measure in terms of discussion of operating results, as it is a GAAP measure.

Segment information for total assets and capital expenditures is not presented, as such information is not used in measuring segment performance or allocating resources between segments.

Selected Segment Financial Information

The following table presents information about the Company's segments for the years ended December 31, 2013, 2012 and 2011:

(in millions)	Corporate	Public	Other	Headquarters	Total
<b>2013:</b>					
Net sales	\$ 5,960.1	\$ 4,164.5	\$ 644.0	\$ —	\$ 10,768.6
Income (loss) from operations	363.3	246.5	27.2	(128.4)	508.6
Depreciation and amortization expense	(97.3)	(44.0)	(8.6)	(58.3)	(208.2)
IPO- and secondary-offering related expenses	(26.4)	(14.4)	(3.6)	(30.6)	(75.0)
<b>2012:</b>					
Net sales	\$ 5,512.8	\$ 4,023.0	\$ 592.4	\$ —	\$ 10,128.2
Income (loss) from operations	349.0	246.7	18.6	(103.7)	510.6
Depreciation and amortization expense	(97.6)	(44.0)	(9.3)	(59.3)	(210.2)
IPO- and secondary-offering related expenses	—	—	—	—	—
<b>2011:</b>					
Net sales	\$ 5,334.4	\$ 3,757.2	\$ 510.8	\$ —	\$ 9,602.4
Income (loss) from operations	331.6	233.3	17.5	(111.7)	470.7
Depreciation and amortization expense	(97.4)	(43.9)	(8.7)	(54.9)	(204.9)
IPO- and secondary-offering related expenses	—	—	—	—	—

Major Customers, Geographic Areas, and Product Mix

Net sales to the federal government were \$764.4 million, \$964.7 million and \$953.6 million and accounted for approximately 7%, 10% and 10% of total net sales in 2013, 2012 and 2011, respectively. Net sales to customers outside of the U.S., primarily in Canada, were approximately 4% of the Company's total net sales in 2013, 2012 and 2011. Approximately 1% and 2% of the Company's long-lived assets were located outside of the U.S. as of December 31, 2013 and 2012, respectively.

**CDW CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following table presents net sales by major category for the years ended December 31, 2013, 2012 and 2011. Categories are based upon internal classifications. Amounts for the years ended December 31, 2012 and 2011 have been reclassified for certain changes in individual product classifications to conform to the presentation for the year ended December 31, 2013.

	Year Ended December 31, 2013		Year Ended December 31, 2012		Year Ended December 31, 2011	
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales
Notebooks/Mobile Devices	\$ 1,706.0	15.8%	\$ 1,470.1	14.5%	\$ 1,336.9	13.9%
NetComm Products	1,489.1	13.8	1,351.1	13.3	1,237.7	12.9
Enterprise and Data Storage (Including Drives)	998.1	9.3	979.4	9.7	929.9	9.7
Other Hardware	4,173.3	38.8	4,068.8	40.2	3,988.3	41.5
Software	1,994.7	18.5	1,849.4	18.3	1,767.2	18.4
Services	327.1	3.0	284.6	2.8	254.3	2.6
Other <sup>(1)</sup>	80.3	0.8	124.8	1.2	88.1	1.0
Total net sales	<u>\$ 10,768.6</u>	<u>100.0%</u>	<u>\$ 10,128.2</u>	<u>100.0%</u>	<u>\$ 9,602.4</u>	<u>100.0%</u>

(1) Includes items such as delivery charges to customers and certain commission revenue.

**17. Supplemental Guarantor Information**

As described in Note 7, the Senior Secured Notes, Senior Subordinated Notes and Senior Notes are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries (the "Guarantor Subsidiaries"). All guarantees by Parent and Guarantor Subsidiaries are joint and several, and full and unconditional; provided that each guarantee by the Guarantor Subsidiaries is subject to certain customary release provisions contained in the indentures governing the Senior Secured Notes, Senior Subordinated Notes and Senior Notes. CDW LLC's Canada subsidiary (the "Non-Guarantor Subsidiary") does not guarantee the debt obligations. CDW LLC and CDW Finance Corporation, as co-issuers, are 100% owned by Parent, and each of the Guarantor Subsidiaries and the Non-Guarantor Subsidiary is 100% owned by CDW LLC.

The following tables set forth condensed consolidating balance sheets as of December 31, 2013 and 2012, consolidating statements of operations for the years ended December 31, 2013, 2012 and 2011, condensed consolidating statements of comprehensive income for the years ended December 31, 2013, 2012 and 2011, and condensed consolidating statements of cash flows for the years ended December 31, 2013, 2012 and 2011, in accordance with Rule 3-10 of Regulation S-X. The consolidating financial information includes the accounts of CDW Corporation (the "Parent Guarantor"), which has no independent assets or operations, the accounts of CDW LLC (the "Subsidiary Issuer"), the combined accounts of the Guarantor Subsidiaries, the accounts of the Non-Guarantor Subsidiary, and the accounts of CDW Finance Corporation (the "Co-Issuer") for the periods indicated. The information was prepared on the same basis as the Company's consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Balance Sheet**

December 31, 2013

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
<b>Assets</b>							
Current assets:							
Cash and cash equivalents	\$ —	\$ 196.5	\$ —	\$ 14.0	\$ —	\$ (22.4)	\$ 188.1
Accounts receivable, net	—	—	1,375.9	75.1	—	—	1,451.0
Merchandise inventory	—	—	378.9	3.1	—	—	382.0
Miscellaneous receivables	—	49.9	91.0	5.4	—	—	146.3
Prepaid expenses and other	—	10.7	33.4	5.1	—	(3.1)	46.1
Total current assets	—	257.1	1,879.2	102.7	—	(25.5)	2,213.5
Property and equipment, net	—	69.7	59.6	1.8	—	—	131.1
Goodwill	—	751.9	1,439.0	29.4	—	—	2,220.3
Other intangible assets, net	—	338.5	982.8	6.7	—	—	1,328.0
Deferred financing costs, net	—	30.1	—	—	—	—	30.1
Other assets	4.9	1.4	0.1	0.9	—	(5.7)	1.6
Investment in and advances to subsidiaries	706.8	2,909.4	—	—	—	(3,616.2)	—
<b>Total assets</b>	<b>\$ 711.7</b>	<b>\$ 4,358.1</b>	<b>\$ 4,360.7</b>	<b>\$ 141.5</b>	<b>\$ —</b>	<b>\$ (3,647.4)</b>	<b>\$ 5,924.6</b>
<b>Liabilities and Shareholders' Equity</b>							
Current liabilities:							
Accounts payable-trade	\$ —	\$ 21.4	\$ 637.3	\$ 26.5	\$ —	\$ (22.4)	\$ 662.8
Accounts payable-inventory financing	—	—	256.6	—	—	—	256.6
Current maturities of long-term debt	—	45.4	—	—	—	—	45.4
Deferred revenue	—	—	89.9	4.9	—	—	94.8
Accrued expenses	—	163.5	175.1	7.5	—	(3.1)	343.0
Total current liabilities	—	230.3	1,158.9	38.9	—	(25.5)	1,402.6
Long-term liabilities:							
Debt	—	3,205.8	—	—	—	—	3,205.8
Deferred income taxes	—	178.3	388.4	1.6	—	(4.8)	563.5
Other liabilities	—	36.9	3.6	1.4	—	(0.9)	41.0
Total long-term liabilities	—	3,421.0	392.0	3.0	—	(5.7)	3,810.3
Total shareholders' equity	711.7	706.8	2,809.8	99.6	—	(3,616.2)	711.7
<b>Total liabilities and shareholders' equity</b>	<b>\$ 711.7</b>	<b>\$ 4,358.1</b>	<b>\$ 4,360.7</b>	<b>\$ 141.5</b>	<b>\$ —</b>	<b>\$ (3,647.4)</b>	<b>\$ 5,924.6</b>

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Balance Sheet**

December 31, 2012

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
<b>Assets</b>							
Current assets:							
Cash and cash equivalents	\$ —	\$ 48.0	\$ —	\$ 9.8	\$ —	\$ (19.9)	\$ 37.9
Accounts receivable, net	—	—	1,217.7	67.3	—	—	1,285.0
Merchandise inventory	—	—	313.2	1.4	—	—	314.6
Miscellaneous receivables	—	61.7	82.0	4.8	—	—	148.5
Deferred income taxes	—	8.7	5.5	(0.1)	—	—	14.1
Prepaid expenses and other	—	10.1	24.4	0.1	—	—	34.6
Total current assets	—	128.5	1,642.8	83.3	—	(19.9)	1,834.7
Property and equipment, net	—	73.9	66.2	2.6	—	—	142.7
Goodwill	—	749.4	1,428.5	31.4	—	—	2,209.3
Other intangible assets, net	—	348.6	1,121.7	8.2	—	—	1,478.5
Deferred financing costs, net	—	53.2	—	—	—	—	53.2
Other assets	5.4	1.1	0.4	0.6	—	(5.9)	1.6
Investment in and advances to subsidiaries	131.1	2,946.0	—	—	—	(3,077.1)	—
<b>Total assets</b>	<b>\$ 136.5</b>	<b>\$ 4,300.7</b>	<b>\$ 4,259.6</b>	<b>\$ 126.1</b>	<b>\$ —</b>	<b>\$ (3,102.9)</b>	<b>\$ 5,720.0</b>
<b>Liabilities and Shareholders' Equity</b>							
Current liabilities:							
Accounts payable-trade	\$ —	\$ 16.5	\$ 500.3	\$ 21.7	\$ —	\$ (19.9)	\$ 518.6
Accounts payable-inventory financing	—	—	249.2	—	—	—	249.2
Current maturities of long-term debt	—	40.0	—	—	—	—	40.0
Deferred revenue	—	—	57.8	—	—	—	57.8
Accrued expenses	—	139.3	157.4	5.9	—	—	302.6
Total current liabilities	—	195.8	964.7	27.6	—	(19.9)	1,168.2
Long-term liabilities:							
Debt	—	3,731.0	—	—	—	—	3,731.0
Deferred income taxes	—	188.1	440.0	1.7	—	(5.5)	624.3
Accrued interest	—	8.0	—	—	—	—	8.0
Other liabilities	—	46.7	4.0	1.7	—	(0.4)	52.0
Total long-term liabilities	—	3,973.8	444.0	3.4	—	(5.9)	4,415.3
Total shareholders' equity	136.5	131.1	2,850.9	95.1	—	(3,077.1)	136.5
<b>Total liabilities and shareholders' equity</b>	<b>\$ 136.5</b>	<b>\$ 4,300.7</b>	<b>\$ 4,259.6</b>	<b>\$ 126.1</b>	<b>\$ —</b>	<b>\$ (3,102.9)</b>	<b>\$ 5,720.0</b>

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Consolidating Statement of Operations**

Year Ended December 31, 2013

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net sales	\$ —	\$ —	\$ 10,293.3	\$ 475.3	\$ —	\$ —	\$ 10,768.6
Cost of sales	—	—	8,592.1	416.2	—	—	9,008.3
Gross profit	—	—	1,701.2	59.1	—	—	1,760.3
Selling and administrative expenses	24.4	103.9	957.3	35.3	—	—	1,120.9
Advertising expense	—	—	126.8	4.0	—	—	130.8
(Loss) income from operations	(24.4)	(103.9)	617.1	19.8	—	—	508.6
Interest (expense) income, net	—	(250.6)	0.2	0.3	—	—	(250.1)
Net loss on extinguishments of long-term debt	—	(64.0)	—	—	—	—	(64.0)
Management fee	—	4.3	—	(4.3)	—	—	—
Other (expense) income, net	—	(0.5)	1.2	0.3	—	—	1.0
(Loss) income before income taxes	(24.4)	(414.7)	618.5	16.1	—	—	195.5
Income tax benefit (expense)	9.2	142.2	(209.5)	(4.6)	—	—	(62.7)
(Loss) income before equity in earnings of subsidiaries	(15.2)	(272.5)	409.0	11.5	—	—	132.8
Equity in earnings of subsidiaries	148.0	420.5	—	—	—	(568.5)	—
Net income	<u>\$ 132.8</u>	<u>\$ 148.0</u>	<u>\$ 409.0</u>	<u>\$ 11.5</u>	<u>\$ —</u>	<u>\$ (568.5)</u>	<u>\$ 132.8</u>

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Consolidating Statement of Operations**

Year Ended December 31, 2012

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net sales	\$ —	\$ —	\$ 9,683.0	\$ 445.2	\$ —	\$ —	\$ 10,128.2
Cost of sales	—	—	8,071.5	387.1	—	—	8,458.6
Gross profit	—	—	1,611.5	58.1	—	—	1,669.6
Selling and administrative expenses	—	103.7	891.6	34.2	—	—	1,029.5
Advertising expense	—	—	125.1	4.4	—	—	129.5
(Loss) income from operations	—	(103.7)	594.8	19.5	—	—	510.6
Interest (expense) income, net	—	(308.0)	0.4	0.2	—	—	(307.4)
Net loss on extinguishments of long-term debt	—	(17.2)	—	—	—	—	(17.2)
Management fee	—	3.8	—	(3.8)	—	—	—
Other income (expense), net	—	—	0.2	(0.1)	—	—	0.1
(Loss) income before income taxes	—	(425.1)	595.4	15.8	—	—	186.1
Income tax benefit (expense)	—	210.6	(272.6)	(5.1)	—	—	(67.1)
(Loss) income before equity in earnings of subsidiaries	—	(214.5)	322.8	10.7	—	—	119.0
Equity in earnings of subsidiaries	119.0	333.5	—	—	—	(452.5)	—
Net income	<u>\$ 119.0</u>	<u>\$ 119.0</u>	<u>\$ 322.8</u>	<u>\$ 10.7</u>	<u>\$ —</u>	<u>\$ (452.5)</u>	<u>\$ 119.0</u>

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Consolidating Statement of Operations**

Year Ended December 31, 2011

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net sales	\$ —	\$ —	\$ 9,222.4	\$ 380.0	\$ —	\$ —	\$ 9,602.4
Cost of sales	—	—	7,688.8	330.1	—	—	8,018.9
Gross profit	—	—	1,533.6	49.9	—	—	1,583.5
Selling and administrative expenses	—	111.7	849.2	29.2	—	—	990.1
Advertising expense	—	—	119.0	3.7	—	—	122.7
(Loss) income from operations	—	(111.7)	565.4	17.0	—	—	470.7
Interest (expense) income, net	—	(324.5)	0.2	0.1	—	—	(324.2)
Net loss on extinguishments of long-term debt	—	(118.9)	—	—	—	—	(118.9)
Management fee	—	9.2	—	(9.2)	—	—	—
Other income (expense), net	—	0.4	0.5	(0.2)	—	—	0.7
(Loss) income before income taxes	—	(545.5)	566.1	7.7	—	—	28.3
Income tax benefit (expense)	—	215.1	(222.4)	(3.9)	—	—	(11.2)
(Loss) income before equity in earnings of subsidiaries	—	(330.4)	343.7	3.8	—	—	17.1
Equity in earnings of subsidiaries	17.1	347.5	—	—	—	(364.6)	—
Net income	<u>\$ 17.1</u>	<u>\$ 17.1</u>	<u>\$ 343.7</u>	<u>\$ 3.8</u>	<u>\$ —</u>	<u>\$ (364.6)</u>	<u>\$ 17.1</u>



**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Comprehensive Income**

Year Ended December 31, 2013

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Comprehensive income	\$ 126.1	\$ 141.3	\$ 409.0	\$ 4.8	\$ —	\$ (555.1)	\$ 126.1

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Comprehensive Income**

Year Ended December 31, 2012

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Comprehensive income	\$ 121.5	\$ 121.5	\$ 322.8	\$ 13.2	\$ —	\$ (457.5)	\$ 121.5

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Comprehensive Income**

Year Ended December 31, 2011

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Comprehensive income	\$ 17.2	\$ 17.2	\$ 343.7	\$ 2.0	\$ —	\$ (362.9)	\$ 17.2

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Cash Flows**

Year Ended December 31, 2013

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net cash (used in) provided by operating activities	\$ (15.2)	\$ (130.3)	\$ 508.8	\$ 5.5	\$ —	\$ (2.5)	\$ 366.3
Cash flows from investing activities:							
Capital expenditures	—	(40.8)	(6.2)	(0.1)	—	—	(47.1)
Net cash used in investing activities	—	(40.8)	(6.2)	(0.1)	—	—	(47.1)
Cash flows from financing activities:							
Proceeds from borrowings under revolving credit facility	—	63.0	—	—	—	—	63.0
Repayments of borrowings under revolving credit facility	—	(63.0)	—	—	—	—	(63.0)
Repayments of long-term debt	—	(51.1)	—	—	—	—	(51.1)
Proceeds from issuance of long-term debt	—	1,535.2	—	—	—	—	1,535.2
Payments to extinguish long-term debt	—	(2,047.4)	—	—	—	—	(2,047.4)
Payment of debt financing costs	—	(6.1)	—	—	—	—	(6.1)
Net change in accounts payable-inventory financing	—	—	7.4	—	—	—	7.4
Payment of incentive compensation plan withholding taxes	—	(4.0)	(19.6)	(0.5)	—	—	(24.1)
Net proceeds from issuance of common shares	424.7	—	—	—	—	—	424.7
Dividends paid	(7.3)	—	—	—	—	—	(7.3)
Advances to/from affiliates	(402.2)	892.6	(490.4)	—	—	—	—
Other financing activities	—	0.4	—	—	—	—	0.4
Net cash provided by (used in) financing activities	15.2	319.6	(502.6)	(0.5)	—	—	(168.3)
Effect of exchange rate changes on cash and cash equivalents	—	—	—	(0.7)	—	—	(0.7)
Net increase in cash and cash equivalents	—	148.5	—	4.2	—	(2.5)	150.2
Cash and cash equivalents – beginning of period	—	48.0	—	9.8	—	(19.9)	37.9
Cash and cash equivalents – end of period	\$ —	\$ 196.5	\$ —	\$ 14.0	\$ —	\$ (22.4)	\$ 188.1

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Cash Flows**

Year Ended December 31, 2012

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net cash (used in) provided by operating activities	\$ —	\$ (204.3)	\$ 514.2	\$ 1.3	\$ —	\$ 6.2	\$ 317.4
Cash flows from investing activities:							
Capital expenditures	—	(27.0)	(14.0)	(0.4)	—	—	(41.4)
Premium payments on interest rate cap agreements	—	(0.3)	—	—	—	—	(0.3)
Net cash used in investing activities	—	(27.3)	(14.0)	(0.4)	—	—	(41.7)
Cash flows from financing activities:							
Proceeds from borrowings under revolving credit facility	—	289.0	—	—	—	—	289.0
Repayments of borrowings under revolving credit facility	—	(289.0)	—	—	—	—	(289.0)
Repayments of long-term debt	—	(201.0)	—	—	—	—	(201.0)
Proceeds from issuance of long-term debt	—	135.7	—	—	—	—	135.7
Payments to extinguish long-term debt	—	(243.2)	—	—	—	—	(243.2)
Payment of debt financing costs	—	(2.1)	—	—	—	—	(2.1)
Net change in accounts payable-inventory financing	—	—	(29.5)	—	—	—	(29.5)
Advances to/from affiliates	—	486.0	(486.5)	0.5	—	—	—
Other financing activities	—	2.1	—	—	—	—	2.1
Net cash provided by (used in) financing activities	—	177.5	(516.0)	0.5	—	—	(338.0)
Effect of exchange rate changes on cash and cash equivalents	—	—	—	0.3	—	—	0.3
Net (decrease) increase in cash and cash equivalents	—	(54.1)	(15.8)	1.7	—	6.2	(62.0)
Cash and cash equivalents – beginning of period	—	102.1	15.8	8.1	—	(26.1)	99.9
Cash and cash equivalents – end of period	\$ —	\$ 48.0	\$ —	\$ 9.8	\$ —	\$ (19.9)	\$ 37.9

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Cash Flows**

Year Ended December 31, 2011

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net cash (used in) provided by operating activities	\$ —	\$ (93.8)	\$ 327.5	\$ (0.3)	\$ —	\$ (18.7)	\$ 214.7
Cash flows from investing activities:							
Capital expenditures	—	(33.4)	(10.6)	(1.7)	—	—	(45.7)
Cash settlements on interest rate swap agreements	—	(6.6)	—	—	—	—	(6.6)
Premium payments on interest rate cap agreements	—	(3.7)	—	—	—	—	(3.7)
Net cash used in investing activities	—	(43.7)	(10.6)	(1.7)	—	—	(56.0)
Cash flows from financing activities:							
Proceeds from borrowings under revolving credit facility	—	1,295.0	—	—	—	—	1,295.0
Repayments of borrowings under revolving credit facility	—	(1,483.2)	—	—	—	—	(1,483.2)
Repayments of long-term debt	—	(132.0)	—	—	—	—	(132.0)
Proceeds from issuance of long-term debt	—	1,175.0	—	—	—	—	1,175.0
Payments to extinguish long-term debt	—	(1,175.0)	—	—	—	—	(1,175.0)
Payment of debt financing costs	—	(26.3)	—	—	—	—	(26.3)
Net change in accounts payable-inventory financing	—	—	250.5	—	—	—	250.5
Advances to/from affiliates	—	552.6	(552.7)	0.1	—	—	—
Other financing activities	—	0.6	—	—	—	—	0.6
Net cash provided by (used in) financing activities	—	206.7	(302.2)	0.1	—	—	(95.4)
Effect of exchange rate changes on cash and cash equivalents	—	—	—	—	—	—	—
Net increase (decrease) in cash and cash equivalents	—	69.2	14.7	(1.9)	—	(18.7)	63.3
Cash and cash equivalents – beginning of period	—	32.9	1.1	10.0	—	(7.4)	36.6
Cash and cash equivalents – end of period	\$ —	\$ 102.1	\$ 15.8	\$ 8.1	\$ —	\$ (26.1)	\$ 99.9

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**18. Selected Quarterly Financial Results (unaudited)**

(in millions, except per-share amounts)	2013			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Net Sales Detail:</b>				
<b>Corporate:</b>				
Medium/Large	\$ 1,146.2	\$ 1,271.4	\$ 1,203.4	\$ 1,281.6
Small Business	257.7	266.0	262.4	271.4
<b>Total Corporate</b>	<b>1,403.9</b>	<b>1,537.4</b>	<b>1,465.8</b>	<b>1,553.0</b>
<b>Public:</b>				
Government	252.3	295.7	375.3	327.3
Education	232.2	420.6	513.4	282.8
Healthcare	362.3	366.3	355.9	380.4
<b>Total Public</b>	<b>846.8</b>	<b>1,082.6</b>	<b>1,244.6</b>	<b>990.5</b>
<b>Other</b>	<b>161.0</b>	<b>159.3</b>	<b>153.9</b>	<b>169.8</b>
<b>Net sales</b>	<b>\$ 2,411.7</b>	<b>\$ 2,779.3</b>	<b>\$ 2,864.3</b>	<b>\$ 2,713.3</b>
<b>Gross profit</b>	<b>\$ 402.0</b>	<b>\$ 451.6</b>	<b>\$ 458.4</b>	<b>\$ 448.3</b>
<b>Income from operations <sup>(1)</sup></b>	<b>\$ 120.1</b>	<b>\$ 153.6</b>	<b>\$ 92.9</b>	<b>\$ 142.0</b>
<b>Net income (loss) <sup>(1)</sup></b>	<b>\$ 28.3</b>	<b>\$ 46.7</b>	<b>\$ (2.2)</b>	<b>\$ 60.0</b>
<b>Net income (loss) per common share <sup>(1)(2)</sup>:</b>				
<b>Basic</b>	<b>\$ 0.19</b>	<b>\$ 0.32</b>	<b>\$ (0.01)</b>	<b>\$ 0.35</b>
<b>Diluted</b>	<b>\$ 0.19</b>	<b>\$ 0.32</b>	<b>\$ (0.01)</b>	<b>\$ 0.35</b>
 (in millions, except per-share amounts)				
	2012			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Net Sales Detail:</b>				
<b>Corporate:</b>				
Medium/Large	\$ 1,089.6	\$ 1,124.7	\$ 1,055.7	\$ 1,178.5
Small Business	273.2	269.7	257.1	264.3
<b>Total Corporate</b>	<b>1,362.8</b>	<b>1,394.4</b>	<b>1,312.8</b>	<b>1,442.8</b>
<b>Public:</b>				
Government	262.6	318.0	408.6	404.9
Education	221.7	349.5	394.7	226.4
Healthcare	333.3	372.9	360.4	370.0
<b>Total Public</b>	<b>817.6</b>	<b>1,040.4</b>	<b>1,163.7</b>	<b>1,001.3</b>
<b>Other</b>	<b>138.8</b>	<b>149.9</b>	<b>146.8</b>	<b>156.9</b>
<b>Net sales</b>	<b>\$ 2,319.2</b>	<b>\$ 2,584.7</b>	<b>\$ 2,623.3</b>	<b>\$ 2,601.0</b>
<b>Gross profit</b>	<b>\$ 384.6</b>	<b>\$ 426.9</b>	<b>\$ 432.7</b>	<b>\$ 425.4</b>
<b>Income from operations</b>	<b>\$ 103.6</b>	<b>\$ 136.4</b>	<b>\$ 139.7</b>	<b>\$ 130.9</b>
<b>Net income</b>	<b>\$ 10.9</b>	<b>\$ 36.8</b>	<b>\$ 38.0</b>	<b>\$ 33.3</b>
<b>Net income per common share <sup>(2)</sup>:</b>				
<b>Basic</b>	<b>\$ 0.08</b>	<b>\$ 0.25</b>	<b>\$ 0.26</b>	<b>\$ 0.23</b>
<b>Diluted</b>	<b>\$ 0.07</b>	<b>\$ 0.25</b>	<b>\$ 0.26</b>	<b>\$ 0.23</b>

(1) The third quarter of 2013 included pre-tax IPO-related charges of \$74.1 million. See Note 9 for additional discussion of the IPO.

**CDW CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

- (2) Basic and diluted net income (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of quarterly basic and diluted per share information may not equal annual basic and diluted net income (loss) per share.

**19. Subsequent Events**

The Company redeemed \$30.0 million and \$20.0 million aggregate principal amounts of Senior Subordinated Notes on January 22, 2014 and February 21, 2014, respectively. The redemption prices were 104.178% of the principal amounts redeemed plus \$1.0 million and \$0.9 million in accrued and unpaid interest to the date of each redemption, respectively. Following these redemptions, \$42.5 million aggregate principal amount of the Senior Subordinated Notes remain outstanding. In connection with these redemptions, the Company expects to record a loss on extinguishment of long-term debt of \$2.7 million in the consolidated statement of operations during the first quarter of 2014. This loss represents \$2.1 million in redemption premiums and \$0.6 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Subordinated Notes.

On February 13, 2014, the Company announced that its board of directors declared a cash dividend on the Company's common stock of \$0.0425 per share. The dividend will be paid on March 10, 2014 to all stockholders of record as of the close of business on February 25, 2014. Future dividends will be subject to the approval of the Company's board of directors.



**SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS**  
**Years ended December 31, 2013, 2012 and 2011**

(in millions)

	Balance at Beginning of Period	Charged to Costs and Expenses	Deductions	Balance at End of Period
Allowance for doubtful accounts:				
Year Ended December 31, 2013	\$ 5.4	\$ 2.8	\$ (2.8)	\$ 5.4
Year Ended December 31, 2012	5.4	3.9	(3.9)	5.4
Year Ended December 31, 2011	5.0	3.6	(3.2)	5.4
Reserve for sales returns:				
Year Ended December 31, 2013	\$ 4.4	\$ 35.0	\$ (34.3)	\$ 5.1
Year Ended December 31, 2012	4.5	33.2	(33.3)	4.4
Year Ended December 31, 2011	3.2	32.0	(30.7)	4.5

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A. Controls and Procedures**

#### **Evaluation of Disclosure Controls and Procedures**

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rule 13a-15(e) or Rule 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, has concluded that, as of the end of such period, the Company's disclosure controls and procedures were effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act, and that information is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely discussions regarding required disclosure.

#### **Management's Annual Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2013. Management based this assessment on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in "Internal Control — Integrated Framework (1992 framework)."

Based on its assessment, management concluded that, as of December 31, 2013, the Company's internal control over financial reporting is effective.

Ernst & Young LLP, independent registered public accounting firm, has audited the consolidated financial statements of the Company and the Company's internal control over financial reporting and has included their reports herein.

#### **Changes in Internal Control over Financial Reporting**

There were no changes in the Company's internal control over financial reporting during the fiscal quarter ended December 31, 2013 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Shareholders of  
CDW Corporation

We have audited CDW Corporation and subsidiaries' internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (1992 framework) (the COSO criteria). CDW Corporation and subsidiaries' management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, CDW Corporation and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2013, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of CDW Corporation and subsidiaries as of December 31, 2013 and 2012, and the related consolidated statements of operations, comprehensive income, shareholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2013 of CDW Corporation and subsidiaries and our report dated March 5, 2014 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP  
Chicago, Illinois  
March 5, 2014

**Item 9B. Other Information**

None.

## **PART III**

### **Item 10. Directors, Managers, Executive Officers and Corporate Governance**

We have adopted The CDW Way Code, our code of business conduct and ethics, that is applicable to all of our coworkers. Additionally, within The CDW Way Code is a Financial Integrity Code of Ethics that sets forth an even higher standard applicable to our executives, officers, members of our internal disclosure committee and all managers and above in our finance department. A copy of this code is available on our corporate website at [www.cdw.com](http://www.cdw.com). If we make any substantive amendments to this code or grant any waiver from a provision to our chief executive officer, principal financial officer or principal accounting officer, we will disclose the nature of such amendment or waiver on our website or in a report on Form 8-K.

See Part I - “Executive Officers” for information about our executive officers, which is incorporated by reference in this Item 10. Other information required under this Item 10 is incorporated herein by reference to our definitive proxy statement for our 2014 annual meeting of stockholders on May 22, 2014 (“2014 proxy statement”), which we will file with the SEC on or before 120 days after our 2013 fiscal year-end.

### **Item 11. Executive Compensation**

Information required under this Item 11 is incorporated herein by reference to the 2014 proxy statement.

### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

Information required under this Item 12 is incorporated herein by reference to the 2014 proxy statement.

### **Item 13. Certain Relationships and Related Transactions, and Director Independence**

Information required under this Item 13 is incorporated herein by reference to the 2014 proxy statement.

### **Item 14. Principal Accountant Fees and Services**

Information required under this Item 14 is incorporated herein by reference to the 2014 proxy statement.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a) Financial Statements and Schedules

The following documents are filed as part of this report:

(1) Consolidated Financial Statements:

	<u>Page</u>
<a href="#">Report of Independent Registered Public Accounting Firm</a>	<a href="#">62</a>
<a href="#">Consolidated Balance Sheets as of December 31, 2013 and 2012</a>	<a href="#">63</a>
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2013, 2012 and 2011</a>	<a href="#">64</a>
<a href="#">Consolidated Statements of Comprehensive Income for the years ended December 31, 2013, 2012 and 2011</a>	<a href="#">65</a>
<a href="#">Consolidated Statements of Shareholders' Equity (Deficit) for the years ended December 31, 2013, 2012 and 2011</a>	<a href="#">66</a>
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2013, 2012 and 2011</a>	<a href="#">67</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">68</a>

(2) Financial Statement Schedules:

	<u>Page</u>
<a href="#">Schedule II – Valuation and Qualifying Accounts</a>	<a href="#">108</a>

All other schedules are omitted since the required information is not present or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements or notes thereto.

(b) Exhibits

The information required by this Item is set forth on the exhibit index that follows the signature page of this report.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CDW CORPORATION

Date: March 5, 2014

By: /s/ Thomas E. Richards  
Thomas E. Richards  
 Chairman, President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas E. Richards</u> Thomas E. Richards	Chairman, President and Chief Executive Officer (principal executive officer) and Director	March 5, 2014
<u>/s/ Ann E. Ziegler</u> Ann E. Ziegler	Senior Vice President and Chief Financial Officer (principal financial officer)	March 5, 2014
<u>/s/ Virginia L. Seggerman</u> Virginia L. Seggerman	Vice President and Controller (principal accounting officer)	March 5, 2014
<u>/s/ Steven W. Alesio</u> Steven W. Alesio	Director	March 5, 2014
<u>/s/ Barry K. Allen</u> Barry K. Allen	Director	March 5, 2014
<u>/s/ Benjamin D. Chereskin</u> Benjamin D. Chereskin	Director	March 5, 2014
<u>/s/ Glenn M. Creamer</u> Glenn M. Creamer	Director	March 5, 2014
<u>/s/ Michael J. Dominguez</u> Michael J. Dominguez	Director	March 5, 2014
<u>/s/ Paul J. Finnegan</u> Paul J. Finnegan	Director	March 5, 2014
<u>/s/ David W. Nelms</u> David W. Nelms	Director	March 5, 2014
<u>/s/ Robin P. Selati</u> Robin P. Selati	Director	March 5, 2014
<u>/s/ Donna F. Zarcone</u> Donna F. Zarcone	Director	March 5, 2014

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
3.1	Fifth Amended and Restated Certificate of Incorporation of CDW Corporation, previously filed as Exhibit 3.1 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
3.2	Amended and Restated By-Laws of CDW Corporation, previously filed as Exhibit 3.2 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
3.3	Articles of Organization of CDW LLC, previously filed as Exhibit 3.3 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.4	Amended and Restated Limited Liability Company Agreement of CDW LLC, previously filed as Exhibit 3.4 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.5	Certificate of Incorporation of CDW Finance Corporation, previously filed as Exhibit 3.5 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.6	By-Laws of CDW Finance Corporation, previously filed as Exhibit 3.6 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.7	Amended and Restated Articles of Incorporation of CDW Technologies, Inc., previously filed as Exhibit 3.7 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.8	Amended and Restated By-Laws of CDW Technologies, Inc., previously filed as Exhibit 3.8 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.9	Articles of Organization of CDW Direct, LLC, previously filed as Exhibit 3.9 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.10	Amended and Restated Limited Liability Company Agreement of CDW Direct, LLC, previously filed as Exhibit 3.10 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.11	Articles of Organization of CDW Government LLC, previously filed as Exhibit 3.11 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.12	Amended and Restated Limited Liability Company Agreement of CDW Government LLC, previously filed as Exhibit 3.12 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.13	Articles of Incorporation of CDW Logistics, Inc., previously filed as Exhibit 3.13 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.14	By-Laws of CDW Logistics, Inc., previously filed as Exhibit 3.14 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
4.1	Specimen Common Stock Certificate, previously filed as Exhibit 4.1 with CDW Corporation's Amendment No. 3 to Form S-1 filed on June 25, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
4.2	Senior Secured Note Indenture, dated as of December 17, 2010, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on December 21, 2010 and incorporated herein by reference.



<b>Exhibit Number</b>	<b>Description</b>
4.3	Senior Secured Note Supplemental Indenture, dated as of March 29, 2011, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on March 30, 2011 and incorporated herein by reference.
4.4	Second Senior Secured Note Supplemental Indenture, dated as of May 10, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on May 11, 2012 and incorporated herein by reference.
4.5	Form of Senior Secured Note (included as Exhibit A to Exhibit 4.1), previously filed as Exhibit 4.2 with CDW Corporation's Form 8-K filed on December 21, 2010 and incorporated herein by reference.
4.6	Senior Note Indenture, dated as of April 13, 2011, between CDW Escrow Corporation and U.S. Bank National Association as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on April 14, 2011 and incorporated herein by reference.
4.7	Senior Note Supplemental Indenture, dated as of April 13, 2011, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.2 with CDW Corporation's Form 8-K filed on April 14, 2011 and incorporated herein by reference.
4.8	Second Senior Note Supplemental Indenture, dated as of May 20, 2011, by and among CDW LLC, CDW Finance Corporation, CDW Escrow Corporation, the guarantors party thereto and U.S. Bank National Association as Trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on May 23, 2011 and incorporated herein by reference.
4.9	Third Senior Note Supplemental Indenture, dated as of February 17, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as Trustee, previously filed as Exhibit 4.5 with CDW Corporation's Form 8-K filed on February 17, 2012 and incorporated herein by reference.
4.10	Fourth Senior Note Supplemental Indenture, dated as of May 10, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.3 with CDW Corporation's Form 8-K filed on May 11, 2012 and incorporated herein by reference.
4.11	Form of Senior Note (included as Exhibit A to Exhibit 4.5), previously filed as Exhibit 4.3 with CDW Corporation's Form 8-K filed on April 14, 2011 and incorporated herein by reference.
4.12	Senior Notes Registration Rights Agreement, dated as of February 17, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and Barclays Capital Inc. as initial purchaser, previously filed as Exhibit 4.7 with CDW Corporation's Form 8-K filed on February 17, 2012 and incorporated herein by reference.
4.13	Senior Subordinated Exchange Note Indenture, dated as of October 10, 2008, by and among CDW Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.6 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
4.14	Senior Subordinated Exchange Note Supplemental Indenture, dated as of May 10, 2010, by and among CDW LLC, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.7 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
4.15	Second Senior Subordinated Exchange Note Supplemental Indenture, dated as of August 23, 2010, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.8 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
4.16	Third Senior Subordinated Exchange Note Supplemental Indenture, dated as of May 10, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.2 with CDW Corporation's Form 8-K filed on May 11, 2012 and incorporated herein by reference.

<b>Exhibit Number</b>	<b>Description</b>
4.17	Form of Fixed Rate Senior Subordinated Exchange Note due 2017 (included as Exhibit B to Exhibit 4.12), previously filed as Exhibit 4.10 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
4.18	Form of Global Fixed Rate Senior Subordinated Exchange Note due 2017, Series B, previously filed as Exhibit 4.11 with CDW Corporation's Form 10-K for the fiscal year ended December 31, 2010 and incorporated herein by reference.
10.1	Revolving Loan Credit Agreement, dated as of June 24, 2011, by and among CDW LLC, the lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent, GE Commercial Distribution Finance Corporation, as floorplan funding agent, and the joint lead arrangers, joint bookrunners, co-collateral agents and other agents party thereto, previously filed as Exhibit 10.1 with CDW Corporation's Amendment No. 1 to Form S-4 filed on September 26, 2011 (Reg. No. 333-175597) and incorporated herein by reference.
10.2	Term Loan Agreement, dated as of April 29, 2013, by and among CDW LLC, the lenders from time to time party thereto, Barclays Bank PLC, as administrative agent and collateral agent, and the joint lead arrangers, joint bookrunners, co-syndication agents and co-documentation agents party thereto, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on May 1, 2013 and incorporated herein by reference.
10.3	First Amendment to Term Loan Agreement, dated as of May 30, 2013, by and among CDW LLC, the lenders from time to time party thereto, and Barclays Bank PLC, as administrative agent and collateral agent, previously filed as Exhibit 10.3 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.4	Incremental Amendment, dated as of July 31, 2013, by and among CDW LLC, the lenders party thereto and Barclays Bank PLC, as administrative agent, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on August 1, 2013 and incorporated herein by reference.
10.5	Third Amendment to the Term Loan Agreement, dated as of September 12, 2013, by and among CDW LLC, the lenders from time to time party thereto and Barclays Bank PLC, as administrative agent and collateral agent, previously filed as Exhibit 10.2 with CDW Corporation's Form 10-Q filed on November 7, 2013 and incorporated herein by reference.
10.6	Second Amended and Restated Guarantee and Collateral Agreement, dated April 29, 2013, by and among CDW LLC, the guarantors party thereto and Barclays Bank PLC, as collateral agent, previously filed as Exhibit 10.2 with CDW Corporation's Form 8-K filed on May 1, 2013 and incorporated herein by reference.
10.7	Management Services Agreement, dated as of October 12, 2007, by and between CDW Corporation, Madison Dearborn Partners V-B, L.P. and Providence Equity Partners L.L.C., previously filed as Exhibit 10.9 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.8	Termination Agreement, dated as of June 12, 2013, by and among CDW Corporation, Madison Dearborn Partners V-B, L.P. and Providence Equity Partners L.L.C., previously filed as Exhibit 10.6 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.9	Registration Agreement, dated as of October 12, 2007, by and among VH Holdings, Inc., CDW Holdings LLC, Madison Dearborn Capital Partners V-A, L.P., Madison Dearborn Capital Partners V-C, L.P., Madison Dearborn Partners V Executive-A, L.P., Providence Equity Partners VI L.P., Providence Equity Partners VI-A L.P., and the other securityholders party thereto, previously filed as Exhibit 10.10 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.10*	Withdrawal from Registration Agreement, dated as of November 12, 2013, by and between CDW Corporation and Paul S. Shain.
10.11*	Withdrawal from Registration Agreement, dated as of November 20, 2013, by and among CDW Corporation, James R. Shanks and BOS Holdings, LLC.
10.12§	CDW Holdings LLC 2007 Incentive Equity Plan, adopted as of October 12, 2007, previously filed as Exhibit 10.11 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.

<b>Exhibit Number</b>	<b>Description</b>
10.13§	Form of CDW Holdings LLC Class A Common Unit Purchase and Exchange Agreement under the CDW Holdings LLC 2007 Incentive Equity Plan (executed by Thomas E. Richards, John A. Edwardson, Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.12 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.14§	Form of CDW Holdings LLC Class A Common Unit Purchase and Exchange Agreement under the CDW Holdings LLC 2007 Incentive Equity Plan (executed by Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka and to be used for certain future investors), previously filed as Exhibit 10.13 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.15§	Form of CDW Holdings LLC Class B Common Unit Grant Agreement under the CDW Holdings LLC 2007 Incentive Equity Plan (executed by Thomas E. Richards, John A. Edwardson, Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.12 with CDW Corporation's Form 10-K filed on March 8, 2013 and incorporated herein by reference.
10.16§	Form of CDW Holdings LLC Class B Common Unit Grant Agreement under the CDW Holdings LLC 2007 Incentive Equity Plan (executed by Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka and to be used for certain future grantees), previously filed as Exhibit 10.13 with CDW Corporation's Form 10-K filed on March 8, 2013 and incorporated herein by reference.
10.17§	Form of Compensation Protection Agreement (executed by Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.18 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.18§	CDW Compensation Protection Plan, adopted as of December 10, 2002 and amended and restated effective as of January 1, 2009 (applicable to Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka), previously filed as Exhibit 10.19 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.19§	First Amendment to CDW Compensation Protection Plan, adopted as of December 10, 2002 and amended and restated effective as of January 1, 2009, dated as of January 3, 2012, previously filed as Exhibit 10.18 with CDW Corporation's Form 10-K filed on March 9, 2012 and incorporated herein by reference.
10.20§	Form of Noncompetition Agreement under the Compensation Protection Agreement, previously filed as Exhibit 10.20 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.21§	Form of Noncompetition Agreement under the CDW Compensation Protection Plan, previously filed as Exhibit 10.21 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.22§	CDW Restricted Debt Unit Plan, adopted as of March 10, 2010, previously filed as Exhibit 10.22 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.23§	Form of CDW Restricted Debt Unit Grant Notice and Agreement (executed by Thomas E. Richards, Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.23 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.24§	Form of CDW Restricted Debt Unit Grant Notice and Agreement (executed by Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka and to be used for certain future grantees), previously filed as Exhibit 10.24 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.25§	Senior Management Incentive Plan, as amended and restated effective January 1, 2010, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on November 15, 2010 and incorporated herein by reference.
10.26§	Amended and Restated Compensation Protection Agreement, dated as of June 30, 2011, by and between CDW LLC and Thomas E. Richards, previously filed as Exhibit 10.3 with CDW Corporation's Form 8-K filed on July 1, 2011 and incorporated herein by reference.

<b>Exhibit Number</b>	<b>Description</b>
10.27§	Letter Agreement, dated as of September 13, 2011, by and between CDW Direct, LLC and Christina M. Corley, previously filed as Exhibit 10.31 with CDW Corporation's Form 10-K filed on March 9, 2012 and incorporated herein by reference.
10.28§	Form of CDW Holdings LLC (Director) Class A Common Unit Purchase Agreement (executed by Steven W. Alesio, Barry K. Allen, Benjamin D. Chereskin and Chereskin Dynasty Trust and Donna F. Zarcone), previously filed as Exhibit 10.32 with CDW Corporation's Form 10-K filed on March 8, 2013 and incorporated herein by reference.
10.29§	Form of Indemnification Agreement by and between CDW Corporation and its directors and officers, previously filed as Exhibit 10.32 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.30	Stockholders Agreement, dated as of June 10, 2013, by and among CDW Corporation, Madison Dearborn Capital Partners V-A, L.P., Madison Dearborn Capital Partners V-C, L.P., Madison Dearborn Capital Partners V Executive-A, L.P., Providence Equity Partners VI L.P., Providence Equity Partners VI-A L.P. and the other securityholders party thereto, previously filed as Exhibit 10.33 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.31§	CDW Corporation 2013 Senior Management Incentive Plan, previously filed as Exhibit 10.34 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.32§	CDW Corporation 2013 Long-Term Incentive Plan, previously filed as Exhibit 10.35 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.33§	CDW Corporation Coworker Stock Purchase Plan, previously filed as Exhibit 10.36 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.34§	Form of CDW Corporation Option Award Notice and Stock Option Agreement (executed by Thomas E. Richards), previously filed as Exhibit 10.37 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.35§	Form of CDW Corporation Option Award Notice and Stock Option Agreement (executed by Neal J. Campbell and Christina M. Corley), previously filed as Exhibit 10.38 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.36§	Form of CDW Corporation Restricted Stock Award Notice and Restricted Stock Award Agreement (executed by Thomas E. Richards, Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.12 with CDW Corporation's Form 10-Q filed on August 12, 2013 and incorporated herein by reference.
10.37§	Form of CDW Corporation Restricted Stock Award Notice and Restricted Stock Award Agreement (executed by Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka), previously filed as Exhibit 10.13 with CDW Corporation's Form 10-Q filed on August 12, 2013 and incorporated herein by reference.
10.38§	CDW Amended and Restated Restricted Debt Unit Plan, previously filed as Exhibit 10.3 with CDW Corporation's Form 10-Q filed on November 7, 2013 and incorporated herein by reference.
12.1*	Computation of ratio of earnings to fixed charges.
21.1	List of subsidiaries, previously filed as Exhibit 21.1 with CDW Corporation's Form S-4 filed on April 13, 2012 (Reg. No. 333-180715) and incorporated herein by reference.
23.1*	Consent of Ernst & Young LLP.
31.1*	Certification of Chief Executive Officer pursuant to Rule 15d-14(a) under the Securities Exchange Act of 1934.

<b>Exhibit Number</b>	<b>Description</b>
31.2*	Certification of Chief Financial Officer pursuant to Rule 15d-14(a) under the Securities Exchange Act of 1934.
32.1**	Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350.
32.2**	Certification of Chief Financial Officer pursuant to 18 U.S.C. 1350.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

\* Filed herewith

\*\* These items are furnished and not filed.

§ A management contract or compensatory arrangement required to be filed as an exhibit pursuant to Item 601 of Regulation S-K.

# CDW CORP

## FORM 10-K (Annual Report)

Filed 02/26/15 for the Period Ending 12/31/14

Address	200 N MILWAUKEE AVE VERNON HILLS, IL 60061
Telephone	8474656000
CIK	0001402057
Symbol	CDW
SIC Code	5961 - Catalog and Mail-Order Houses
Fiscal Year	12/31

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2014

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-35985

CDW CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

26-0273989

(I.R.S. Employer  
Identification No.)

200 N. Milwaukee Avenue  
Vernon Hills, Illinois

(Address of principal executive offices)

60061

(Zip Code)

(847) 465-6000

(Registrant's telephone number, including area code)

None

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class:

Name of each exchange on which registered

Common stock, par value \$0.01 per share

NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.  Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  Yes  No

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The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of June 30, 2014 , the last business day of the registrant's most recently completed second fiscal quarter, was \$2,762.3 million , based on the per share closing sale price of \$31.88 on that date.

As of February 20, 2015 , there were 172,275,656 shares of common stock, \$0.01 par value, outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement for use in connection with its 2015 Annual Meeting of Shareholders, to be filed not later than 120 days after December 31, 2014 , are incorporated by reference into Part III of this report.

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CDW CORPORATION AND SUBSIDIARIES

ANNUAL REPORT ON FORM 10-K  
Year Ended December 31, 2014

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## FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact included in this report are forward-looking statements. These statements relate to analyses and other information, which are based on forecasts of future results and estimates of amounts not yet determinable. These statements also relate to our future prospects, developments and business strategies. We claim the protection of The Private Securities Litigation Reform Act of 1995 for all forward-looking statements in this report.

These forward-looking statements are identified by the use of terms and phrases such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “should,” “will” and similar terms and phrases, including references to assumptions. However, these words are not the exclusive means of identifying such statements. Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that we will achieve those plans, intentions or expectations. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those that we expected.

Important factors that could cause actual results to differ materially from our expectations, or cautionary statements, are disclosed under the section entitled “Risk Factors” included elsewhere in this report. All written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements contained in the section entitled “Risk Factors” included elsewhere in this report as well as other cautionary statements that are made from time to time in our other Securities and Exchange Commission (“SEC”) filings and public communications. You should evaluate all forward-looking statements made in this report in the context of these risks and uncertainties.

We caution you that the important factors referenced above may not contain all of the factors that are important to you. In addition, we cannot assure you that we will realize the results or developments we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our operations in the way we expect. The forward-looking statements included in this report are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

## PART I

### Item 1. Business

#### Our Company

CDW is a Fortune 500 company and a leading provider of integrated information technology (“IT”) solutions in the U.S. and Canada. We help our customer base of approximately 250,000 small, medium and large business, government, education and healthcare customers by delivering critical solutions to their increasingly complex IT needs. Our broad array of offerings ranges from discrete hardware and software products to integrated IT solutions such as mobility, security, data center optimization, cloud computing, virtualization and collaboration. We are technology “agnostic,” with a product portfolio that includes over 100,000 products from more than 1,000 brands. We provide our products and solutions through sales force and service delivery teams consisting of nearly 4,600 coworkers, including more than 1,800 field sellers, highly-skilled technology specialists and advanced service delivery engineers.

We are a leading U.S. sales channel partner for many original equipment manufacturers (“OEMs”) and software publishers (collectively, our “vendor partners”), whose products we sell or include in the solutions we offer. We believe we are an important extension of our vendor partners' sales and marketing capabilities, providing them with a cost-effective way to reach customers and deliver a consistent brand experience through our established end-market coverage and extensive customer access.

We provide value to our customers by simplifying the complexities of technology across design, selection, procurement, integration and management. Our goal is to have our customers, regardless of their size, view us as an indispensable extension of their IT staffs. We seek to achieve this goal by providing our customers with superior service through our large and experienced sales force and service delivery teams. Our multi-brand offering approach enables us to identify the products or combination of products that best address each customer's specific organizational IT requirements and to evolve our offerings as new technologies develop.

We believe we offer the following value proposition to our customers and our vendor partners:

#### Our value proposition to our customers

- Broad selection of products and multi-branded IT solutions
- Value-added services with integration capabilities
- Highly-skilled specialists and engineers
- Solutions across a very broad IT landscape

#### Our value proposition to our vendor partners

- Access to approximately 250,000 customers throughout the U.S. and Canada
- Large and established customer channels
- Strong distribution and implementation capabilities
- Value-added solutions and marketing programs that generate end-user demand

Our customers include private sector businesses many of which employ fewer than 5,000 employees, government agencies and educational and healthcare institutions. We serve our customers through channel-specific sales teams and service delivery teams with extensive technical skills and knowledge of the specific markets they serve. This market segmentation allows us to customize our offerings and to provide enhanced expertise in designing and implementing IT solutions for our customers. We currently have five dedicated customer channels: medium/large business, small business, government, education and healthcare, each of which generated nearly \$1 billion or more in net sales in 2014 . The scale and diversity of our customer channels provide us with multiple avenues for growth and a balanced customer base to weather economic and technology cycles.

The following table provides information regarding our reportable segments and our customer channels:

<i>Customer Channels</i>	<b>Corporate Segment</b>		<b>Public Segment</b>			
	<b>Medium/Large Business</b>	<b>Small Business</b>	<b>Government</b>	<b>Education</b>	<b>Healthcare</b>	<b>Other</b>
<i>Target Customers</i>	100 - 5,000 employees	10 - 100 employees	Various federal, state and local agencies	Higher education and K-12	Hospitals, ambulatory service providers and long-term care facilities	Advanced services customers plus Canada
<i>2014 Net Sales (in billions)</i>	\$5.5	\$1.0	\$1.5	\$1.8	\$1.6	\$0.7

For further information on our segments, including financial results, see Note 17 to the accompanying audited consolidated financial statements included elsewhere in this report.

We offer more than 1,000 brands, from well-established companies such as APC, Apple, Cisco, EMC, Google, Hewlett-Packard, IBM, Lenovo, Microsoft, NetApp, Samsung, Symantec and VMware to emerging vendor partners such as Aerohive Networks, Box, Inc., Drobo, Jive, Nimble Storage, Nutanix, and Ruckus. In 2014, we generated over \$1 billion of revenue for each of four of our vendor partners and over \$100 million of revenue for each of 12 other vendor partners. We have received the highest level of certification from major vendor partners such as Cisco, EMC and Microsoft, which reflects the extensive product and solution knowledge and capabilities that we bring to our customers' IT challenges. These certifications also provide us with access to favorable pricing, tools and resources, including vendor incentive programs, which we use to provide additional value to our customers. Our vendor partners also regularly recognize us with top awards and select us to develop and grow new customer solutions.

## History

CDW was founded in 1984. In 2003, we purchased selected U.S. assets and the Canadian operations of Micro Warehouse, which extended our growth platform into Canada. In 2006, we acquired Berbee Information Networks Corporation, a regional provider of technology products, solutions and customized engineering services in advanced technologies primarily across Cisco, IBM and Microsoft portfolios. This acquisition increased our capabilities in customized engineering services and managed services.

On October 12, 2007, CDW Corporation, an Illinois corporation, was acquired through a merger transaction by an entity controlled by investment funds affiliated with Madison Dearborn Partners, LLC and Providence Equity Partners L.L.C. (the "Acquisition"). CDW Corporation continued as the surviving corporation and same legal entity after the Acquisition, but became a wholly owned subsidiary of VH Holdings, Inc., a Delaware corporation.

On December 31, 2009, CDW Corporation merged into CDWC LLC, an Illinois limited liability company owned by VH Holdings, Inc., with CDWC LLC as the surviving entity. This change had no impact on our operations or management. On December 31, 2009, CDWC LLC was renamed CDW LLC ("CDW LLC"). On August 17, 2010, VH Holdings, Inc. was renamed CDW Corporation ("Parent"), a Delaware corporation.

Throughout this report, the terms "the Company" and "CDW" refer to Parent and its 100% owned subsidiaries.

Prior to July 2, 2013, the date of our initial public offering ("IPO"), Parent was owned directly by CDW Holdings LLC ("CDW Holdings"), a company controlled by investment funds affiliated with Madison Dearborn Partners, LLC and Providence Equity Partners L.L.C. (the "Sponsors"), certain other co-investors and certain members of CDW management. Before the IPO, Madison Dearborn Partners, LLC and Providence Equity Partners L.L.C. owned 46.0% and 40.6% of our common stock, respectively. After the IPO and through subsequent secondary offerings in fourth quarter of 2013 and during 2014, the Sponsors' ownership has significantly decreased. As of December 31, 2014, the Sponsors own 15.5% and 13.7% of our common stock, respectively.

On July 2, 2013, Parent completed the IPO of its common stock. In connection with the IPO, CDW Holdings distributed all of its shares of Parent's common stock to its members in June 2013 in accordance with the members' respective membership interests and was subsequently dissolved in August 2013. See Note 9 to the accompanying audited consolidated financial statements included elsewhere in this report for additional discussion of the IPO.

On November 10, 2014, we completed the acquisition of a 35% non-controlling equity interest in Kelway TopCo Limited ("Kelway"), a UK-based IT solutions provider, which has global supply chain relationships that enable it to conduct business in more than 100 countries. This investment strengthens our ability to provide a more comprehensive solution to our customers and enhances our ability to serve our existing multi-national customers.

## Our Market

We operate in the U.S. and Canadian IT markets, which are large and growing markets. According to IDC, the overall U.S. IT market generated approximately \$675 billion in sales in 2014. We believe our addressable market in the U.S. in the indirect sales channel represents more than \$215 billion in annual sales and for the year ended December 31, 2014, our U.S. net sales of \$11.5 billion represented approximately 5% of that highly diverse and fragmented market. According to IDC, the overall Canadian IT market generated more than \$50 billion in sales in 2014. We believe our addressable market in Canada in the indirect sales channel represents more than \$11 billion in annual sales and for the year ended December 31, 2014, our net sales of \$532 million in Canada represented approximately 5% of that market. We believe we have the largest market share in our addressable market, with our 2014 net sales exceeding the cumulative North American net sales of our four largest publicly traded sales channel competitors, based upon publicly available information for those companies. New technologies, including cloud, virtualization and mobility, coupled with the resulting increase in demand for data as well as aging infrastructure, are increasingly requiring businesses and institutions to seek integrated solutions to their IT needs. We expect this trend to continue for the foreseeable future, with end-user demand for business efficiency and productivity driving future IT spending growth.

## Our Offerings

Our offerings range from discrete hardware and software products and services to complex integrated solutions that include one or more of these elements. We believe our customers increasingly view technology purchases as integrated solutions rather than discrete product and service categories and we estimate that approximately 47% of our net sales in 2014 came from sales of product categories and services typically associated with solutions. Our hardware products include notebooks/mobile devices (including tablets), network communications, enterprise and data storage, video monitors, printers, desktop computers and servers. Our software products include application suites, security, virtualization, operating systems, network management and Software as a Service ("SaaS") offerings. We also provide a full suite of value-added-services, which range from basic installation, warranty and repair services to custom configuration, data center and network implementation services, as well as managed services that include Infrastructure as a Service ("IaaS") offerings.

We also offer a variety of integrated solutions, such as:

- *Mobility* : We assist our customers with the selection, procurement and integration of mobile security software, hardware devices such as smartphones, tablets and notebooks, and cellular wireless activation systems. We also provide mobile device management applications with policy and security management capabilities across a variety of mobile operating systems and platforms.
- *Security* : We assess our customers' security needs and provide them with threat prevention tools in order to protect their networks, servers and applications, such as anti-virus, anti-spam, content filtering, intrusion prevention, firewall and virtual private network services, and network access control. We also design and implement data loss prevention solutions, using data monitoring and encryption across a wide array of devices to ensure the security of customer information, personal employee information and research and development data.
- *Data Center Optimization* : We help our customers evaluate their data centers for convergence and optimization opportunities. Our data center optimization solutions consist of server virtualization, physical server consolidation, data storage management and energy-efficient power and cooling systems.
- *Cloud Computing* : We provide our customers with a broad portfolio of cloud-based solutions, which are technology delivered as a service. Our cloud offerings include: Infrastructure as a Service (IaaS), which delivers compute, networking, storage, and data center capabilities via the cloud; Software as a Service (SaaS), which connects users to cloud-based software applications; and Platform as a Service (PaaS), which enables development and ongoing maintenance of cloud-based solutions. We provide public cloud solutions which reside off customer premises on a public (shared) infrastructure, and private cloud solutions, which reside on customer premises. We also offer hybrid cloud solutions that deliver the benefits of both public and private solutions. Our migration, integration and managed

services offerings help our customers simplify cloud adoption, as well as the ongoing management of cloud solutions across the entire IT lifecycle. Dedicated Cloud Client Executives work with our customers to architect cloud solutions that meet their organizational, technology and financial objectives.

- *Virtualization* : We design and implement server, storage and desktop virtualization solutions. Virtualization enables our customers to efficiently utilize hardware resources by running multiple, independent, virtual operating systems on a single computer and multiple virtual servers simultaneously on a single server. Virtualization also can separate a desktop environment and associated application software from the hardware device that is used to access it, and provides employees with remote desktop access. Our specialists assist customers with the steps of implementing virtualization solutions, including evaluating network environments, deploying shared storage options and licensing platform software.
- *Collaboration* : We provide our customers with communication tools that allow employees to share knowledge, ideas and information among each other and with clients and partners effectively and quickly. Our collaboration solutions unite communications and applications via the integration of products that facilitate the use of multiple enterprise communication methods including email, instant messaging, presence, social media, voice, video, hardware, software and services. We also host cloud-based collaboration solutions.

While we believe customers increasingly view technology purchases as solutions rather than discrete product and service categories, the following table shows our net sales by major category, based upon our internal category classifications.

	Year Ended December 31, 2014		Year Ended December 31, 2013 <sup>(1)</sup>		Year Ended December 31, 2012 <sup>(1)</sup>	
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales
Notebooks/Mobile Devices	\$ 2,352.3	19.5%	\$ 1,698.4	15.8%	\$ 1,462.8	14.4%
NetComm Products	1,615.9	13.4	1,486.3	13.8	1,351.5	13.3
Enterprise and Data Storage (Including Drives)	1,024.3	8.5	999.2	9.3	981.5	9.7
Other Hardware	4,549.2	37.6	4,178.5	38.8	4,075.7	40.3
Software <sup>(2)</sup>	2,076.7	17.2	1,993.1	18.5	1,877.7	18.5
Services	371.4	3.1	332.7	3.1	285.0	2.8
Other <sup>(3)</sup>	84.7	0.7	80.4	0.7	94.0	1.0
Total net sales	\$ 12,074.5	100.0%	\$ 10,768.6	100.0%	\$ 10,128.2	100.0%

- (1) Amounts have been reclassified for changes in individual product classifications to conform to the presentation for the year ended December 31, 2014.
- (2) The decline in software as a percentage of total net sales is primarily driven by a higher proportion of revenue recorded on a net basis, including SaaS.
- (3) Includes items such as delivery charges to customers and certain commission revenue.

## Our Customers

We provide integrated IT solutions to approximately 250,000 small, medium and large business, government, education and healthcare customers throughout the U.S. and Canada. Sales to the U.S. federal government, which are diversified across multiple agencies and departments, collectively accounted for approximately 7% , 7% and 10% of total net sales in 2014, 2013 and 2012, respectively. However, there are several independent purchasing decision-makers across these agencies and departments. Excluding these sales to the federal government, we are not reliant on any one customer, as our next five largest customers cumulatively comprised approximately 3% of our net sales in 2014 .

## Inventory Management

We utilize our IT systems to manage our inventory in a cost-efficient manner, resulting in a rapid-turn inventory model. We generally only stock items that have attained a minimum sales volume.

Our distribution process is highly automated. Once a customer order is received and credit approved, orders are automatically routed to one of our distribution centers for picking and shipping as well as configuration and imaging services. We operate two distribution centers: a 450,000 square foot facility in Vernon Hills, Illinois, and a 513,000 square foot facility in North Las Vegas, Nevada. We ship almost 37 million units annually on an aggregate basis from our two distribution centers. We believe that the location of our distribution centers allows us to efficiently ship products throughout the U.S. and provide timely access to our principal distributors. In addition, in the event of weather-related or other disruptions at one of our distribution centers, we are able to shift order processing and fulfillment from one center to the other quickly and efficiently, enabling us to continue to ship products in a timely manner. We believe that competitive sources of supply are available in substantially all of the product categories we offer. We continue to improve the productivity of our distribution centers as measured by key performance indicators such as units shipped per hour worked and bin accuracy.

We also have drop-shipment arrangements with many of our OEMs and wholesale distributors, which permit us to offer products to our customers without having to take physical delivery at either of our distribution centers. These arrangements generally represent approximately 40% to 50% of total net sales, including approximately 15% to 20% related to electronic delivery for software licenses.

### **Information Technology Systems**

We maintain customized IT and unified communication systems that enhance our ability to provide prompt, efficient and expert service to our customers. In addition, these systems enable centralized management of key functions, including purchasing, inventory management, billing and collection of accounts receivable, sales and distribution. Our systems provide us with thorough, detailed and real-time information regarding key aspects of our business. This capability helps us to continuously enhance productivity, ship customer orders quickly and efficiently, respond appropriately to industry changes and provide high levels of customer service. We believe that our websites, which provide electronic order processing and advanced tools, such as order tracking, reporting and asset management, make it easy for customers to transact business with us and ultimately strengthen our customer relationships.

### **Product Procurement**

We may purchase all or only some of the products that our vendor partners offer for resale to our customers or for inclusion in the solutions we offer. Each vendor partner agreement provides for specific terms and conditions, which may include one or more of the following: product return privileges, price protection policies, purchase discounts and vendor incentive programs, such as purchase or sales rebates and cooperative advertising reimbursements. We also purchase software from major software publishers for resale to our customers or for inclusion in the solutions we offer. Our agreements with software publishers allow the end-user customer to acquire software or licensed products and services.

In addition to purchasing products directly from our vendor partners, we purchase products from wholesale distributors for resale to our customers or for inclusion in the solutions we offer. These wholesale distributors provide logistics management and supply-chain services for us, as well as for our vendor partners. For the year ended December 31, 2014, we purchased 54% of the products we sold as discrete products or as components of a solution directly from our vendor partners and the remaining 46% from wholesale distributors. Purchases from our three largest wholesale distributors, Tech Data, SYNEX and Ingram Micro each represented 9% of our total purchases. Sales of products manufactured by Apple, Cisco, EMC, Hewlett-Packard, Lenovo and Microsoft, whether purchased directly from these vendor partners or from a wholesale distributor, represented in the aggregate 54% of our net sales in 2014. Sales of products manufactured by Hewlett-Packard and Cisco represented 18% and 14%, of our 2014 net sales, respectively.

### **Competition**

The market for technology products and services is highly competitive. Competition is based on the ability to tailor specific solutions to customer needs, quality and breadth of product and service offerings, knowledge and expertise of sales force, customer service, price, product availability, speed of delivery and credit availability. Our competition includes:

- resellers such as Dimension Data, ePlus, Insight Enterprises, PC Connection, PCM, Presidio, Softchoice, World Wide Technology and many smaller resellers;
- manufacturers who sell directly to customers, such as Dell, Hewlett-Packard and Apple;
- large service providers and system integrators, such as IBM, Accenture, Hewlett-Packard and Dell;
- e-tailers such as Amazon, Newegg, and TigerDirect.com;
- cloud providers such as AT&T, Amazon Web Services and Box; and



- retailers (including their e-commerce activities) such as Staples and Office Depot.

We expect the competitive landscape in which we compete to continue to change as new technologies are developed. While innovation can help our business as it creates new offerings for us to sell, it can also disrupt our business model and create new and stronger competitors. For a discussion of the risks associated with competition, see “Risk Factors” included elsewhere in this report.

## Marketing

We market the CDW brand to both national and local audiences using a variety of channels that include online, broadcast, print, social and other media. This promotion is supported by integrated communication efforts that target decision-makers, influencers and the general public using a combination of news releases, case studies, media interviews and speaking opportunities. We also market to current and prospective customers through integrated marketing programs that include behaviorally targeted email, print, online media, events and sponsorships, as well as broadcast media.

As a result of our relationships with our vendor partners, a significant portion of our advertising and marketing expenses are reimbursed through cooperative advertising reimbursement programs. These programs are at the discretion of our vendor partners and are typically tied to sales or purchasing volumes or other commitments to be met by us within a specified period of time. We believe that our national scale and analytical techniques that measure the efficacy of our marketing programs differentiate us from our competitors.

## Coworkers

As of December 31, 2014, we employed 7,211 coworkers, none of whom is covered by collective bargaining agreements. We consider our coworker relations to be good.

## Intellectual Property

The CDW trademark and certain variations thereon are registered or subject to pending trademark applications in the U.S., Canada and certain other jurisdictions. We believe our trademarks have significant value and are important factors in our marketing programs. In addition, we own registrations for domain names, including cdw.com and cdwg.com, for certain of our primary trademarks. We also have unregistered copyrights in our website content.

## Item 1A. Risk Factors

*There are many factors that affect our business, results of operations and cash flows, some of which are beyond our control. The following is a description of some important factors that may cause our actual results of operations and cash flows in future periods to differ materially from those currently expected or desired.*

### Risks Related to Our Business

***General economic conditions could negatively affect technology spending by our customers and put downward pressure on prices, which may have an adverse impact on our business, results of operations or cash flows.***

Weak economic conditions generally, sustained uncertainty about global economic conditions, U.S. federal government spending cuts and the impact of new government programs, or a tightening of credit markets could cause our customers and potential customers to postpone or reduce spending on technology products or services or put downward pressure on prices, which could have an adverse effect on our business, results of operations or cash flows.

***Our financial performance could be adversely affected by decreases in spending on technology products and services by our Public segment customers.***

Our sales to our Public segment customers are impacted by government spending policies, budget priorities and revenue levels. Although our sales to the federal government are diversified across multiple agencies and departments, they collectively accounted for approximately 7% of 2014 net sales. An adverse change in government spending policies (including ongoing budget cuts at the federal level), budget priorities or revenue levels could cause our Public segment customers to reduce their purchases or to terminate or not renew their contracts with us, which could adversely affect our business, results of operations or cash flows. For example, in 2013, as a result of sequestration and related budget uncertainty and the partial shutdown of the federal government for 16 days, we experienced significantly reduced Federal sales in our Public segment.

***Our business depends on our vendor partner relationships and the availability of their products.***

We purchase products for resale from vendor partners, which include OEMs and software publishers, and wholesale distributors. For the year ended December 31, 2014, we purchased approximately 54% of the products we sold directly from vendor partners and the remaining amount from wholesale distributors. We are authorized by vendor partners to sell all or some of their products via direct marketing activities. Our authorization with each vendor partner is subject to specific terms and conditions regarding such things as sales channel restrictions, product return privileges, price protection policies, purchase discounts and vendor partner programs and funding, including purchase rebates, sales volume rebates, purchasing incentives and cooperative advertising reimbursements. However, we do not have any long-term contracts with our vendor partners and many of these arrangements are terminable upon notice by either party. A reduction in vendor partner programs or funding or our failure to timely react to changes in vendor partner programs or funding could have an adverse effect on our business, results of operations or cash flows. In addition, a reduction in the amount of credit granted to us by our vendor partners could increase our need for, and the cost of, working capital and could have an adverse effect on our business, results of operations or cash flows, particularly given our substantial indebtedness.

From time to time, vendor partners may terminate or limit our right to sell some or all of their products or change the terms and conditions or reduce or discontinue the incentives that they offer us. For example, there is no assurance that, as our vendor partners continue to sell directly to end users and through resellers, they will not limit or curtail the availability of their products to solutions providers like us. Any such termination or limitation or the implementation of such changes could have a negative impact on our business, results of operations or cash flows.

Although we purchase from a diverse vendor base, in 2014, products we purchased from distributors Tech Data, SYNEX and Ingram Micro each represented 9% of our total purchases. In addition, sales of Apple, Cisco, EMC, Hewlett-Packard, Lenovo and Microsoft products comprise a substantial portion of our sales, representing approximately 54% of net sales in 2014. Sales of products manufactured by Hewlett-Packard and Cisco represented approximately 18% and 14%, respectively, of our 2014 net sales. The loss of, or change in business relationship with, any of these or any other key vendor partners, the diminished availability of their products, or backlogs for their products leading to manufacturer allocation, could reduce the supply and increase the cost of products we sell and negatively impact our competitive position.

Additionally, the relocation of key distributors utilized in our purchasing model could increase our need for, and the cost of, working capital and have an adverse effect on our business, results of operations or cash flows. Further, the sale, spin-off or combination of any of our vendor partners and/or certain of their business units, including any such sale to or combination with a vendor with whom we do not currently have a commercial relationship or whose products we do not sell, could have an adverse impact on our business, results of operations or cash flows.

***Our sales are dependent on continued innovations in hardware, software and services offerings by our vendor partners and the competitiveness of their offerings, and our ability to partner with new and emerging technology providers.***

The technology industry is characterized by rapid innovation and the frequent introduction of new and enhanced hardware, software and services offerings, such as cloud-based solutions, including SaaS, IaaS and PaaS. We have been and will continue to be dependent on innovations in hardware, software and services offerings, as well as the acceptance of those innovations by customers. A decrease in the rate of innovation, or the lack of acceptance of innovations by customers, could have an adverse effect on our business, results of operations or cash flows.

In addition, if we are unable to keep up with changes in technology and new hardware, software and services offerings, for example by providing the appropriate training to our account managers, sales technology specialists and engineers to enable them to effectively sell and deliver such new offerings to customers, our business, results of operations or cash flows could be adversely affected.

We also are dependent upon our vendor partners for the development and marketing of hardware, software and services to compete effectively with hardware, software and services of vendors whose products and services we do not currently offer or that we are not authorized to offer in one or more customer channels. In addition, our success is dependent on our ability to develop relationships with and sell hardware, software and services from new emerging vendors and vendors that we have not historically represented in the marketplace. To the extent that a vendor's offering that is highly in demand is not available to us for resale in one or more customer channels, and there is not a competitive offering from another vendor that we are authorized to sell in such customer channels, or we are unable to develop relationships with new technology providers or companies that we have not historically represented, our business, results of operations or cash flows could be adversely impacted.

***Substantial competition could reduce our market share and significantly harm our financial performance.***

Our current competition includes:

- resellers, such as Dimension Data, ePlus, Insight Enterprises, PC Connection, PCM, Presidio, Softchoice, World Wide Technology and many smaller resellers;
- manufacturers who sell directly to customers, such as Dell, Hewlett-Packard and Apple;
- large service providers and system integrators, such as IBM, Accenture, Hewlett-Packard and Dell;
- e-tailers, such as Amazon, Newegg and TigerDirect.com;
- cloud providers, such as AT&T, Amazon Web Services and Box; and
- retailers (including their e-commerce activities), such as Staples and Office Depot.

We expect the competitive landscape in which we compete to continue to change as new technologies are developed. While innovation can help our business as it creates new offerings for us to sell, it can also disrupt our business model and create new and stronger competitors. For instance, while cloud-based solutions present an opportunity for us, cloud-based solutions and technologies that deliver technology solutions as a service could increase the amount of sales directly to customers rather than through solutions providers like us, or could reduce the amount of hardware we sell, leading to a reduction in our sales and/or profitability. In addition, some of our hardware and software vendor partners sell, and could intensify their efforts to sell, their products directly to our customers. Moreover, traditional OEMs have increased their services capabilities through mergers and acquisitions with service providers, which could potentially increase competition in the market to provide comprehensive technology solutions to customers. If any of these trends becomes more prevalent, it could adversely affect our business, results of operations or cash flows.

We focus on offering a high level of service to gain new customers and retain existing customers. To the extent we face increased competition to gain and retain customers, we may be required to reduce prices, increase advertising expenditures or take other actions which could adversely affect our business, results of operations or cash flows. Additionally, some of our competitors may reduce their prices in an attempt to stimulate sales, which may require us to reduce prices. This would require us to sell a greater number of products to achieve the same level of net sales and gross profit. If such a reduction in prices occurs and we are unable to attract new customers and sell increased quantities of products, our sales growth and profitability could be adversely affected.

***The success of our business depends on the continuing development, maintenance and operation of our information technology systems.***

Our success is dependent on the accuracy, proper utilization and continuing development of our information technology systems, including our business systems, such as our sales, customer management, financial and accounting, marketing, purchasing, warehouse management, e-commerce and mobile systems, as well as our operational platforms, including voice and data networks and power systems. The quality and our utilization of the information generated by our information technology systems, and our success in implementing new systems and upgrades, affects, among other things, our ability to:

- conduct business with our customers, including delivering services and solutions to them;
- manage our inventory and accounts receivable;
- purchase, sell, ship and invoice our hardware and software products and provide and invoice our services efficiently and on a timely basis; and
- maintain our cost-efficient operating model while scaling our business.

The integrity of our information technology systems is vulnerable to disruption due to forces beyond our control. While we have taken steps to protect our information technology systems from a variety of threats, including computer viruses, malware, phishing, social engineering, unauthorized access and other malicious attacks, both internal and external, and human error, there can be no guarantee that those steps will be effective. Furthermore, although we have redundant systems at a separate location to back up our primary systems, there can be no assurance that these redundant systems will operate properly if and when required. Any disruption to or infiltration of our information technology systems could significantly harm our business and results of operations.

***Breaches of data security could adversely impact our business.***

Our business involves the storage and transmission of proprietary information and sensitive or confidential data, including personal information of coworkers, customers and others. In addition, we operate data centers for our customers which host their technology infrastructure and may store and transmit both business-critical data and confidential information. In connection with our services business, our coworkers also have access to our customers' confidential data and other information. We have privacy and data security policies in place that are designed to prevent security breaches; however, as newer technologies evolve, we could be exposed to increased risk of breaches in security. Breaches in security could expose us, our customers or other individuals to a risk of public disclosure, loss or misuse of this information, resulting in legal claims or proceedings, liability or regulatory penalties under laws protecting the privacy of personal information, as well as the loss of existing or potential customers and damage to our brand and reputation. In addition, the cost and operational consequences of implementing further data protection measures could be significant. Such breaches, costs and consequences could adversely affect our business, results of operations or cash flows.

***The failure to comply with our Public segment contracts or applicable laws and regulations could result in, among other things, termination, fines or other liabilities, and changes in procurement regulations could adversely impact our business, results of operations or cash flows.***

Revenues in our Public segment are derived from sales to governmental entities, educational institutions and healthcare customers, through various contracts and open market sales of products and services. Sales to Public segment customers are highly regulated. Noncompliance with contract provisions, government procurement regulations or other applicable laws or regulations (including but not limited to the False Claims Act and the Medicare and Medicaid Anti-Kickback Statute) could result in civil, criminal and administrative liability, including substantial monetary fines or damages, termination of government contracts or other Public segment customer contracts, and suspension, debarment or ineligibility from doing business with the government and other customers in the Public segment. In addition, contracts in the Public segment are generally terminable at any time for convenience of the contracting agency or group purchasing organization ("GPO") or upon default. Furthermore, our inability to enter into or retain contracts with GPOs may threaten our ability to sell to customers in those GPOs and compete. The effect of any of these possible actions could adversely affect our business, results of operations or cash flows. In addition, the adoption of new or modified procurement regulations and other requirements may increase our compliance costs and reduce our gross margins, which could have a negative effect on our business, results of operations or cash flows.

***If we fail to provide high-quality services to our customers, or if our third-party service providers fail to provide high-quality services to our customers, our reputation, business, results of operations or cash flows could be adversely affected.***

Our service offerings include field services, managed services, warranties, configuration services, partner services and telecom services. Additionally, we deliver and manage mission critical software, systems and network solutions for our customers. We also offer certain services, such as implementation and installation services and repair services, to our customers through various third-party service providers engaged to perform these services on our behalf. If we or our third-party service providers fail to provide high quality services to our customers or such services result in a disruption of our customers' businesses, this could, among other things, result in legal claims and proceedings and liability. Moreover, as we expand our services and solutions business, we may be exposed to additional operational, regulatory and other risks. We also could incur liability for failure to comply with the rules and regulations applicable to the new services and solutions we provide to our customers. If any of the foregoing were to occur, our reputation with our customers, our brand and our business, results of operations or cash flows could be adversely affected.

***If we lose any of our key personnel, or are unable to attract and retain the talent required for our business, our business could be disrupted and our financial performance could suffer.***

Our success is heavily dependent upon our ability to attract, develop, engage and retain key personnel to manage and grow our business, including our key executive, management, sales, services and technical coworkers.

Our future success will depend to a significant extent on the efforts of Thomas E. Richards, our Chairman and Chief Executive Officer, as well as the continued service and support of our other executive officers. Our future success also will depend on our ability to retain our customer-facing coworkers, who have been given critical CDW knowledge regarding, and the opportunity to develop strong relationships with, many of our customers. In addition, as we seek to expand our offerings of value-added services and solutions, our success will even more heavily depend on attracting and retaining highly skilled technology specialists and engineers, for whom the market is extremely competitive.

Our inability to attract, develop and retain key personnel could have an adverse effect on our relationships with our vendor partners and customers and adversely affect our ability to expand our offerings of value-added services and solutions. Moreover, our inability to train our sales, services and technical personnel effectively to meet the rapidly changing technology

needs of our customers could cause a decrease in the overall quality and efficiency of such personnel. Such consequences could adversely affect our business, results of operations or cash flows.

***The interruption of the flow of products from suppliers could disrupt our supply chain.***

A significant portion of the products we sell are manufactured or purchased by our vendor partners outside of the U.S., primarily in Asia. Political, social or economic instability in Asia, or in other regions in which our vendor partners purchase or manufacture the products we sell, could cause disruptions in trade, including exports to the U.S. Other events that could also cause disruptions to our supply chain include:

- the imposition of additional trade law provisions or regulations;
- the imposition of additional duties, tariffs and other charges on imports and exports;
- foreign currency fluctuations;
- natural disasters or other adverse occurrences at, or affecting, any of our suppliers' facilities;
- restrictions on the transfer of funds;
- the financial instability or bankruptcy of manufacturers; and
- significant labor disputes, such as strikes.

We cannot predict whether the countries in which the products we sell are purchased or manufactured, or may be purchased or manufactured in the future, will be subject to new or additional trade restrictions or sanctions imposed by the U.S. or foreign governments, including the likelihood, type or effect of any such restrictions. Trade restrictions, including new or increased tariffs or quotas, embargoes, sanctions, safeguards and customs restrictions against the products we sell, as well as foreign labor strikes and work stoppages or boycotts, could increase the cost or reduce the supply of product available to us and adversely affect our business, results of operations or cash flows. In addition, our exports are subject to regulations and noncompliance with these requirements could have a negative effect on our business, results of operations or cash flows.

***A natural disaster or other adverse occurrence at one of our primary facilities or customer data centers could damage our business.***

Substantially all of our corporate, warehouse and distribution functions are located at our Vernon Hills, Illinois facilities and our second distribution center in North Las Vegas, Nevada. If the warehouse and distribution equipment at one of our distribution centers were to be seriously damaged by a natural disaster or other adverse occurrence, we could utilize the other distribution center or third-party distributors to ship products to our customers. However, this may not be sufficient to avoid interruptions in our service and may not enable us to meet all of the needs of our customers and would cause us to incur incremental operating costs. In addition, we operate three customer data centers and numerous sales offices which may contain both business-critical data and confidential information of our customers. A natural disaster or other adverse occurrence at any of the customer data centers or at any of our major sales offices could negatively impact our business, results of operations or cash flows.

***We are heavily dependent on commercial delivery services.***

We generally ship hardware products to our customers by FedEx, United Parcel Service and other commercial delivery services and invoice customers for delivery charges. If we are unable to pass on to our customers future increases in the cost of commercial delivery services, our profitability could be adversely affected. Additionally, strikes, inclement weather, natural disasters or other service interruptions by such shippers could adversely affect our ability to deliver products on a timely basis.

***We are exposed to accounts receivable and inventory risks.***

We extend credit to our customers for a significant portion of our net sales, typically on 30-day payment terms. We are subject to the risk that our customers may not pay for the products they have purchased, or may pay at a slower rate than we have historically experienced, the risk of which is heightened during periods of economic downturn or uncertainty or, in the case of Public segment customers, during periods of budget constraints.

We are also exposed to inventory risks as a result of the rapid technological changes that affect the market and pricing for the products we sell. We seek to minimize our inventory exposure through a variety of inventory management procedures and policies, including our rapid-turn inventory model, as well as vendor price protection and product return programs. However, if we were unable to maintain our rapid-turn inventory model, if there were unforeseen product developments that

created more rapid obsolescence or if our vendor partners were to change their terms and conditions, our inventory risks could increase. We also from time to time take advantage of cost savings associated with certain opportunistic bulk inventory purchases offered by our vendor partners or we may decide to carry high inventory levels of certain products that have limited or no return privileges due to customer demand or request. These bulk purchases could increase our exposure to inventory obsolescence.

***We could be exposed to additional risks if we continue to make strategic investments or acquisitions or enter into alliances.***

We may continue to pursue transactions, including strategic investments, acquisitions or alliances, in an effort to extend or complement our existing business. These types of transactions involve numerous business risks, including finding suitable transaction partners and negotiating terms that are acceptable to us, the diversion of management's attention from other business concerns, extending our product or service offerings into areas in which we have limited experience, entering into new geographic markets, the potential loss of key coworkers or business relationships and successfully integrating acquired businesses, any of which could adversely affect our operations.

In addition, our financial results could be adversely affected by financial adjustments required by accounting principles generally accepted in the United States of America ("GAAP") in connection with these types of transactions where significant goodwill or intangible assets are recorded. To the extent the value of goodwill or identifiable intangible assets with indefinite lives becomes impaired, we may be required to incur material charges relating to the impairment of those assets.

***Our future operating results may fluctuate significantly.***

We may experience significant variations in our future quarterly results of operations. These fluctuations may cause the market price of our common stock to be volatile and may result from many factors, including the condition of the technology industry in general, shifts in demand and pricing for hardware, software and services and the introduction of new products or upgrades.

Our operating results are also highly dependent on our level of gross profit as a percentage of net sales. Our gross profit percentage fluctuates due to numerous factors, some of which may be outside of our control, including general macroeconomic conditions; pricing pressures; changes in product costs from our vendor partners; the availability of price protection, purchase discounts and incentive programs from our vendor partners; changes in product, order size and customer mix; the risk of some items in our inventory becoming obsolete; increases in delivery costs that we cannot pass on to customers; and general market and competitive conditions.

In addition, our cost structure is based, in part, on anticipated sales and gross margins. Therefore, we may not be able to adjust our cost structure quickly enough to compensate for any unexpected sales or gross margin shortfall, and any such inability could have an adverse effect on our business, results of operations or cash flows.

***We are exposed to risks from legal proceedings and audits.***

We are party to various legal proceedings that arise in the ordinary course of our business, which include commercial, employment, tort and other litigation.

We are subject to intellectual property infringement claims against us in the ordinary course of our business, either because of the products and services we sell or the business systems and processes we use to sell such products and services, in the form of cease-and-desist letters, licensing inquiries, lawsuits and other communications and demands. In our industry, such intellectual property claims have become more frequent as the complexity of technological products and the intensity of competition in our industry have increased. Increasingly, many of these assertions are brought by non-practicing entities whose principal business model is to secure patent licensing revenue, but we may also be subject to suits from inventors, competitors or other patent holders who may seek licensing revenue, lost profits and/or an injunction preventing us from engaging in certain activities, including selling certain products and services.

Because of our significant sales to governmental entities, we also are subject to audits by federal, state and local authorities. We also are subject to audits by various vendor partners and large customers, including government agencies, relating to purchases and sales under various contracts. In addition, we are subject to indemnification claims under various contracts.

Current and future litigation, infringement claims, governmental proceedings, audits or indemnification claims that we face may result in substantial costs and expenses and significantly divert the attention of our management regardless of the outcome. In addition, current and future litigation, infringement claims, governmental proceedings, audits or indemnification claims could lead to increased costs or interruptions of our normal business operations. Litigation, infringement claims, governmental proceedings, audits or indemnification claims involve uncertainties and the eventual outcome of any litigation,

infringement claim, governmental proceeding, audit or indemnification claim could adversely affect our business, results of operations or cash flows.

***Failure to comply with the laws and regulations applicable to our operations could adversely impact our business, results of operations or cash flows.***

Our operations are subject to numerous U.S. and foreign laws and regulations in a number of areas including, but not limited to, areas of labor and employment, advertising, e-commerce, tax, import and export requirements, anti-corruption, data privacy requirements, anti-competition, and environmental, health, and safety. Compliance with these laws, regulations and similar requirements may be onerous and expensive, and they may be inconsistent from jurisdiction to jurisdiction, further increasing the cost of compliance and doing business, and the risk of noncompliance. We have implemented policies and procedures designed to help ensure compliance with applicable laws and regulations, but there can be no guarantee against coworkers, contractors, or agents violating such laws and regulations or our policies and procedures.

***We have significant deferred cancellation of debt income.***

As a result of a 2009 debt modification, we realized \$395.5 million of cancellation of debt income (“CODI”). We made an election under Code Section 108(i) to defer this CODI from taxable income, pursuant to which we are also required to defer certain original issue discount (“OID”) deductions as they accrue. As of December 31, 2013, we had deferred approximately \$114.5 million of OID deductions. Starting in 2014, we were required to include the deferred CODI and the deferred OID into taxable income ratably over a five-year period ending in 2018. Because we have more CODI than the aggregate of our deferred OID on the relevant remaining debt instruments, we will have a future cash tax liability associated with our significant deferred CODI. We have reflected the associated cash tax liability in our deferred taxes for financial accounting purposes.

All of our deferred CODI will be accelerated into current taxable income if, prior to 2018, we engage in a so-called “impairment transaction” and the gross value of our assets immediately afterward is less than 110% of the sum of our total liabilities and the tax on the net amount of our deferred CODI and OID (the “110% test”) as determined under the applicable Treasury Regulations. An “impairment transaction” is any transaction that impairs our ability to pay the tax on our deferred CODI, and includes dividends or distributions with respect to our equity and charitable contributions, in each case in a manner that is not consistent with our historical practice within the meaning of the applicable Treasury Regulations.

Prior to 2018, our willingness to pay dividends or make distributions with respect to our equity could be adversely affected if, at the time, we do not meet the 110% test and, as a result, the payment of a dividend or the making of a distribution would accelerate the tax payable with respect to our deferred CODI. We believe that, based on our interpretation of applicable Treasury Regulations, the gross value of our assets exceeds 110% of the sum of our total liabilities and the tax on the net amount of our deferred CODI and OID as of the filing date of this Annual Report on Form 10-K. However, we cannot assure you that this will continue to be true in the future.

## **Risks Related to Our Indebtedness**

***We have a substantial amount of indebtedness, which could have important consequences to our business.***

We have a substantial amount of indebtedness. As of December 31, 2014, we had \$3.2 billion of total long-term debt outstanding, as defined by GAAP, and \$332.1 million of obligations outstanding under our inventory financing agreements, and the ability to borrow an additional \$935.6 million under our senior secured asset-based revolving credit facility (the “Revolving Loan”). Our substantial indebtedness could have important consequences, including the following:

- making it more difficult for us to satisfy our obligations with respect to our indebtedness;
- requiring us to dedicate a substantial portion of our cash flow from operations to debt service payments on our and our subsidiaries' debt, which reduces the funds available for working capital, capital expenditures, acquisitions and other general corporate purposes;
- requiring us to comply with restrictive covenants in our senior credit facilities and indentures, which limit the manner in which we conduct our business;
- making it more difficult for us to obtain vendor financing from our vendor partners, including original equipment manufacturers and software publishers;
- limiting our flexibility in planning for, or reacting to, changes in the industry in which we operate;

- placing us at a competitive disadvantage compared to any of our less-leveraged competitors;
- increasing our vulnerability to both general and industry-specific adverse economic conditions; and
- limiting our ability to obtain additional debt or equity financing to fund future working capital, capital expenditures, acquisitions or other general corporate requirements and increasing our cost of borrowing.

***Restrictive covenants under our senior credit facilities and, to varying degrees, our indentures may adversely affect our operations and liquidity.***

Our senior credit facilities and, to varying degrees, our indentures contain, and any future indebtedness of ours may contain, various covenants that limit our ability to, among other things:

- incur or guarantee additional debt;
- pay dividends or make distributions to holders of our capital stock or to make certain other restricted payments or investments;
- repurchase or redeem capital stock;
- make loans, capital expenditures or investments or acquisitions;
- receive dividends or other payments from our subsidiaries;
- enter into transactions with affiliates;
- create liens;
- merge or consolidate with other companies or transfer all or substantially all of our assets;
- transfer or sell assets, including capital stock of subsidiaries; and
- prepay, repurchase or redeem debt.

As a result of these covenants, we are limited in the manner in which we conduct our business and we may be unable to engage in favorable business activities or finance future operations or capital needs. A breach of any of these covenants or any of the other restrictive covenants would result in a default under our senior credit facilities. Upon the occurrence of an event of default under our senior credit facilities, the lenders:

- will not be required to lend any additional amounts to us;
- could elect to declare all borrowings outstanding thereunder, together with accrued and unpaid interest and fees, to be due and payable; or
- could require us to apply all of our available cash to repay these borrowings.

The acceleration of amounts outstanding under our senior credit facilities would likely trigger an event of default under our existing indentures.

If we were unable to repay those amounts, the lenders under our senior credit facilities could proceed against the collateral granted to them to secure our borrowings thereunder. We have pledged a significant portion of our assets as collateral under our senior credit facilities. If the lenders under our senior credit facilities accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay our senior credit facilities and our other indebtedness or the ability to borrow sufficient funds to refinance such indebtedness. Even if we were able to obtain new financing, it may not be on commercially reasonable terms, or terms that are acceptable to us.

In addition, under our Revolving Loan, we are permitted to borrow an aggregate amount of up to \$1,250.0 million. However, our ability to borrow under our Revolving Loan is limited by a borrowing base and a liquidity condition. The borrowing base at any time equals the sum of up to 85% of CDW LLC and its subsidiary guarantors' eligible accounts receivable (net of accounts reserves) (up to 30% of such eligible accounts receivable which can consist of federal government accounts receivable) plus the lesser of (i) 75% of CDW LLC and its subsidiary guarantors' eligible inventory (valued at cost and net of inventory reserves) and (ii) the product of 85% multiplied by the net orderly liquidation value percentage multiplied by eligible inventory (valued at cost and net of inventory reserves), less reserves (other than accounts reserves and inventory



reserves). The borrowing base in effect as of December 31, 2014 was \$1,253.4 million , and therefore, did not restrict our ability to borrow under our Revolving Loan as of that date.

Our ability to borrow under our Revolving Loan is also limited by a minimum liquidity condition, which provides that, if excess cash availability is less than the lesser of (i) \$125.0 million and (ii) the greater of (A) 10% of the borrowing base and (B) \$100.0 million, the lenders are not required to lend any additional amounts under our Revolving Loan unless the consolidated fixed charge coverage ratio (as defined in the credit agreement for our Revolving Loan) is at least 1.0 to 1.0. Moreover, our Revolving Loan provides discretion to the agent bank acting on behalf of the lenders to impose additional availability reserves, which could materially impair the amount of borrowings that would otherwise be available to us. We cannot assure you that the agent bank will not impose such reserves or, were it to do so, that the resulting impact of this action would not materially and adversely impair our liquidity.

***We will be required to generate sufficient cash to service our indebtedness and, if not successful, we may be forced to take other actions to satisfy our obligations under our indebtedness.***

Our ability to make scheduled payments on or to refinance our debt obligations depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. Our outstanding long-term debt will impose significant cash interest payment obligations on us and, accordingly, we will have to generate significant cash flow from operating activities to fund our debt service obligations. We cannot assure you that we will maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations-Liquidity and Capital Resources” included elsewhere in this report.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional debt or equity capital, restructure or refinance our indebtedness, or revise or delay our strategic plan. We cannot assure you that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or satisfy our capital requirements, or that these actions would be permitted under the terms of our existing or future debt agreements, including our senior credit facilities and indentures. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. Our senior credit facilities and the indenture governing our 8.5% Senior Notes due 2019 (“2019 Senior Notes”) restrict our ability to dispose of assets and use the proceeds from the disposition. We may not be able to consummate those dispositions or to obtain the proceeds which we could realize from them and these proceeds may not be adequate to meet any debt service obligations then due. Furthermore, the Sponsors have no obligation to provide us with debt or equity financing.

If we cannot make scheduled payments on our debt, we will be in default and, as a result:

- our debt holders could declare all outstanding principal and interest to be due and payable;
- the lenders under our senior credit facilities could foreclose against the assets securing the borrowings from them and the lenders under our term loan facility could terminate their commitments to lend us money; and
- we could be forced into bankruptcy or liquidation.

***Despite our indebtedness levels, we and our subsidiaries may be able to incur substantially more debt, including secured debt. This could further increase the risks associated with our leverage.***

We and our subsidiaries may be able to incur substantial additional indebtedness in the future. The terms of our senior credit facilities and indentures do not fully prohibit us or our subsidiaries from doing so. To the extent that we incur additional indebtedness or such other obligations, the risks associated with our substantial indebtedness described above, including our possible inability to service our debt, will increase. As of December 31, 2014 , we had approximately \$935.6 million available for additional borrowing under our Revolving Loan after taking into account borrowing base limitations (net of \$2.1 million of issued and undrawn letters of credit and \$332.1 million of reserves related to our floorplan sub-facility).

***Variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.***

Certain of our borrowings, primarily borrowings under our senior credit facilities, are at variable rates of interest and expose us to interest rate risk. As of December 31, 2014 , we had \$1,513.5 million of variable rate debt outstanding. If interest rates increase above 1% per annum, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income would decrease. Although we have entered into interest rate cap

agreements on our term loan facility to reduce interest rate volatility, we cannot assure you we will be able to enter into interest rate cap agreements in the future on acceptable terms or that such caps or the caps we have in place now will be effective.

### **Risks Related to Ownership of Our Common Stock**

***Our common stock price may be volatile and may decline regardless of our operating performance, and holders of our common stock could lose a significant portion of their investment.***

The market price for our common stock may be volatile. Our stockholders may not be able to resell their shares of common stock at or above the price at which they purchased such shares, due to fluctuations in the market price of our common stock, which may be caused by a number of factors, many of which we cannot control, including the risk factors described in this Annual Report on Form 10-K and the following:

- changes in financial estimates by any securities analysts who follow our common stock, our failure to meet these estimates or failure of securities analysts to initiate or maintain coverage of our common stock;
- downgrades by any securities analysts who follow our common stock;
- future sales of our common stock by our officers, directors and significant stockholders, including the Sponsors;
- market conditions or trends in our industry or the economy as a whole;
- investors' perceptions of our prospects;
- announcements by us or our competitors of significant contracts, acquisitions, joint ventures or capital commitments;
- changes in key personnel; and
- our limited public float in light of the Sponsors' beneficial ownership of a majority of our common stock, which may result in the trading of relatively small quantities of shares by our stockholders having a disproportionate positive or negative influence on the market price of our common stock.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies, including companies in our industry. In the past, securities class action litigation has followed periods of market volatility. If we were involved in securities litigation, we could incur substantial costs, and our resources and the attention of management could be diverted from our business.

***The Sponsors have influence over significant corporate activities and their interests may not align with yours.***

Madison Dearborn beneficially owns approximately 15.5% of our common stock and Providence Equity beneficially owns approximately 13.7% of our common stock as of February 20, 2015. As a result of their ownership, each Sponsor, so long as it holds a sizable portion of our outstanding common stock, will have substantial voting power with respect to matters submitted to a vote of stockholders. In addition, so long as each Sponsor has representation on our board of directors, it will have the ability to exercise influence over decision-making with respect to our business direction and policies. Matters over which each of the Sponsors may, directly or indirectly, exercise influence include:

- the election of our board of directors and the appointment and removal of our officers;
- mergers and other business combination transactions, including proposed transactions that would result in our stockholders receiving a premium price for their shares;
- other acquisitions or dispositions of businesses or assets;
- incurrence of indebtedness and the issuance of equity securities;
- repurchase of stock and payment of dividends; and
- the issuance of shares to management under our equity incentive plans.

Under our amended and restated certificate of incorporation, each Sponsor and its affiliates do not have any obligation to present to us, and each Sponsor may separately pursue, corporate opportunities of which it becomes aware, even if those opportunities are ones that we would have pursued if granted the opportunity.

***Future sales of our common stock, or the perception in the public markets that these sales may occur, may depress our stock price.***

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could adversely affect the price of our common stock and could impair our ability to raise capital through the sale of additional shares. As of February 20, 2015, there were 172,275,656 shares of our common stock outstanding. The shares of our common stock sold in our initial public offering and in registered secondary offerings are freely tradable without restriction under the Securities Act of 1933, as amended (the “Securities Act”), except that any shares of our common stock that may be acquired by our directors, executive officers and other affiliates, as that term is defined in the Securities Act, may be sold only in compliance with certain volume limitations and other restrictions of Rule 144 under the Securities Act.

The remaining shares of our common stock, to the extent not previously sold pursuant to an exemption from registration, will continue to be “restricted securities” within the meaning of Rule 144 under the Securities Act and subject to certain restrictions on resale. Restricted securities may be sold in the public market only if they are registered under the Securities Act or are sold pursuant to an exemption from registration such as Rule 144 under the Securities Act.

As of February 20, 2015, the holders of approximately 53,000,000 shares of our common stock will continue to have the right to require us to register the sales of such shares under the Securities Act, under the terms of an agreement between us and the holders.

In the future, we may also issue our securities in connection with investments or acquisitions. The number of shares of our common stock issued in connection with an investment or acquisition could constitute a material portion of our then-outstanding shares of our common stock.

***Anti-takeover provisions in our charter documents and Delaware law might discourage or delay acquisition attempts for us that you might consider favorable.***

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may make the acquisition of the Company more difficult without the approval of our board of directors. These provisions:

- authorize the issuance of undesignated preferred stock, the terms of which may be established and the shares of which may be issued without stockholder approval, and which may include super voting, special approval, dividend, or other rights or preferences superior to the rights of the holders of common stock;
- establish a classified board of directors so that not all members of our board of directors are elected at one time;
- generally prohibit stockholder action by written consent, requiring all stockholder actions be taken at a meeting of our stockholders;
- provide that special meetings of the stockholders can only be called by or at the direction of (i) our board of directors pursuant to a written resolution adopted by the affirmative vote of the majority of the total number of directors that the Company would have if there were no vacancies;
- establish advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings; and
- provide that our board of directors is expressly authorized to make, alter or repeal our amended and restated bylaws.

Our amended and restated certificate of incorporation also contains a provision that provides us with protections similar to Section 203 of the Delaware General Corporation Law, and will prevent us from engaging in a business combination with a person who acquires at least 15% of our common stock for a period of three years from the date such person acquired such common stock, unless board or stockholder approval is obtained prior to the acquisition. These anti-takeover provisions and other provisions under Delaware law could discourage, delay or prevent a transaction involving a change in control of the Company, even if doing so would benefit our stockholders. These provisions could also discourage proxy contests and make it more difficult for our stockholders to elect directors of their choosing and to cause us to take other corporate actions our stockholders desire.

***Conflicts of interest may arise because some of our directors are principals of our largest stockholders.***

Paul Finnegan and Robin Selati, who are principals of Madison Dearborn, and Glenn Creamer and Michael Dominguez, who are managing directors of Providence Equity, serve on our board of directors. As of February 20, 2015, Madison Dearborn and Providence Equity each continue to hold a sizable portion of our outstanding common stock. The Sponsors and the entities respectively controlled by them may hold equity interests in entities that directly or indirectly compete with us, and companies in which they currently invest may begin competing with us. As a result of these relationships, when conflicts arise between the interests of Madison Dearborn or Providence Equity, on the one hand, and of other stockholders, on the other hand, these directors may not be disinterested. Although our directors and officers have a duty of loyalty to us under Delaware law and our amended and restated certificate of incorporation, transactions that we enter into in which a director or officer has a conflict of interest are generally permissible so long as (1) the material facts relating to the director's or officer's relationship or interest as to the transaction are disclosed to our board of directors and a majority of our disinterested directors approves the transaction, (2) the material facts relating to the director's or officer's relationship or interest as to the transaction are disclosed to our stockholders and a majority of our disinterested stockholders approve the transaction or (3) the transaction is otherwise fair to us. Our amended and restated certificate of incorporation also provides that any principal, officer, member, manager and/or employee of a Sponsor or any entity that controls, is controlled by or under common control with a Sponsor (other than us or any company that is controlled by us) or a Sponsor-managed investment fund will not be required to offer any transaction opportunity of which they become aware to us and could take any such opportunity for themselves or offer it to other companies in which they have an investment, unless such opportunity is offered to them solely in their capacities as our directors.

***We cannot assure you that we will continue to pay dividends on our common stock or repurchase any of our common stock under our share repurchase program, and our indebtedness and certain tax considerations could limit our ability to continue to pay dividends on, or make share repurchases of, our common stock. If we do not continue to pay dividends, you may not receive any return on investment unless you are able to sell your common stock for a price greater than your purchase price.***

We expect to continue to pay a cash dividend on our common stock of \$0.0675 per share per quarter, or \$0.27 per share per annum. Any determination to pay dividends in the future will be at the discretion of our board of directors. Any determination to pay dividends on, or repurchase, shares of our common stock in the future will depend upon our results of operations, financial condition, business prospects, capital requirements, contractual restrictions, including those under our senior credit facilities and indentures, any potential indebtedness we may incur, restrictions imposed by applicable law, tax considerations and other factors our board of directors deems relevant. In addition, our ability to pay dividends on, or repurchase, shares of our common stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to us, in each case, under the terms of our current and any future agreements governing our indebtedness. There can be no assurance that we will continue to pay a dividend at the current rate or at all or that we will repurchase shares of our common stock. If we do not pay dividends in the future, realization of a gain on your investment will depend entirely on the appreciation of the price of our common stock, which may never occur. See "--Risks Related to Our Business--We have significant deferred cancellation of debt income" for a discussion of certain tax considerations that could affect our willingness to pay dividends in the future .

***We are a holding company and rely on dividends, distributions and other payments, advances and transfers of funds from our subsidiaries to meet our obligations.***

We are a holding company that does not conduct any business operations of our own. As a result, we are largely dependent upon cash dividends and distributions and other transfers from our subsidiaries to meet our obligations. The agreements governing the indebtedness of our subsidiaries impose restrictions on our subsidiaries' ability to pay dividends or other distributions to us. The deterioration of the earnings from, or other available assets of, our subsidiaries for any reason could also limit or impair their ability to pay dividends or other distributions to us.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

As of December 31, 2014 , we owned or leased a total of 2.3 million square feet of space throughout the U.S. and Canada. We own two properties: a combined office and a 450,000 square foot distribution center in Vernon Hills, Illinois, and a 513,000 square foot distribution center in North Las Vegas, Nevada. In addition, we conduct sales, services and administrative activities in various leased locations throughout the U.S. and Canada, including data centers in Madison, Wisconsin and Minneapolis, Minnesota.

We believe that our facilities are well maintained, suitable for our business and occupy sufficient space to meet our operating needs. As part of our normal business, we regularly evaluate sales center performance and site suitability. Leases covering our currently occupied leased properties expire at varying dates, generally within the next ten years. We anticipate no difficulty in retaining occupancy through lease renewals, month-to-month occupancy or replacing the leased properties with equivalent properties. We believe that suitable additional or substitute leased properties will be available as required.

### **Item 3. Legal Proceedings**

We are party to various legal proceedings that arise in the ordinary course of our business, which include commercial, intellectual property, employment, tort and other litigation matters. We are also subject to audit by federal, state and local authorities, and by various partners, group purchasing organizations and customers, including government agencies, relating to purchases and sales under various contracts. In addition, we are subject to indemnification claims under various contracts. From time to time, certain of our customers file voluntary petitions for reorganization or liquidation under the U.S. bankruptcy laws. In such cases, certain pre-petition payments received by us could be considered preference items and subject to return to the bankruptcy administrator.

As of December 31, 2014, we do not believe that there is a reasonable possibility that any material loss exceeding the amounts already recognized for these proceedings and matters, if any, has been incurred. However, the ultimate resolutions of these proceedings and matters are inherently unpredictable. As such, our financial condition and results of operations could be adversely affected in any particular period by the unfavorable resolution of one or more of these proceedings or matters.

### **Item 4. Mine Safety Disclosures**

Not applicable.

**Executive Officers**

<b>Name</b>	<b>Age</b>	<b>Position</b>
Thomas E. Richards	60	Chairman, President and Chief Executive Officer, and Director
Dennis G. Berger	50	Senior Vice President and Chief Coworker Services Officer
Neal J. Campbell	53	Senior Vice President and Chief Marketing Officer
Christina M. Corley	47	Senior Vice President - Corporate Sales
Douglas E. Eckrote	50	Senior Vice President - Strategic Solutions and Services
Christine A. Leahy	50	Senior Vice President, General Counsel and Corporate Secretary
Christina V. Rother	51	Senior Vice President - Public and Advanced Technology Sales
Jonathan J. Stevens	45	Senior Vice President - Operations and Chief Information Officer
Matthew A. Troka	44	Senior Vice President - Product and Partner Management
Ann E. Ziegler	56	Senior Vice President and Chief Financial Officer

**Thomas E. Richards** serves as our Chairman, President and Chief Executive Officer, as a member of our board of directors and as a manager of CDW LLC. Mr. Richards has served as our President and Chief Executive Officer since October 2011 and was named Chairman on January 1, 2013. From September 2009 to October 2011, Mr. Richards served as our President and Chief Operating Officer. Prior to joining CDW, Mr. Richards held leadership positions with Qwest Communications International Inc. ("Qwest"), a broadband Internet-based communications company. From 2008 to 2009, he served as Executive Vice President and Chief Operating Officer, where he was responsible for the day-to-day operation and performance of Qwest, and before assuming that role, was the Executive Vice President of the Business Markets Group from 2005 to 2008. Mr. Richards also has served as Chairman and Chief Executive Officer of Clear Communications Corporation and as Executive Vice President of Ameritech Corporation. Mr. Richards serves as a board member of Junior Achievement of Chicago, Rush University Medical Center and the University of Pittsburgh. Mr. Richards also is a member of the Economic Club of Chicago and the Executives' Club of Chicago. Mr. Richards is a graduate of the University of Pittsburgh where he earned a bachelor's degree and a graduate of Massachusetts Institute of Technology where he earned a Master of Science in Management as a Sloan Fellow.

**Dennis G. Berger** serves as our Senior Vice President and Chief Coworker Services Officer. Mr. Berger joined CDW in September 2005 as Vice President-Coworker Services. In January 2007, he was named Senior Vice President and Chief Coworker Services Officer. Mr. Berger is responsible for leading CDW's programs in coworker learning and development, benefits, compensation, performance management, coworker relations and talent acquisition. Prior to joining CDW, he served as Vice President of Human Resources at PepsiAmericas, a beverage company, from 2002 to 2005. Mr. Berger has also held human resources positions of increasing responsibility at Pepsi Bottling Group, Inc., PepsiCo, Inc. and GTE Corporation. Mr. Berger serves on the board of directors of Glenwood Academy, Anti-Defamation League of Chicago and Skills for Chicagoland's Future. Mr. Berger is a graduate of Northeastern University where he earned a bachelor's degree and a graduate of John M. Olin School of Business at Washington University in St. Louis where he earned a Master of Business Administration.

**Neal J. Campbell** serves as our Senior Vice President and Chief Marketing Officer. Mr. Campbell joined CDW in January 2011, and is responsible for the strategy and development of CDW's advertising, public relations, channel marketing, marketing intelligence and research, merchandising, microsites, creative services and direct marketing content, along with relationship marketing, corporate communications and e-commerce initiatives including content development, online marketing and e-procurement. Prior to joining CDW, Mr. Campbell served as Chief Executive Officer of TrafficCast, a provider of real-time and predictive traffic information to Google, Yahoo and others from 2008 to 2011. From 2006 to 2008, he served as Executive Vice President and General Manager-Strategic Marketing and Next Generation Products for ISCO International, a manufacturer of wireless telecommunications components. Mr. Campbell also spent 17 years with Motorola, most recently as Vice President and General Manager, GSM Portfolio Marketing and Planning for the company's mobile device business. He currently serves as a board member of TrafficCast and Junior Achievement of Chicago, and is on the Executive Advisory Council of Bradley University. Mr. Campbell is a graduate of Bradley University where he earned a bachelor's degree and a graduate of Northwestern University's Kellogg School of Management where he earned a Master of Business Administration.

**Christina M. Corley** serves as our Senior Vice President of Corporate Sales and is responsible for managing all aspects of our corporate sales force, including sales force strategy, structure, goals, operations, revenue generation and training and development. Prior to joining CDW in September 2011, Ms. Corley served as President and Chief Operating Officer of Zones, Inc., a provider of IT products and solutions, from 2006 to 2011. She served as Executive Vice President of Purchasing and Operations for Zones, Inc. from April 2005 to October 2006. She served as President of Corporate PC Source ("CPCS"), a

wholly owned subsidiary of Zones, Inc., from March 2003 to April 2005. Prior to its acquisition by Zones, Inc., Ms. Corley served as Chief Executive Officer of CPCS from 1999 to 2003. Ms. Corley began her career in sales and marketing, holding various positions at IBM, Dataflex and VisionTek. She currently serves as a board member of the Boys and Girls Club of Chicago. Ms. Corley is a graduate of the University of Illinois at Urbana-Champaign where she earned a bachelor's degree and a graduate of Northwestern University's Kellogg School of Management where she earned a Master of Business Administration in management and strategy.

**Douglas E. Eckrote** serves as our Senior Vice President of Strategic Solutions and Services and is responsible for our technology specialist teams focusing on servers and storage, unified communications, security, wireless, power and cooling, networking, software licensing and mobility solutions. He also holds responsibility for CDW Canada, Inc. Mr. Eckrote joined CDW in 1989 as an account manager. Mr. Eckrote was appointed Director of Operations in 1996, Vice President of Operations in 1999 and Senior Vice President of Purchasing in April 2001. In October 2001, he was named Senior Vice President of Purchasing and Operations. He was named Senior Vice President of Operations, Services and Canada in 2006 and assumed his current role in 2009. Prior to joining CDW, Eckrote worked in outside sales for Arrow Electronics and Cintas Uniform Company. From 2003 to 2009, Mr. Eckrote served on the board of directors of the Make-A-Wish Foundation of Illinois, completing the last two years as board chair, and served on the Make-A-Wish Foundation of America National Chapter Performance Committee from 2009-2014. Mr. Eckrote also served on the board of directors of the Center for Enriched Living from 2002-2011, serving as Vice President from 2004-2005, President from 2006-2008, board emeritus from 2009-2011 and currently serves as a trustee. Mr. Eckrote is a graduate of Purdue University where he earned a bachelor's degree and a graduate of Northwestern University's Kellogg School of Management where he earned an Executive Master of Business Administration.

**Christine A. Leahy** serves as our Senior Vice President, General Counsel and Corporate Secretary and is responsible for our legal, corporate governance, enterprise risk management and ethics and compliance functions. She also is responsible for our international strategy and serves on the board of directors of Kelway, a UK-based technology solutions provider in which CDW has a minority investment. Ms. Leahy joined CDW in January 2002. Prior to that, Ms. Leahy served as a corporate partner in the Chicago office of Sidley Austin LLP where she specialized in mergers and acquisitions, strategic counseling, corporate governance and securities law. Ms. Leahy serves on the board of trustees of Children's Home and Aid. Ms. Leahy is a graduate of Brown University where she earned a bachelor's degree and a graduate of Boston College Law School where she earned her Juris Doctor. She also completed the CEO Perspective and Women's Director Development Programs at Northwestern University's Kellogg School of Management.

**Christina V. Rother** serves as our Senior Vice President of Public and Advanced Technology Sales and is responsible for managing all aspects of our public sector and advanced technology sales forces, including sales force strategy, structure, goals, operations, revenue generation and training and development. Ms. Rother joined CDW in 1991 as an account manager. In 2002, she was appointed Vice President for Education and State and Local Sales. In 2005, she was chosen to lead our newly formed healthcare sales team. Beginning in 2006, Ms. Rother has held various positions ranging from Group Vice President of CDW Government LLC, President of CDW Government LLC and Senior Vice President of Sales. In September 2011, Ms. Rother assumed her current role as Senior Vice President of Public and Advanced Technology Sales. Prior to joining CDW, Ms. Rother held a number of sales positions with technology companies including Laser Computers and Price Electronics. Ms. Rother currently serves as chair of the board of directors of the Make-A-Wish Foundation of Illinois. Ms. Rother is a graduate of the University of Illinois at Chicago where she earned a bachelor's degree.

**Jonathan J. Stevens** serves as our Senior Vice President of Operations and Chief Information Officer. Mr. Stevens joined CDW in June 2001 as Vice President-Information Technology, was named Chief Information Officer in January 2002 and Vice President-International and Chief Information Officer from 2005 until December 2006. In January 2007, he was named Senior Vice President and Chief Information Officer and assumed his current role in November 2009. Mr. Stevens is responsible for the strategic direction of our information technology. Additionally, he holds responsibility for our distribution centers, transportation, facilities, customer relations and operational excellence practices. Prior to joining CDW, Mr. Stevens served as regional technology director for Avanade, an international technology integration company formed through a joint venture between Microsoft and Accenture from 2000 to 2001. Prior to that, Mr. Stevens was a principal with Microsoft Consulting Services and led an information technology group for a corporate division of AT&T/NCR. He currently serves on the board of directors of SingleWire Software, LLC and Northeast Illinois Council: Boy Scouts of America. Mr. Stevens is a graduate of the University of Dayton where he earned a bachelor's degree.

**Matthew A. Troka** serves as our Senior Vice President of Product and Partner Management. Mr. Troka is responsible for managing our relationships with all of our vendor partners. In addition, he directs the day-to-day operations of our purchasing department. Mr. Troka joined CDW in 1992 as an account manager and became a sales manager in 1995. From 1998 to 2001, he served as Corporate Sales Director. From 2001 to 2004, Mr. Troka was Senior Director of Purchasing. From 2004 to 2006, Mr. Troka served as Vice President of Purchasing. From 2006 to 2011, Mr. Troka was Vice President of Product and Partner Management. On March 3, 2011, Mr. Troka was elected Senior Vice President of Product and Partner Management.

Mr. Troka serves as a member of the board of directors of Encompass Championship Charities. Mr. Troka is a graduate of the University of Illinois where he earned a bachelor's degree.

**Ann E. Ziegler** joined CDW in April 2008 as Senior Vice President and Chief Financial Officer. Prior to joining CDW, Ms. Ziegler spent 15 years at Sara Lee Corporation ("Sara Lee"), a global consumer goods company, in a number of executive roles including finance, mergers and acquisitions, strategy and general management positions in both U.S. and international businesses. Most recently, from 2005 until April 2008, Ms. Ziegler served as Chief Financial Officer and Senior Vice President of Administration for Sara Lee Food and Beverage. Prior to joining Sara Lee, Ms. Ziegler was a corporate attorney at Skadden, Arps, Slate, Meagher & Flom. Ms. Ziegler serves on the board of directors of Hanesbrands, Inc, Groupon, Inc., and the board of governors of the Smart Museum of Art at the University of Chicago. During the previous five years, Ms. Ziegler also served on the board of directors of Unitrin, Inc. Ms. Ziegler is a graduate of The College of William and Mary where she earned a bachelor's degree and a graduate of the University of Chicago Law School where she earned her Juris Doctor.



## PART II

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market Information**

Our common stock has been listed on the NASDAQ Global Select Market since June 27, 2013 under the symbol “CDW.” Prior to that date, there was no public market for our common stock. Shares sold in our initial public offering (“IPO”) were priced at \$17.00 per share on June 26, 2013. The following table sets forth the ranges of high and low sales prices per share of our common stock as reported on the NASDAQ Global Select Market and the cash dividends per share of common stock declared for the periods indicated.

Year ended December 31, 2014	High	Low	Dividends declared per share
Fourth quarter	\$ 36.08	\$ 27.59	\$ 0.0675
Third quarter	\$ 33.80	\$ 30.07	\$ 0.0425
Second quarter	\$ 32.41	\$ 26.70	\$ 0.0425
First quarter	\$ 27.53	\$ 22.72	\$ 0.0425

Year ended December 31, 2013	High	Low	Dividends declared per share
Fourth quarter	\$ 23.56	\$ 20.50	\$ 0.0425
Third quarter	\$ 24.51	\$ 18.26	\$ —
Second quarter (beginning June 27, 2013)	\$ 19.17	\$ 17.38	\$ —

**Holders**

As of February 20, 2015, there were 71 holders of record of our common stock. The number of beneficial stockholders is substantially greater than the number of holders of record because a portion of our common stock is held through brokerage firms.

**Dividends**

On February 10, 2015, we announced that our board of directors declared a quarterly cash dividend on our common stock of \$0.0675 per share. The dividend will be paid on March 10, 2015 to all stockholders of record as of the close of business on February 25, 2015.

We expect to continue to pay quarterly cash dividends on our common stock in the future, but such payments remain at the discretion of our board of directors and will depend upon our results of operations, financial condition, business prospects, capital requirements, contractual restrictions, any potential indebtedness we may incur, restrictions imposed by applicable law, tax considerations and other factors that our board of directors deems relevant. In addition, our ability to pay dividends on our common stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to us, in each case, under the terms of our current and any future agreements governing our indebtedness. For a discussion of our cash resources and needs and restrictions on our ability to pay dividends, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources” included elsewhere in this report. For additional discussion of restrictions on our ability to pay dividends, see Note 7 to the accompanying audited consolidated financial statements included elsewhere in this report.

**Issuer Purchases of Equity Securities**

On November 6, 2014, we announced that the board of directors approved a \$500 million share repurchase program, which became effective immediately, under which we may repurchase shares of our common stock in the open market or through privately negotiated transactions, depending on share price, market conditions and other factors. The share repurchase program does not obligate us to repurchase any dollar amount or number of shares, and repurchases may be commenced or

suspended from time to time without prior notice. As of the date of this filing, no shares have been repurchased under the share repurchase program.

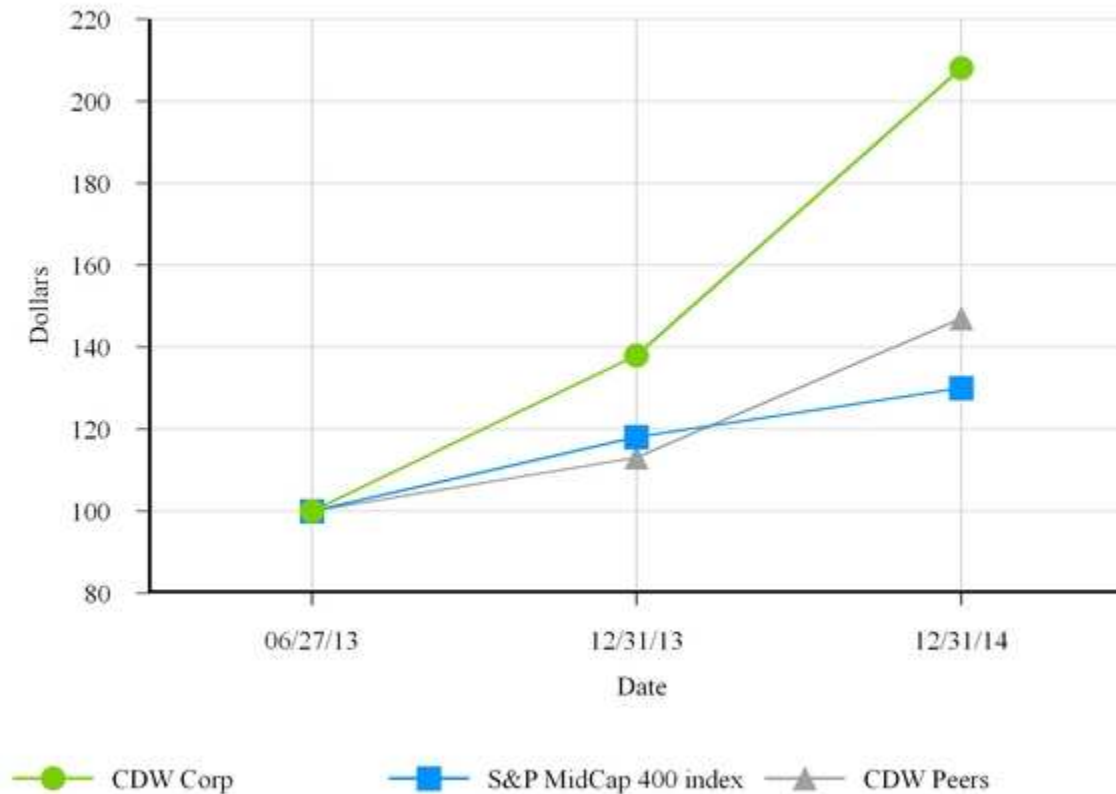
### **Stock Performance Graph**

The information contained in this Stock Performance Graph section shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Securities Exchange Act of 1934, except to the extent that we specifically incorporate it by reference into a document filed under the Securities Act of 1933 or the Securities Exchange Act of 1934.

The following graph compares the cumulative total shareholder return, calculated on a dividend reinvested basis, on \$100.00 invested at the opening of the market on June 27, 2013, the date our common stock first traded on the NASDAQ Global Select Market, through and including the market close on December 31, 2014, with the cumulative total return for the same time period of the same amount invested in the S&P MidCap 400 index and a peer group index. Our peer group index for 2014 consists of the following companies: Accenture plc, Anixter International, Inc., Arrow Electronics, Inc., Avnet, Inc., CGI Group Inc., Genuine Parts Company, Henry Schein, Inc., Insight Enterprises, Inc., Owens & Minor, Inc., Patterson Companies, Inc., SYNEX Corporation, United Stationers Inc., W.W. Grainger, Inc. and Wesco International, Inc. This peer group was selected based on a review of publicly available information about these companies and our determination that they met one or more of the following criteria: (i) similar size in terms of revenue and/or enterprise value (one-third to three times our revenue or enterprise value); (ii) operates in a business-to-business distribution environment; (iii) members of the technology industry; (iv) similar customers ( *i.e.* , business, government, healthcare, and education); (v) companies that provide services and/or solutions; and (vi) similar EBITDA and gross margins.

Shareholder returns over the indicated period are based on historical data and should not be considered indicative of future shareholder returns.

## Stock Performance Graph



	June 27, 2013	December 31, 2013	December 31, 2014
CDW Corp	\$ 100	\$ 138	\$ 208
S&P MidCap 400 index	100	118	130
CDW Peers	100	113	147

### Recent Sales of Unregistered Securities

None.

### Use of Proceeds from Registered Securities

None.

### Item 6. Selected Financial Data

The selected financial data set forth below are not necessarily indicative of the results of future operations and should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited consolidated financial statements and the related notes included elsewhere in this report.

We have derived the selected financial data presented below as of December 31, 2014 and December 31, 2013 and for the years ended December 31, 2014, 2013, and 2012 from our audited consolidated financial statements and related notes, which are included elsewhere in this report. The selected financial data as of December 31, 2011 and December 31, 2010 have been derived from our audited consolidated financial statements as of and for those periods, which are not included in this report.

The following are some of the items affecting comparability of the selected financial data for the periods presented:

- During the years ended December 31, 2014, 2013, 2012, and 2011, we recorded net losses on extinguishments of long-term debt of \$90.7 million , \$64.0 million , \$17.2 million , and \$118.9 million , respectively. The losses represented the difference between the amount paid upon extinguishment, including call premiums and expenses paid to the debt holders and agents, and the net carrying amount of the extinguished debt, adjusted for a portion of the unamortized deferred financing costs. Refer to Note 7 to the accompanying audited consolidated financial statements included elsewhere in this report for additional information on long-term debt.
- During the year ended December 31, 2013, we recorded IPO- and secondary-offering related expenses of \$75.0 million. Refer to Note 9 to the accompanying audited consolidated financial statements included elsewhere in this report for additional information on the IPO- and secondary-offering related expenses.

(dollars and shares in millions, except per share amounts)	Years Ended December 31,				
	2014	2013	2012	2011	2010
<b>Statement of Operations Data:</b>					
Net sales	\$ 12,074.5	\$ 10,768.6	\$ 10,128.2	\$ 9,602.4	\$ 8,801.2
Cost of sales	10,153.2	9,008.3	8,458.6	8,018.9	7,410.4
Gross profit	1,921.3	1,760.3	1,669.6	1,583.5	1,390.8
Selling and administrative expenses	1,110.3	1,120.9	1,029.5	990.1	932.1
Advertising expense	138.0	130.8	129.5	122.7	106.0
Income from operations	673.0	508.6	510.6	470.7	352.7
Interest expense, net	(197.3)	(250.1)	(307.4)	(324.2)	(391.9)
Net (loss) gain on extinguishments of long-term debt	(90.7)	(64.0)	(17.2)	(118.9)	2.0
Other income, net	2.7	1.0	0.1	0.7	0.2
Income (loss) before income taxes	387.7	195.5	186.1	28.3	(37.0)
Income tax (expense) benefit	(142.8)	(62.7)	(67.1)	(11.2)	7.8
Net income (loss)	\$ 244.9	\$ 132.8	\$ 119.0	\$ 17.1	\$ (29.2)
Net income (loss) per common share:					
Basic	\$1.44	\$0.85	\$0.82	\$0.12	\$(0.20)
Diluted	\$1.42	\$0.84	\$0.82	\$0.12	\$(0.20)
Weighted-average common shares outstanding:					
Basic	170.6	156.6	145.1	144.8	144.4
Diluted	172.8	158.7	145.8	144.9	144.4
<b>Balance Sheet Data (at period end):</b>					
Cash and cash equivalents	\$ 344.5	\$ 188.1	\$ 37.9	99.9	\$ 36.6
Working capital	985.4	810.9	666.5	538.1	675.4
Total assets	6,099.9	5,924.6	5,720.0	5,967.7	5,943.8
Total debt and capitalized lease obligations <sup>(1)</sup>	3,190.0	3,251.2	3,771.0	4,066.0	4,290.0
Total shareholders' equity (deficit)	936.5	711.7	136.5	(7.3)	(43.5)
<b>Other Financial Data:</b>					
Capital expenditures	\$ 55.0	\$ 47.1	\$ 41.4	45.7	\$ 41.5
Depreciation and amortization	207.9	208.2	210.2	204.9	209.4
Gross profit as a percentage of net sales	15.9%	16.3%	16.5%	16.5%	15.8%
Ratio of earnings to fixed charges <sup>(2)</sup>	2.9	1.8	1.6	1.1	(a)
EBITDA <sup>(3)</sup>	\$ 792.9	\$ 653.8	\$ 703.7	557.4	\$ 564.3
Adjusted EBITDA <sup>(3)</sup>	907.0	808.5	766.6	717.3	601.8
Non-GAAP net income <sup>(4)</sup>	409.9	314.3	247.1	198.8	85.7
<b>Statement of Cash Flows Data:</b>					
Net cash provided by (used in):					
Operating activities	\$ 435.0	\$ 366.3	\$ 317.4	\$ 214.7	\$ 423.7
Investing activities	(164.8)	(47.1)	(41.7)	(56.0)	(125.4)
Financing activities	(112.0)	(168.3)	(338.0)	(95.4)	(350.1)

- (1) Excludes borrowings of \$332.1 million, \$256.6 million, \$249.2 million, \$278.7 million and \$28.2 million, as of December 31, 2014, 2013, 2012, 2011, and 2010, respectively, under our inventory financing agreements. We do not include these borrowings in total debt because we have not in the past incurred, and in the future do not expect to incur, any interest expense or late fees under these agreements.



- (2) For purposes of calculating the ratio of earnings to fixed charges, earnings consist of earnings before income taxes minus income from equity investments plus distributed income from equity investments and fixed charges. Fixed charges consist of interest expense and the portion of rental expense we believe is representative of the interest component of rental expense.

(a) For the year ended December 31, 2010, earnings available for fixed charges were inadequate to cover fixed charges by \$37.0 million.

- (3) EBITDA is defined as consolidated net income (loss) before interest expense, income tax expense (benefit), depreciation, and amortization. Adjusted EBITDA, which is a measure defined in our credit agreements, is calculated by adjusting EBITDA for certain items of income and expense including (but not limited to) the following: (a) non-cash equity-based compensation; (b) goodwill impairment charges; (c) sponsor fees; (d) certain consulting fees; (e) debt-related legal and accounting costs; (f) equity investment income and losses; (g) certain severance and retention costs; (h) gains and losses from the early extinguishment of debt; (i) gains and losses from asset dispositions outside the ordinary course of business; and (j) non-recurring, extraordinary or unusual gains or losses or expenses.

We have included a reconciliation of EBITDA and Adjusted EBITDA in the table below. Both EBITDA and Adjusted EBITDA are considered non-GAAP financial measures. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that EBITDA and Adjusted EBITDA provide helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our credit agreements.

The following unaudited table sets forth reconciliations of net income (loss) to EBITDA and EBITDA to Adjusted EBITDA for the periods presented:

(in millions)	Years Ended December 31,				
	2014	2013	2012	2011	2010
Net income (loss)	\$ 244.9	\$ 132.8	\$ 119.0	\$ 17.1	\$ (29.2)
Depreciation and amortization	207.9	208.2	210.2	204.9	209.4
Income tax expense (benefit)	142.8	62.7	67.1	11.2	(7.8)
Interest expense, net	197.3	250.1	307.4	324.2	391.9
<b>EBITDA</b>	<b>792.9</b>	<b>653.8</b>	<b>703.7</b>	<b>557.4</b>	<b>564.3</b>
Non-cash equity-based compensation	16.4	8.6	22.1	19.5	11.5
Sponsor fees	—	2.5	5.0	5.0	5.0
Consulting and debt-related professional fees	—	0.1	0.6	5.1	15.1
Net loss (gain) on extinguishments of long-term debt	90.7	64.0	17.2	118.9	(2.0)
Litigation, net <sup>(i)</sup>	(0.9)	(4.1)	4.3	—	—
IPO- and secondary-offering related expenses	1.4	75.0	—	—	—
Other adjustments <sup>(ii)</sup>	6.5	8.6	13.7	11.4	7.9
<b>Adjusted EBITDA</b>	<b>\$ 907.0</b>	<b>\$ 808.5</b>	<b>\$ 766.6</b>	<b>\$ 717.3</b>	<b>\$ 601.8</b>

(i) Relates to unusual, non-recurring litigation matters.

(ii) Other adjustments primarily include certain retention costs and equity investment income.

The following unaudited table sets forth a reconciliation of EBITDA to net cash provided by operating activities for the periods presented:

(in millions)	Years Ended December 31,				
	2014	2013	2012	2011	2010
EBITDA	\$ 792.9	\$ 653.8	\$ 703.7	\$ 557.4	\$ 564.3
Depreciation and amortization	(207.9)	(208.2)	(210.2)	(204.9)	(209.4)
Income tax (expense) benefit	(142.8)	(62.7)	(67.1)	(11.2)	7.8
Interest expense, net	(197.3)	(250.1)	(307.4)	(324.2)	(391.9)
Net income (loss)	244.9	132.8	119.0	17.1	(29.2)
Depreciation and amortization	207.9	208.2	210.2	204.9	209.4
Equity-based compensation expense	16.4	46.6	22.1	19.5	11.5
Amortization of deferred financing costs, debt premium, and debt discount, net	6.4	8.8	13.6	15.7	18.0
Deferred income taxes	(89.1)	(48.7)	(56.3)	(10.2)	(4.3)
Allowance for doubtful accounts	0.3	—	—	0.4	(1.3)
Realized loss on interest rate swap agreements	—	—	—	2.8	51.5
Net loss (gain) on extinguishments of long-term debt	90.7	64.0	17.2	118.9	(2.0)
Income from equity investments	(1.2)	—	—	—	—
Changes in assets and liabilities	(41.8)	(47.1)	(9.4)	(158.3)	165.3
Other non-cash items	0.5	1.7	1.0	3.9	4.8
Net cash provided by operating activities	\$ 435.0	\$ 366.3	\$ 317.4	\$ 214.7	\$ 423.7



- (4) Non-GAAP net income is considered a non-GAAP financial measure. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that non-GAAP net income provides meaningful information regarding our operating performance and our prospects for the future. This supplemental measure excludes, among other things, charges related to the amortization of acquisition-related intangibles, non-cash equity-based compensation and gains and losses from the early extinguishment of debt. The following unaudited table sets forth a reconciliation of net income (loss) to non-GAAP net income for the periods presented:

(in millions)	Years Ended December 31,				
	2014	2013	2012	2011	2010
Net income (loss)	\$ 244.9	\$ 132.8	\$ 119.0	\$ 17.1	\$ (29.2)
Amortization of intangibles <sup>(i)</sup>	161.2	161.2	163.7	165.7	166.8
Non-cash equity-based compensation	16.4	8.6	22.1	19.5	11.5
Litigation, net <sup>(ii)</sup>	(0.6)	(6.3)	—	—	—
Net loss on extinguishments of long-term debt	90.7	64.0	17.2	118.9	(2.0)
Interest expense adjustment related to extinguishments of long-term debt <sup>(iii)</sup>	(1.1)	(7.5)	(3.3)	(19.4)	(0.7)
IPO- and secondary-offering related expenses <sup>(iv)</sup>	1.4	75.0	—	—	—
Debt-related refinancing costs <sup>(v)</sup>	—	—	—	3.8	5.6
Aggregate adjustment for income taxes <sup>(vi)</sup>	(103.0)	(113.5)	(71.6)	(106.8)	(66.3)
Non-GAAP net income	<u>\$ 409.9</u>	<u>\$ 314.3</u>	<u>\$ 247.1</u>	<u>\$ 198.8</u>	<u>\$ 85.7</u>

- (i) Includes amortization expense for acquisition-related intangible assets, primarily customer relationships and trade names.
- (ii) Relates to unusual, non-recurring litigation matters.
- (iii) Reflects adjustments to interest expense resulting from debt extinguishments. Represents the difference between interest expense previously recognized under the effective interest method and actual interest paid.
- (iv) IPO- and secondary-offering related expenses consist of the following:

(in millions)	Years Ended December 31,	
	2014	2013
Acceleration charge for certain equity awards and related employer payroll taxes	\$ —	\$ 40.7
RDU Plan cash retention pool accrual	—	7.5
Management services agreement termination fee	—	24.4
Other expenses	1.4	2.4
IPO- and secondary-offering related expenses	<u>\$ 1.4</u>	<u>\$ 75.0</u>

- (v) Represents fees and costs expensed related to the December 2010 and March 2011 amendments to our prior senior secured term loan facility.
- (vi) Based on a normalized effective tax rate of 39.0%.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*Unless otherwise indicated or the context otherwise requires, as used in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," the terms "we," "us," "the Company," "our," "CDW" and similar terms refer to CDW Corporation and its subsidiaries. "Management's Discussion and Analysis of Financial Condition and Results of Operations" should be read in conjunction with the audited consolidated financial statements and the related notes included elsewhere in this report. This discussion contains forward-looking statements that are subject to numerous risks and uncertainties. Actual results may differ materially from those contained in any forward-looking statements. See "Forward-Looking Statements" above.*

### Overview

CDW is a Fortune 500 company and a leading provider of integrated information technology ("IT") solutions in the U.S. and Canada. We help our customer base of approximately 250,000 small, medium and large business, government, education and healthcare customers by delivering critical solutions to their increasingly complex IT needs. Our broad array of offerings ranges from discrete hardware and software products to integrated IT solutions such as mobility, security, data center optimization, cloud computing, virtualization and collaboration. We are technology "agnostic," with a product portfolio that includes more than 100,000 products from more than 1,000 brands. We provide our products and solutions through sales force and service delivery teams consisting of nearly 4,600 coworkers, including more than 1,800 field sellers, highly-skilled technology specialists and advanced service delivery engineers.

We are a leading U.S. sales channel partner for many original equipment manufacturers ("OEMs") and software publishers (collectively, our "vendor partners"), whose products we sell or include in the solutions we offer. We believe we are an important extension of our vendor partners' sales and marketing capabilities, providing them with a cost-effective way to reach customers and deliver a consistent brand experience through our established end-market coverage and extensive customer access.

We have two reportable segments: Corporate, which is comprised primarily of private sector business customers, and Public, which is comprised of government agencies and education and healthcare institutions. Our Corporate segment is divided into a medium/large business customer channel, primarily serving customers with more than 100 employees, and a small business customer channel, primarily serving customers with up to 100 employees. We also have three other operating segments, CDW Advanced Services, Canada and Kelway TopCo Limited ("Kelway"), which do not meet the reportable segment quantitative thresholds and, accordingly, are combined together as "Other." In November 2014, we acquired a 35% non-controlling equity interest in Kelway. See Note 15 to the accompanying audited consolidated financial statements included elsewhere in this report for additional details.

The CDW Advanced Services business consists primarily of customized engineering services delivered by technology specialists and engineers, and managed services that include Infrastructure as a Service ("IaaS") offerings. Revenues from the sale of hardware, software, custom configuration and third-party provided services are recorded within our Corporate and Public segments.

We may sell all or only select products that our vendor partners offer. Each vendor partner agreement provides for specific terms and conditions, which may include one or more of the following: product return privileges, price protection policies, purchase discounts and vendor incentive programs, such as purchase or sales rebates and cooperative advertising reimbursements. We also resell software for major software publishers. Our agreements with software publishers allow the end-user customer to acquire software or licensed products and services. In addition to helping our customers determine the best software solutions for their needs, we help them manage their software agreements, including warranties and renewals. A significant portion of our advertising and marketing expenses is reimbursed through cooperative advertising reimbursement programs with our vendor partners. These programs are at the discretion of our vendor partners and are typically tied to sales or purchasing volumes or other commitments to be met by us within a specified period of time.

### Trends and Key Factors Affecting our Financial Performance

We believe the following trends may have an important impact on our financial performance:

- Our Public segment sales are impacted by government spending policies, budget priorities and revenue levels. An adverse change in any of these factors could cause our Public segment customers to reduce their purchases or to terminate or not renew contracts with us, which could adversely affect our business, results of operations or cash flows. Although our sales to the federal government are diversified across multiple

agencies and departments, they collectively accounted for approximately 7% , 7% and 10% of our net sales for the years ended December 31, 2014, 2013 and 2012, respectively. In 2013, and through the second quarter of 2014, Public segment results were impacted by the combined and residual negative effects of sequestration, the partial shutdown of the federal government in 2013 and federal government budget uncertainty. However, with the finalization of federal budget allocations in early 2014, we began to see improvement in federal sales in the second quarter of 2014. The momentum continued through the third quarter of 2014 in conjunction with the federal fiscal year-end. This recovery continued into the fourth quarter of 2014 in connection with increased customer confidence that a federal budget for 2015 would be in place.

- An important factor affecting our ability to generate sales and achieve our targeted operating results is the impact of general economic conditions on our customers' willingness to spend on information technology. While macroeconomic uncertainty drove a cautious approach to customer spending in the early part of 2013, uncertainty began to dissipate in the back half of 2013 and continued to dissipate throughout 2014. Our sales to small business customers increased in 2014 as a result of the improvement in the macroeconomic environment. We will continue to closely monitor macroeconomic conditions during 2015. Uncertainties related to potential reductions in government spending, requirements associated with implementation of the Affordable Care Act, potential changes in tax and regulatory policy, weakening consumer and business confidence or increased unemployment could result in reduced or deferred spending on information technology products and services by our customers and result in increased competitive pricing pressures.
- We believe that our customers' transition to more complex technology solutions will continue to be an important growth area for us in the future. However, because the market for technology products and services is highly competitive, our success at capitalizing on this transition will be based on our ability to tailor specific solutions to customer needs, the quality and breadth of our product and service offerings, the knowledge and expertise of our sales force, price, product availability and speed of delivery. In 2014, market dynamics, including client device refresh and digital testing needs for K-12 students, drove customer demand for transactional products, primarily client devices, which include notebooks/mobile devices and desktops. Our diverse product suite of more than 100,000 products from over 1,000 leading and emerging brands and efficient, distribution capabilities enabled us to capitalize on this demand. While sales growth for transactional products was strong during the year, growth in solutions-focused products, including netcomm and software, also contributed to the increase in net sales during 2014. We expect the demand for client devices to moderate in 2015, both from the client device refresh slowing and a wind-down in preparation for digital testing requirements.

### Key Business Metrics

Our management monitors a number of financial and non-financial measures and ratios on a regular basis in order to track the progress of our business and make adjustments as necessary. We believe that the most important of these measures and ratios include average daily sales, gross margin, operating margin, net income, Non-GAAP net income, net income per diluted share, Non-GAAP net income per diluted share, EBITDA and Adjusted EBITDA, return on invested capital, cash and cash equivalents, cash flow, net working capital, cash conversion cycle (defined to be days of sales outstanding in accounts receivable plus days of supply in inventory minus days of purchases outstanding in accounts payable, based on a rolling three-month average), debt levels including available credit and leverage ratios, sales per coworker and coworker turnover. These measures and ratios are compared to standards or objectives set by management, so that actions can be taken, as necessary, in order to achieve the standards and objectives. Non-GAAP net income, Non-GAAP net income per diluted share and Adjusted EBITDA are non-GAAP financial measures. We believe these measures provide helpful information with respect to the company's operating performance and cash flows including our ability to meet our future debt service, capital expenditures, dividend payments, and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our senior credit facilities. See "Selected Financial Data" included elsewhere in this report for the definitions of Non-GAAP net income and Adjusted EBITDA and reconciliations to net income.

The results of certain key business metrics are as follows:

(dollars in millions)	Years Ended December 31,		
	2014	2013	2012
Net sales	\$ 12,074.5	\$ 10,768.6	\$ 10,128.2
Gross profit	1,921.3	1,760.3	1,669.6
Income from operations	673.0	508.6	510.6
Net income	244.9	132.8	119.0
Non-GAAP net income	409.9	314.3	247.1
Adjusted EBITDA	907.0	808.5	766.6
Average daily sales	47.5	42.4	39.9
Net debt (defined as total debt minus cash and cash equivalents)	2,845.5	3,063.1	3,733.1
Cash conversion cycle (in days) <sup>(1)</sup>	21	23	24

(1) Cash conversion cycle is defined as days of sales outstanding in accounts receivable plus days of supply in inventory minus days of purchases outstanding in accounts payable, based on a rolling three-month average. The prior periods have been revised to conform to the current definition.

## Results of Operations

### Year Ended December 31, 2014 Compared to Year Ended December 31, 2013

The following table presents our results of operations, in dollars and as a percentage of net sales, for the years ended December 31, 2014 and 2013 :

	Year Ended December 31, 2014		Year Ended December 31, 2013	
	Dollars in Millions	Percentage of Net Sales	Dollars in Millions	Percentage of Net Sales
Net sales	\$ 12,074.5	100.0 %	\$ 10,768.6	100.0 %
Cost of sales	10,153.2	84.1	9,008.3	83.7
Gross profit	1,921.3	15.9	1,760.3	16.3
Selling and administrative expenses	1,110.3	9.2	1,120.9	10.4
Advertising expense	138.0	1.1	130.8	1.2
Income from operations	673.0	5.6	508.6	4.7
Interest expense, net	(197.3)	(1.6)	(250.1)	(2.3)
Net loss on extinguishments of long-term debt	(90.7)	(0.8)	(64.0)	(0.6)
Other income, net	2.7	—	1.0	—
Income before income taxes	387.7	3.2	195.5	1.8
Income tax expense	(142.8)	(1.2)	(62.7)	(0.6)
Net income	\$ 244.9	2.0 %	\$ 132.8	1.2 %

## Net sales

The following table presents our net sales by segment, in dollars and as a percentage of total net sales, and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2014 and 2013 :

	Years Ended December 31,					
	2014		2013		Dollar Change	Percent Change <sup>(1)</sup>
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales		
Corporate	\$ 6,475.5	53.6%	\$ 5,960.1	55.3%	\$ 515.4	8.6%
Public	4,879.4	40.4	4,164.5	38.7	714.9	17.2
Other	719.6	6.0	644.0	6.0	75.6	11.7
Total net sales	\$ 12,074.5	100.0%	\$ 10,768.6	100.0%	\$ 1,305.9	12.1%

(1) There were 254 selling days in both the years ended December 31, 2014 and 2013 .

The following table presents our net sales by customer channel for our Corporate and Public segments and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2014 and 2013 . Net sales of \$150.1 million for the year ended December 31, 2013 have been reclassified from the small business customer channel to the medium/large customer channel to conform to the current period presentation.

(dollars in millions)

	Years Ended December 31,			
	2014	2013	Dollar Change	Percent Change
<b>Corporate:</b>				
Medium / Large	\$ 5,485.4	\$ 5,052.7	\$ 432.7	8.6%
Small Business	990.1	907.4	82.7	9.1
Total Corporate	\$ 6,475.5	\$ 5,960.1	\$ 515.4	8.6%
<b>Public:</b>				
Government	\$ 1,449.4	\$ 1,250.6	\$ 198.8	15.9%
Education	1,824.0	1,449.0	375.0	25.9
Healthcare	1,606.0	1,464.9	141.1	9.6
Total Public	\$ 4,879.4	\$ 4,164.5	\$ 714.9	17.2%

Total net sales in 2014 increased \$1,305.9 million , or 12.1% , to \$12,074.5 million , compared to \$10,768.6 million in 2013 . There were 254 selling days for both the years ended December 31, 2014 and 2013 . The increase in total net sales was primarily the result of continued growth in transactional products driven by notebooks/mobile devices and desktop computers as customers across all channels refreshed their client devices and K-12 customers continued to prepare for digital testing requirements, and the addition of more than 140 customer-facing coworkers, the majority in pre- and post-sale technical positions such as technical specialists and service delivery roles. Growth in solutions-focused products, including netcomm and software, also contributed to the increase in net sales during 2014 .

Corporate segment net sales in 2014 increased \$515.4 million , or 8.6% , compared to 2013 , driven by sales growth in the medium/large customer channel. Within our Corporate segment, net sales to medium/large customers increased \$432.7 million , or 8.6% , between years primarily due to customers refreshing their client devices and making continued investments in technology infrastructure and a continued focus on seller productivity. This increase was led by growth in notebooks/mobile devices, netcomm products, software, and desktop computers. Net sales to small business customers increased \$82.7 million , or 9.1% , between years, driven by growth in notebooks/mobile devices and desktop computers due to customers refreshing their client devices.

Public segment net sales in 2014 increased \$714.9 million , or 17.2% , between years, driven by strong performance across all channels. In 2013, and through the second quarter of 2014, Public segment results were impacted by the combined and residual negative effects of sequestration, the partial shutdown of the federal government in 2013 and federal government budget uncertainty. However, with the finalization of federal budget allocations in early 2014, we began to see improvement in federal sales in the second quarter of 2014 and saw continued momentum through the third quarter of 2014 in conjunction with

the federal fiscal year-end. This recovery continued into the fourth quarter of 2014 in connection with increased customer confidence that a federal budget for 2015 would be in place. Net sales to government customers increased \$198.8 million , or 15.9% . The increase in net sales to the federal government was led by increases in sales of notebooks/mobile devices and desktop computers. The increase in net sales to state/local government customers was led by growth in sales of notebooks/mobile devices, netcomm products, enterprise storage, and software due to a continued focus on public safety solutions. Net sales to education customers increased \$375.0 million , or 25.9% , between years, led by growth in net sales to K-12 customers, reflecting increased sales of notebooks/mobile devices to support digital testing requirements. Net sales to healthcare customers increased \$141.1 million , or 9.6% , between periods, driven by growth in netcomm products, notebook/mobile devices, and desktop computers.

#### *Gross profit*

Gross profit increased \$161.0 million , or 9.1% , to \$1,921.3 million in 2014 , compared to \$1,760.3 million in 2013 . As a percentage of total net sales, gross profit decreased 40 basis points to 15.9% during 2014 , down from 16.3% in 2013 . Gross profit margin was negatively impacted 30 basis points by unfavorable price/mix changes within product margin, as transactional product categories such as notebooks/mobile devices and desktops experienced a higher rate of net sales growth than our overall net sales growth, accompanied by continuing product margin compression in these product categories. Additionally, we experienced an unfavorable impact of 10 basis points from vendor funding in 2014. Although vendor funding dollars increased, it represented a lower percentage of net sales in 2014 compared to 2013 . Vendor funding includes purchase discounts, volume rebates and cooperative advertising.

The gross profit margin may fluctuate based on various factors, including vendor incentive and inventory price protection programs, cooperative advertising funds classified as a reduction of cost of sales, product mix, net service contract revenue, commission revenue, pricing strategies, market conditions and other factors, any of which could result in changes in gross profit margins.

#### *Selling and administrative expenses*

Selling and administrative expenses decreased \$10.6 million , or 0.9% , to \$1,110.3 million in 2014 , compared to \$1,120.9 million in 2013 . The overall decrease was largely driven by the absence of \$74.3 million in costs incurred during 2013 related to the completion of our IPO. This decrease was partially offset by an increase of \$31.4 million, or 14.3%, of certain coworker costs between years which was primarily due to higher compensation consistent with increased coworker count and attainment-based compensation accruals tied to annual performance. Total coworker count was 7,211, up 244 from 6,967 at December 31, 2013 . In addition, sales payroll, including sales commissions and other variable compensation costs, increased \$18.6 million, or 3.9% between years, consistent with higher sales and gross profit. Further offsetting the decrease in selling and administrative expenses was an increase in long-term compensation expense and equity compensation expense of \$7.2 million during 2014.

As a percentage of total net sales, selling and administrative expenses decreased 120 basis points to 9.2% in 2014 , down from 10.4% in 2013 . The decrease in selling and administrative expenses as a percentage of net sales was largely driven by a decline of 70 basis points in costs related to the IPO in 2013 . Sales payroll as a percentage of net sales also decreased 30 basis points during 2014 reflecting the lower cost to serve transactional sales compared to solutions-focused sales, consistent with our variable compensation cost structure.

#### *Advertising expense*

Advertising expense increase d \$7.2 million , or 5.5% , to \$138.0 million in 2014 , compared to \$130.8 million in 2013 . As a percentage of net sales, advertising expense remained relatively consistent at 1.1% in 2014 , compared to 1.2% in 2013 . The dollar increase in advertising expense was due to a continued focus on advertising our solutions and products, which reinforces our reputation as a leading IT solutions provider.

*Income from operations*

The following table presents income from operations by segment, in dollars and as a percentage of net sales, and the year-over-year percentage change in income from operations for the years ended December 31, 2014 and 2013 :

	Year Ended December 31, 2014		Year Ended December 31, 2013		Percent Change in Income from Operations
	Dollars in Millions	Operating Margin Percentage	Dollars in Millions	Operating Margin Percentage	
<b>Segments: <sup>(1)</sup></b>					
Corporate	\$ 439.8	6.8%	\$ 363.3	6.1%	21.1%
Public	313.2	6.4	246.5	5.9	27.1
Other	32.9	4.6	27.2	4.2	20.9
Headquarters <sup>(2)</sup>	(112.9)	nm*	(128.4)	nm*	12.0
Total income from operations	\$ 673.0	5.6%	\$ 508.6	4.7%	32.3%

\* Not meaningful

- (1) Segment income (loss) from operations includes the segment's direct operating income (loss) and allocations for Headquarters' costs, allocations for income and expenses from logistics services, certain inventory adjustments and volume rebates and cooperative advertising from vendors.
- (2) Includes certain Headquarters' function costs that are not allocated to the segments.

Income from operations was \$673.0 million in 2014 , an increase of \$164.4 million , or 32.3% , compared to \$508.6 million in 2013 . The increase in income from operations was driven by higher net sales and gross profit and the absence of IPO-related costs. Total operating margin percentage increased 90 basis points to 5.6% in 2014 , from 4.7% in 2013 . Operating margin percentage benefited from the decrease in selling and administrative expenses as a percentage of net sales, which was driven by the absence of \$74.3 million in costs related to our IPO in 2013, and was partially offset by a decrease in gross profit margin.

Corporate segment income from operations was \$439.8 million in 2014 , an increase of \$76.5 million , or 21.1% , compared to \$363.3 million in 2013 . This increase was primarily driven by higher net sales and gross profit. Corporate segment operating margin percentage increased 70 basis points to 6.8% in 2014 , from 6.1% in 2013 . Operating margin percentage benefited from the decrease in selling and administrative expenses as a percentage of net sales, which was driven by the absence of costs related to our IPO in 2013, and was partially offset by a decrease in gross profit margin.

Public segment income from operations was \$313.2 million in 2014 , an increase of \$66.7 million , or 27.1% , compared to \$246.5 million in 2013 . This increase was primarily driven by higher net sales and gross profit. Public segment operating margin percentage increased 50 basis points to 6.4% in 2014 , from 5.9% in 2013 . Operating margin percentage benefited from the decrease in selling and administrative expenses as a percentage of net sales, which was driven by the absence of costs related to our IPO in 2013, and was partially offset by a decrease in gross profit margin.

*Interest expense, net*

At December 31, 2014 , our outstanding long-term debt totaled \$3,190.0 million , compared to \$3,251.2 million at December 31, 2013 . We reduced our long-term debt during 2014 through refinancing activities to redeem our higher interest debt. Net interest expense in 2014 was \$197.3 million , a decrease of \$52.8 million compared to \$250.1 million in 2013 . This decrease was primarily due to lower debt balances and effective interest rates for 2014 compared to 2013 as a result of debt repayments and refinancing activities completed during 2014 and 2013 . See "Liquidity and Capital Resources" below for a description of the significant debt refinancings in 2014.

*Net loss on extinguishments of long-term debt*

During 2014, we recorded a net loss on extinguishments of long-term debt of \$90.7 million compared to \$64.0 million in 2013.

In December 2014, we redeemed \$541.4 million aggregate principal amount of the 2019 Senior Notes. We recorded a loss on extinguishment of debt of \$36.9 million , representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs and unamortized premium.

In September 2014, we redeemed \$234.7 million aggregate principal amount of the 2019 Senior Notes. We recorded a loss on extinguishment of debt of \$22.1 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs and unamortized premium.

In August 2014, we redeemed all of the remaining \$325.0 million aggregate principal amount of the 8.0% Senior Secured Notes due 2018 ("Senior Secured Notes"). We recorded a loss on extinguishment of debt of \$23.7 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for the remaining unamortized deferred financing costs.

In June 2014, we entered into the Senior Secured Asset-Based Revolving Credit Facility ("Revolving Loan"), a new five-year \$1,250.0 million senior secured asset-based revolving credit facility. The Revolving Loan replaces our previous revolving loan credit facility that was to mature on June 24, 2016. In connection with the termination of the previous facility, we recorded a loss on extinguishment of long-term debt of \$0.4 million, representing a write-off of a portion of unamortized deferred financing costs.

In May 2014, we redeemed all of the remaining \$42.5 million aggregate principal amount of the 12.535% Senior Subordinated Exchange Notes due 2017 ("Senior Subordinated Notes"). We recorded a loss on extinguishment of long-term debt of \$2.2 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for the remaining unamortized deferred financing costs.

In March 2014, we repurchased \$25.0 million aggregate principal amount of the 2019 Senior Notes. We recorded a loss on extinguishment of long-term debt of \$2.7 million, representing the difference between the repurchase price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In January and February 2014, we redeemed \$50.0 million aggregate principal amounts of the Senior Subordinated Notes. We recorded a loss on extinguishment of long-term debt of \$2.7 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In October 2013, we redeemed \$155.0 million aggregate principal amount of the Senior Subordinated Notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$8.5 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In August 2013, we redeemed \$324.0 million aggregate principal amount of the Senior Subordinated Notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$24.6 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In July 2013, we redeemed \$175.0 million aggregate principal amount of the Senior Secured Notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$16.7 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In April 2013, we entered into a new seven-year, \$1,350.0 million aggregate principal amount Senior Secured Term Loan Facility ("Term Loan"). Substantially all of the proceeds were used to repay the \$1,299.5 million outstanding aggregate principal amount of the prior senior secured term loan facility. In connection with this refinancing, we recorded a loss on extinguishment of long-term debt of \$10.3 million, representing a write-off of the remaining unamortized deferred financing costs related to the prior senior secured term loan facility.

In March 2013, we redeemed \$50.0 million aggregate principal amount of the Senior Subordinated Notes. We recorded a loss on extinguishment of long-term debt of \$3.9 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.



*Income tax expense*

Income tax expense was \$142.8 million in 2014 , compared to \$62.7 million in 2013 . The effective income tax rate, expressed by calculating income tax expense or benefit as a percentage of income before income taxes, was 36.8% and 32.1% for 2014 and 2013 , respectively.

For 2014 , the effective tax rate differed from the U.S. federal statutory rate primarily due to state income taxes, including current year state income tax credits. For 2013 , the effective tax rate differed from the U.S. federal statutory rate primarily due to state income taxes, including current year state income tax credits and an adjustment to deferred state income taxes due to changes in apportionment factors. The higher effective tax rate for 2014 as compared to 2013 was primarily attributable to the favorable impact of changes in state tax apportionment factors had on deferred state income taxes in 2013 and a lower rate impact of state income tax credits due to the increase in income before income taxes in 2014.

*Net income*

Net income was \$244.9 million in 2014 , compared to \$132.8 million in 2013 . Significant factors and events causing the net changes between the periods are discussed above.

*Non-GAAP net income*

Non-GAAP net income was \$409.9 million for the year ended December 31, 2014 , an increase of \$95.6 million , or 30.4% , compared to \$314.3 million for the year ended December 31, 2013 .

We have included a reconciliation of Non-GAAP net income for the years ended December 31, 2014 and 2013 below. Non-GAAP net income excludes, among other things, charges related to the amortization of acquisition-related intangible assets, non-cash equity-based compensation, and gains and losses from the early extinguishment of debt. Non-GAAP net income is considered a non-GAAP financial measure. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position, or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that Non-GAAP net income provides helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements.

(in millions)	Years Ended December 31,	
	2014	2013
Net income	\$ 244.9	\$ 132.8
Amortization of intangibles <sup>(1)</sup>	161.2	161.2
Non-cash equity-based compensation	16.4	8.6
Litigation, net <sup>(2)</sup>	(0.6)	(6.3)
Net loss on extinguishments of long-term debt	90.7	64.0
Interest expense adjustment related to extinguishments of long-term debt <sup>(3)</sup>	(1.1)	(7.5)
IPO- and secondary-offering related expenses <sup>(4)</sup>	1.4	75.0
Aggregate adjustment for income taxes <sup>(5)</sup>	(103.0)	(113.5)
Non-GAAP net income	<u>\$ 409.9</u>	<u>\$ 314.3</u>

(1) Includes amortization expense for acquisition-related intangible assets, primarily customer relationships and trade names.

(2) Relates to unusual, non-recurring litigation matters.

(3) Reflects adjustments to interest expense resulting from debt extinguishments. Represents the difference between interest expense previously recognized under the effective interest method and actual interest paid.

(4) IPO- and secondary-offering related expenses consist of the following:

(in millions)	Years Ended December 31,	
	2014	2013
Acceleration charge for certain equity awards and related employer payroll taxes	\$ —	\$ 40.7
RDU Plan cash retention pool accrual	—	7.5
Management services agreement termination fee	—	24.4
Other expenses	1.4	2.4
IPO- and secondary-offering related expenses	<u>\$ 1.4</u>	<u>\$ 75.0</u>

(5) Based on a normalized effective tax rate of 39.0%.

#### Adjusted EBITDA

Adjusted EBITDA was \$907.0 million for the year ended December 31, 2014, an increase of \$98.5 million, or 12.2%, compared to \$808.5 million for the year ended December 31, 2013. As a percentage of net sales, Adjusted EBITDA was 7.5% for both the years ended December 31, 2014 and 2013.

We have included a reconciliation of EBITDA and Adjusted EBITDA for the years ended December 31, 2014 and 2013 in the tables below. EBITDA is defined as consolidated net income before interest expense, income tax expense, depreciation and amortization. Adjusted EBITDA, which is a measure defined in our credit agreements, means EBITDA adjusted for certain items which are described in the table below. Both EBITDA and Adjusted EBITDA are considered non-GAAP financial measures. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that EBITDA and Adjusted EBITDA provide helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our credit agreements.

(in millions)	Years Ended December 31,	
	2014	2013
Net income	\$ 244.9	\$ 132.8
Depreciation and amortization	207.9	208.2
Income tax expense	142.8	62.7
Interest expense, net	197.3	250.1
EBITDA	792.9	653.8
Adjustments:		
Non-cash equity-based compensation	16.4	8.6
Sponsor fee	—	2.5
Net loss on extinguishments of long-term debt	90.7	64.0
Litigation, net <sup>(1)</sup>	(0.9)	(4.1)
IPO- and secondary-offering related expenses <sup>(2)</sup>	1.4	75.0
Other adjustments <sup>(3)</sup>	6.5	8.7
Total adjustments	114.1	154.7
Adjusted EBITDA	\$ 907.0	\$ 808.5

(1) Relates to unusual, non-recurring litigation matters.

(2) As defined under *Non-GAAP net income* above.

(3) Other adjustments primarily include certain retention costs and equity investment income.

The following table sets forth a reconciliation of EBITDA to net cash provided by operating activities for the years ended December 31, 2014 and 2013 .

(in millions)	Years Ended December 31,	
	2014	2013
EBITDA	\$ 792.9	\$ 653.8
Depreciation and amortization	(207.9)	(208.2)
Income tax expense	(142.8)	(62.7)
Interest expense, net	(197.3)	(250.1)
Net income	244.9	132.8
Depreciation and amortization	207.9	208.2
Equity-based compensation expense	16.4	46.6
Deferred income taxes	(89.1)	(48.7)
Amortization of deferred financing costs, debt premium, and debt discount, net	6.4	8.8
Net loss on extinguishments of long-term debt	90.7	64.0
Other	(0.4)	1.7
Changes in assets and liabilities	(41.8)	(47.1)
Net cash provided by operating activities	\$ 435.0	\$ 366.3

**Year Ended December 31, 2013 Compared to Year Ended December 31, 2012**

The following table presents our results of operations, in dollars and as a percentage of net sales, for the years ended December 31, 2013 and 2012:

	Year Ended December 31, 2013		Year Ended December 31, 2012	
	Dollars in Millions	Percentage of Net Sales	Dollars in Millions	Percentage of Net Sales
Net sales	\$ 10,768.6	100.0 %	\$ 10,128.2	100.0 %
Cost of sales	9,008.3	83.7	8,458.6	83.5
Gross profit	1,760.3	16.3	1,669.6	16.5
Selling and administrative expenses	1,120.9	10.4	1,029.5	10.2
Advertising expense	130.8	1.2	129.5	1.3
Income from operations	508.6	4.7	510.6	5.0
Interest expense, net	(250.1)	(2.3)	(307.4)	(3.0)
Net loss on extinguishments of long-term debt	(64.0)	(0.6)	(17.2)	(0.2)
Other income, net	1.0	—	0.1	—
Income before income taxes	195.5	1.8	186.1	1.8
Income tax expense	(62.7)	(0.6)	(67.1)	(0.7)
Net income	\$ 132.8	1.2 %	\$ 119.0	1.1 %

*Net sales*

The following table presents our net sales by segment, in dollars and as a percentage of total net sales, and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2013 and 2012:

	Years Ended December 31,					
	2013		2012		Dollar Change	Percent Change (1)
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales		
Corporate	\$ 5,960.1	55.3%	\$ 5,512.8	54.4%	\$ 447.3	8.1%
Public	4,164.5	38.7	4,023.0	39.7	141.5	3.5
Other	644.0	6.0	592.4	5.9	51.6	8.7
Total net sales	\$ 10,768.6	100.0%	\$ 10,128.2	100.0%	\$ 640.4	6.3%

(1) There were 254 selling days in both the years ended December 31, 2013 and 2012.

The following table presents our net sales by customer channel for our Corporate and Public segments and the year-over-year dollar and percentage change in net sales for the years ended December 31, 2013 and 2012. Net sales of \$150.1 million and \$124.2 million for the years ended December 31, 2013 and 2012 have been reclassified from the small business customer channel to the medium/large customer channel to conform to the 2014 presentation.

(in millions)	Years Ended December 31,		Dollar Change	Percent Change
	2013	2012		
<b>Corporate:</b>				
Medium / Large	\$ 5,052.7	\$ 4,572.7	\$ 480.0	10.5 %
Small Business	907.4	940.1	(32.7)	(3.5)
Total Corporate	<u>\$ 5,960.1</u>	<u>\$ 5,512.8</u>	<u>\$ 447.3</u>	8.1 %
<b>Public:</b>				
Government	\$ 1,250.6	\$ 1,394.1	\$ (143.5)	(10.3)%
Education	1,449.0	1,192.3	256.7	21.5
Healthcare	1,464.9	1,436.6	28.3	2.0
Total Public	<u>\$ 4,164.5</u>	<u>\$ 4,023.0</u>	<u>\$ 141.5</u>	3.5 %

Total net sales in 2013 increased \$640.4 million , or 6.3% , to \$10,768.6 million , compared to \$10,128.2 million in 2012. There were 254 selling days for both the years ended December 31, 2013 and 2012. The increase in total net sales was primarily the result of growth in hardware and software, a more tenured sales force, a continued focus on seller productivity across all areas of the organization and the addition of nearly 120 customer-facing coworkers, the majority in pre- and post-sale technical positions such as technical specialists and service delivery roles. Our total net sales growth for the year ended December 31, 2013 reflected growth in notebooks/mobile devices, netcomm products and software. Software gains were driven by growth in security, document management software and network management software, partially offset by a decline in application suites.

Corporate segment net sales in 2013 increased \$447.3 million , or 8.1% , compared to 2012, driven by sales growth in the medium/large customer channel. Within our Corporate segment, net sales to medium/large customers increased 10.5% between years primarily due to certain of these customers increasing their IT spending, a more tenured sales force, a continued focus on seller productivity and additional customer-facing coworkers, the majority in pre- and post-sale technical positions such as technical specialists and service delivery roles. This increase was led by unit volume growth in netcomm products and growth in notebooks/mobile devices and software. Partially offsetting the growth in the medium/large customer channel was a 3.5% decline in net sales to small business customers, due to certain of these customers taking a more cautious approach to spending as macroeconomic and regulatory uncertainty impacted decision-making. This decrease was led by unit volume declines in notebooks/mobile devices, partially offset by growth in netcomm products.

Public segment net sales in 2013 increased \$141.5 million , or 3.5% , between years, driven by strong performance in the education customer channel. Net sales to education customers increased \$256.7 million , or 21.5% , between years, led by growth in net sales to K-12 customers, reflecting increased sales of notebooks/mobile devices to support new standardized digital testing requirements that will take effect in 2014. Net sales to government customers decreased \$143.5 million , or 10.3% , in 2013 compared to 2012 due to reductions and delays in federal government spending following sequestration, uncertainty over future budget negotiations and the partial shutdown of the federal government. The government customer channel net sales decline was led by decreases in sales of enterprise storage and notebooks/mobile devices, partially offset by growth in software. Net sales to healthcare customers increased \$28.3 million , or 2.0% , between years, driven by growth in notebooks/mobile devices and desktop computers.

### Gross profit

Gross profit increased \$90.7 million , or 5.4% , to \$1,760.3 million in 2013, compared to \$1,669.6 million in 2012. As a percentage of total net sales, gross profit decreased 20 basis points to 16.3% in 2013, down from 16.5% in 2012. Gross profit margin was negatively impacted 30 basis points by unfavorable price/mix changes within product margin, as we experienced product margin compression in transactional product categories such as desktops and notebooks. Partially offsetting this decrease was an increase of 10 basis points due to a higher mix of net service contract revenue. Net service contract revenue, including items such as third-party services and warranties, has a positive impact on gross profit margin as our cost paid to the vendor or third-party service provider is recorded as a reduction to net sales, resulting in net sales being equal to the gross profit on the transaction.

The gross profit margin may fluctuate based on various factors, including vendor incentive and inventory price protection programs, cooperative advertising funds classified as a reduction of cost of sales, product mix, net service contract revenue, commission revenue, pricing strategies, market conditions and other factors, any of which could result in changes in gross profit margins.

#### *Selling and administrative expenses*

Selling and administrative expenses increased \$91.3 million, or 8.9%, to \$1,120.9 million in 2013, compared to \$1,029.5 million in 2012. As a percentage of total net sales, selling and administrative expenses increased 20 basis points to 10.4% in 2013, up from 10.2% in 2012. Sales payroll, including sales commissions and other variable compensation costs, increased \$28.9 million, or 6.4%, between years, consistent with higher sales and gross profit. Additionally, selling and administrative expenses for 2013 included IPO- and secondary-offering related expenses of \$75.0 million, as follows:

- Pre-tax charges of \$36.7 million related to the acceleration of the expense recognition for certain equity awards and \$4.0 million for the related employer payroll taxes. See Note 10 of the accompanying audited consolidated financial statements for additional discussion of the impact of the IPO on our equity awards.
- A pre-tax charge of \$24.4 million related to the payment of a termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities.
- A pre-tax charge of \$7.5 million related to compensation expense in connection with the Restricted Debt Unit Plan. See Note 12 of the accompanying audited consolidated financial statements for additional discussion of this charge.
- Other IPO- and secondary-offering related expenses of \$2.4 million.

We did not record any IPO- or secondary-offering related expenses during 2012. Partially offsetting these increases in 2013 was the favorable resolution of a class action legal proceeding in which we were a claimant, which reduced selling and administrative expenses by \$10.4 million in 2013 compared to 2012. Total coworker count increased by 163 coworkers, from 6,804 at December 31, 2012, to 6,967 at December 31, 2013.

#### *Advertising expense*

Advertising expense increased \$1.3 million, or 0.9%, to \$130.8 million in 2013, compared to \$129.5 million in 2012. As a percentage of net sales, advertising expense was 1.2% in 2013, compared to 1.3% in 2012. The dollar increase in advertising expense was due to a continued focus on advertising our solutions and products, which reinforces our reputation as a leading IT solutions provider.

#### *Income from operations*

The following table presents income from operations by segment, in dollars and as a percentage of net sales, and the year-over-year percentage change in income from operations for the years ended December 31, 2013 and 2012:

	Year Ended December 31, 2013		Year Ended December 31, 2012		Percent Change in Income from Operations
	Dollars in Millions	Operating Margin Percentage	Dollars in Millions	Operating Margin Percentage	
<b>Segments: <sup>(1)</sup></b>					
Corporate	\$ 363.3	6.1%	\$ 349.0	6.3%	4.1 %
Public	246.5	5.9	246.7	6.1	(0.1)
Other	27.2	4.2	18.6	3.1	46.3
Headquarters <sup>(2)</sup>	(128.4)	nm*	(103.7)	nm*	(23.8)
Total income from operations	<u>\$ 508.6</u>	4.7%	<u>\$ 510.6</u>	5.0%	(0.4)%

\* Not meaningful

- (1) Segment income (loss) from operations includes the segment's direct operating income (loss) and allocations for Headquarters' costs, allocations for logistics services, certain inventory adjustments, and volume rebates and cooperative advertising from vendors.
- (2) Includes Headquarters' function costs that are not allocated to the segments.

Income from operations was \$508.6 million in 2013, a decrease of \$2.0 million, or 0.4% , compared to \$510.6 million in 2012. The decrease in income from operations was driven by higher selling and administrative expenses primarily resulting from \$75.0 million of IPO- and secondary-offering related expenses recorded during 2013, mostly offset by higher net sales and gross profit. Total operating margin percentage decreased 30 basis points to 4.7% in 2013, from 5.0% in 2012. Operating margin percentage was negatively impacted by the increase in selling and administrative expenses as a percentage of net sales and gross profit margin compression, partially offset by a decrease in advertising expense as a percentage of net sales.

Corporate segment income from operations was \$363.3 million in 2013, an increase of \$14.3 million, or 4.1% , compared to \$349.0 million in 2012. Corporate segment operating margin percentage decreased 20 basis points to 6.1% in 2013, from 6.3% in 2012. Results for 2013 included \$26.4 million of IPO- and secondary-offering related expenses, which reduced Corporate segment operating margin by 40 basis points. Higher sales and gross profit dollars offset the effect of IPO- and secondary-offering related expenses on income from operations for 2013.

Public segment income from operations was \$246.5 million in 2013, a decrease of \$0.2 million, or 0.1%, compared to \$246.7 million in 2012. Public segment operating margin percentage decreased 20 basis points to 5.9% in 2013, from 6.1% in 2012. Results for 2013 included \$14.4 million of IPO- and secondary-offering related expenses, which reduced Public segment operating margin by 30 basis points. Higher sales and gross profit dollars nearly offset the effect of IPO- and secondary-offering related expenses on income from operations for 2013.

#### *Interest expense, net*

At December 31, 2013 , our outstanding long-term debt totaled \$3,251.2 million, compared to \$3,771.0 million at December 31, 2012. We reduced long-term debt throughout the year primarily through the use of a portion of the net proceeds from the IPO and cash flows provided by operating activities. Net interest expense in 2013 was \$250.1 million , a decrease of \$57.3 million compared to \$307.4 million in 2012. This decrease was primarily due to lower debt balances and effective interest rates for 2013 compared to 2012 as a result of debt repayments and refinancing activities completed during 2012 and 2013.

#### *Net loss on extinguishments of long-term debt*

During 2013 , we recorded a net loss on extinguishments of long-term debt of \$64.0 million compared to \$17.2 million in 2012 .

In October 2013, we redeemed \$155.0 million aggregate principal amount of the Senior Subordinated Notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$8.5 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In August 2013, we redeemed \$324.0 million aggregate principal amount of the Senior Subordinated Notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$24.6 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In July 2013, we redeemed \$175.0 million aggregate principal amount of the Senior Secured Notes. In connection with this redemption, we recorded a loss on extinguishment of long-term debt of \$16.7 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In April 2013, we entered into a new seven-year, \$1,350.0 million aggregate principal amount Term Loan. Substantially all of the proceeds were used to repay the \$1,299.5 million outstanding aggregate principal amount of the prior senior secured term loan facility. In connection with this refinancing, we recorded a loss on extinguishment of long-term debt of \$10.3 million, representing a write-off of the remaining unamortized deferred financing costs related to the prior senior secured term loan facility.

In March 2013, we redeemed \$50.0 million aggregate principal amount of the Senior Subordinated Notes. We recorded a loss on extinguishment of long-term debt of \$3.9 million, representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In December 2012, we redeemed \$100.0 million aggregate principal amount of the Senior Subordinated Notes. We recorded a loss on extinguishment of long-term debt of \$7.8 million representing the difference between the redemption price and the net carrying amount of the purchased debt, adjusted for a portion of the unamortized deferred financing costs.

In February and March 2012, we purchased or redeemed the remaining \$129.0 million of 11.0% Senior Exchange Notes due 2015 and 11.5%/12.25% Senior PIK Election Exchange Notes due 2015 (together, the "Senior Notes due 2015"), funded with the issuance of an additional \$130.0 million of Senior Notes due 2019. As a result, we recorded a loss on extinguishment of long-term debt of \$9.4 million, representing the difference between the purchase or redemption price of the Senior Notes due 2015 and the net carrying amount of the purchased debt, adjusted for the remaining unamortized deferred financing costs.

#### *Income tax expense*

Income tax expense was \$62.7 million in 2013, compared to \$67.1 million in 2012. The effective income tax rate was 32.1% and 36.0% for 2013 and 2012, respectively.

For 2013, the effective tax rate differed from the U.S. federal statutory rate primarily due to state income taxes, including current year state income tax credits and an adjustment to deferred state income taxes due to changes in apportionment factors. For 2012, the effective tax rate differed from the U.S. federal statutory rate primarily due to favorable adjustments to state tax credits which were partially offset by the unfavorable impact of adjustments to deferred state income taxes due to changes in state tax laws and non-deductible expenses, primarily equity-based compensation and meals and entertainment. The lower effective tax rate for 2013 as compared to 2012 was primarily driven by the favorable impact of adjustments to deferred state income taxes due to changes in state tax apportionment factors and lower non-deductible expenses.

#### *Net income*

Net income was \$132.8 million in 2013, compared to \$119.0 million in 2012. Significant factors and events causing the net changes between the periods are discussed above.

#### *Non-GAAP net income*

Non-GAAP net income was \$314.3 million for the year ended December 31, 2013, an increase of \$67.2 million, or 27.2%, compared to \$247.1 million for the year ended December 31, 2012.

We have included a reconciliation of Non-GAAP net income for the years ended December 31, 2013 and 2012 below. Non-GAAP net income excludes, among other things, charges related to the amortization of acquisition-related intangibles, non-cash equity-based compensation, IPO- and secondary-offering related expenses and gains and losses from the early extinguishment of debt. Non-GAAP net income is considered a non-GAAP financial measure. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position, or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that Non-GAAP net income provides helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements.



(in millions)	Years Ended December 31,	
	2013	2012
Net income	\$ 132.8	\$ 119.0
Amortization of intangibles <sup>(1)</sup>	161.2	163.7
Non-cash equity-based compensation	8.6	22.1
Litigation, net <sup>(2)</sup>	(6.3)	—
Net loss on extinguishments of long-term debt	64.0	17.2
Interest expense adjustment related to extinguishments of long-term debt <sup>(3)</sup>	(7.5)	(3.3)
IPO- and secondary-offering related expenses <sup>(4)</sup>	75.0	—
Aggregate adjustment for income taxes <sup>(5)</sup>	(113.5)	(71.6)
Non-GAAP net income	<u>\$ 314.3</u>	<u>\$ 247.1</u>

(1) Includes amortization expense for acquisition-related intangible assets, primarily customer relationships and trade names.

(2) Relates to unusual, non-recurring litigation matters.

(3) Reflects adjustments to interest expense resulting from debt extinguishments. Represents the difference between interest expense previously recognized under the effective interest method and actual interest paid.

(4) IPO- and secondary-offering related expenses consist of the following:

(in millions)	Years Ended December 31,	
	2013	2012
Acceleration charge for certain equity awards and related employer payroll taxes	\$ 40.7	\$ —
RDU Plan cash retention pool accrual	7.5	—
Management services agreement termination fee	24.4	—
Other expenses	2.4	—
IPO- and secondary-offering related expenses	<u>\$ 75.0</u>	<u>\$ —</u>

(5) Based on a normalized effective tax rate of 39.0%.

#### Adjusted EBITDA

Adjusted EBITDA was \$808.5 million in 2013, an increase of \$41.9 million, or 5.5%, compared to \$766.6 million in 2012. As a percentage of net sales, Adjusted EBITDA was 7.5% and 7.6% in 2013 and 2012, respectively.

We have included a reconciliation of EBITDA and Adjusted EBITDA for 2013 and 2012 in the table below. EBITDA is defined as consolidated net income before interest expense, income tax expense, depreciation and amortization. Adjusted EBITDA, which is a measure defined in our credit agreements, means EBITDA adjusted for certain items which are described in the table below. Both EBITDA and Adjusted EBITDA are considered non-GAAP financial measures. Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position or cash flows that either excludes or includes amounts that are not normally included or excluded in the most directly comparable measure calculated and presented in accordance with GAAP. Non-GAAP measures used by the Company may differ from similar measures used by other companies, even when similar terms are used to identify such measures. We believe that EBITDA and Adjusted EBITDA provide helpful information with respect to our operating performance and cash flows including our ability to meet our future debt service, capital expenditures and working capital requirements. Adjusted EBITDA also provides helpful information as it is the primary measure used in certain financial covenants contained in our credit agreements.

(in millions)	Years Ended December 31,	
	2013	2012
Net income	\$ 132.8	\$ 119.0
Depreciation and amortization	208.2	210.2
Income tax expense	62.7	67.1
Interest expense, net	250.1	307.4
EBITDA	653.8	703.7
Adjustments:		
Non-cash equity-based compensation	8.6	22.1
Sponsor fee	2.5	5.0
Consulting and debt-related professional fees	0.1	0.6
Net loss on extinguishments of long-term debt	64.0	17.2
Litigation, net <sup>(1)</sup>	(4.1)	4.3
IPO- and secondary-offering related expenses <sup>(2)</sup>	75.0	—
Other adjustments <sup>(3)</sup>	8.6	13.7
Total adjustments	154.7	62.9
Adjusted EBITDA	\$ 808.5	\$ 766.6

(1) Relates to unusual, non-recurring litigation matters.

(2) As defined under *Non-GAAP net income* above.

(3) Other adjustments primarily include certain retention costs and equity investment income.

The following table sets forth a reconciliation of EBITDA to net cash provided by operating activities for the years ended December 31, 2013 and 2012.

(in millions)	Years Ended December 31,	
	2013	2012
EBITDA	\$ 653.8	\$ 703.7
Depreciation and amortization	(208.2)	(210.2)
Income tax expense	(62.7)	(67.1)
Interest expense, net	(250.1)	(307.4)
Net income	132.8	119.0
Depreciation and amortization	208.2	210.2
Equity-based compensation expense	46.6	22.1
Deferred income taxes	(48.7)	(56.3)
Amortization of deferred financing costs, debt premium, and debt discount, net	8.8	13.6
Net loss on extinguishments of long-term debt	64.0	17.2
Other	1.7	1.0
Changes in assets and liabilities	(47.1)	(9.4)
Net cash provided by operating activities	\$ 366.3	\$ 317.4

### Seasonality

While we have not historically experienced significant seasonality throughout the year, sales in our Corporate segment, which primarily serves private sector business customers, are typically higher in the fourth quarter than in other quarters due to customers spending their remaining technology budget dollars at the end of the year. Additionally, sales in our Public segment have historically been higher in the third quarter than in other quarters primarily due to the buying patterns of the federal government and education customers.



**Overview**

We finance our operations and capital expenditures through a combination of internally generated cash from operations and from borrowings under our senior secured asset-based revolving credit facility. We believe that our current sources of funds will be sufficient to fund our cash operating requirements for the next year. In addition, we believe that, in spite of the uncertainty of future macroeconomic conditions, we have adequate sources of liquidity and funding available to meet our longer-term needs. However, there are a number of factors that may negatively impact our available sources of funds. The amount of cash generated from operations will be dependent upon factors such as the successful execution of our business plan and general economic conditions.

Long-Term Debt Activities

During the year ended December 31, 2014, we had significant debt refinancings. In connection with these refinancings, we recorded a loss on extinguishment of long-term debt of \$90.7 million in our consolidated statement of operations for the year ended December 31, 2014. See Note 7 to the accompanying audited consolidated financial statements included elsewhere in this report for additional details.

Share Repurchase Program

On November 6, 2014, we announced that our Board of Directors approved a \$500 million share repurchase program effective immediately under which we may repurchase shares of our common stock in the open market or through privately negotiated transactions, depending on share price, market conditions and other factors. The share repurchase program does not obligate us to repurchase any dollar amount or number of shares, and repurchases may be commenced or suspended from time to time without prior notice. As of the date of this filing, no shares have been repurchased under the share repurchase program.

Dividends

A summary of 2014 dividend activity for our common stock is shown below:

Dividend Amount	Declaration Date	Record Date	Payment Date
\$0.0425	February 12, 2014	February 25, 2014	March 10, 2014
\$0.0425	May 8, 2014	May 27, 2014	June 10, 2014
\$0.0425	July 31, 2014	August 25, 2014	September 10, 2014
\$0.0675	November 6, 2014	November 25, 2014	December 10, 2014

On February 10, 2015, we announced that our board of directors declared a quarterly cash dividend on our common stock of \$0.0675 per share. The dividend will be paid on March 10, 2015 to all stockholders of record as of the close of business on February 25, 2015.

The payment of any future dividends will be at the discretion of our board of directors and will depend upon our results of operations, financial condition, business prospects, capital requirements, contractual restrictions, any potential indebtedness we may incur, restrictions imposed by applicable law, tax considerations and other factors that our board of directors deems relevant. In addition, our ability to pay dividends on our common stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to us, in each case, under the terms of our current and any future agreements governing our indebtedness.

**Cash Flows**

Cash flows from operating, investing and financing activities were as follows:

(in millions)	Years Ended December 31,		
	2014	2013	2012
Net cash provided by (used in):			
Operating activities	\$ 435.0	\$ 366.3	\$ 317.4
Investing activities	(164.8)	(47.1)	(41.7)
Net change in accounts payable - inventory financing	75.5	7.4	(29.5)
Other financing activities	(187.5)	(175.7)	(308.5)
Financing activities	(112.0)	(168.3)	(338.0)
Effect of exchange rate changes on cash and cash equivalents	(1.8)	(0.7)	0.3
Net increase (decrease) in cash and cash equivalents	\$ 156.4	\$ 150.2	\$ (62.0)

#### *Operating Activities*

Net cash provided by operating activities for 2014 increased \$68.7 million compared to 2013. Net income adjusted for the impact of non-cash items such as depreciation and amortization, equity-based compensation expense and net loss on extinguishments of long-term debt was \$476.8 million during 2014, compared to \$413.4 million during 2013. The increase in cash of \$63.4 million reflected stronger operating results in 2014 compared to 2013. Net changes in assets and liabilities reduced cash by \$41.8 million in 2014 compared to a reduction of \$47.1 million in 2013, resulting in a change of \$5.3 million between periods. The decrease in inventory balances year over year contributed to a \$111.7 million increase in cash flows which was primarily due to the timing of inventory receipts and earlier than expected inventory shipments at the end of 2014 due to accelerated customer roll-outs. Partially offsetting the increase in cash flows from inventory was a decline in cash inflows from accounts payable of \$102.4 million driven by the timing of inventory receipts at the end of 2014 versus 2013.

Net cash provided by operating activities for 2013 increased \$48.9 million compared to 2012. Net income adjusted for the impact of non-cash items such as depreciation and amortization, equity-based compensation expense and net loss on extinguishments of long-term debt was \$413.4 million during 2013, compared to \$326.8 million during 2012, an increase of \$86.6 million. The increase in cash of \$86.6 million reflected stronger operating results in 2013 compared to 2012. Net changes in assets and liabilities reduced cash by \$47.1 million in 2013 compared to a reduction of \$9.4 million in 2012, resulting in a change of \$37.7 million between periods. While changes in assets and liabilities were relatively flat during 2012, during 2013, accounts receivable and accounts payable balances decreased and increased cash by \$170.8 million and \$146.1 million, respectively, primarily as a result of accelerated sales growth during the final month of 2013. Merchandise inventory also increased during 2013 to support strong sales order volume near the end of 2013.

In order to manage our working capital and operating cash needs, we monitor our cash conversion cycle, defined as days of sales outstanding in accounts receivable plus days of supply in inventory minus days of purchases outstanding in accounts payable, based on a rolling three-month average. The following table presents the components of our cash conversion cycle:

(in days)	December 31,		
	2014	2013	2012
Days of sales outstanding (DSO) <sup>(1)</sup>	42	44	42
Days of supply in inventory (DIO) <sup>(2)</sup>	13	14	14
Days of purchases outstanding (DPO) <sup>(3)</sup>	(34)	(35)	(32)
Cash conversion cycle	21	23	24

- (1) Represents the rolling three-month average of the balance of trade accounts receivable, net at the end of the period divided by average daily net sales for the same three-month period. Also incorporates components of other miscellaneous receivables.
- (2) Represents the rolling three-month average of the balance of inventory at the end of the period divided by average daily cost of goods sold for the same three-month period. The prior period has been revised to conform to the current definition.
- (3) Represents the rolling three-month average of the combined balance of accounts payable-trade, excluding cash overdrafts, and accounts payable-inventory financing at the end of the period divided by average daily cost of goods sold for the same three-month period.

The cash conversion cycle decreased to 21 days at December 31, 2014 compared to 23 days at December 31, 2013, primarily driven by improvement in DSO. The decline in DSO was primarily driven by improved collections and early payments from certain customers. Additionally, the timing of inventory receipts at the end of 2014 had a favorable impact on DIO and an unfavorable impact on DPO.

The cash conversion cycle decreased to 23 days at December 31, 2013 compared to 24 days at December 31, 2012. The increase in DSO was primarily driven by an increase in receivables for third-party services such as software assurance and warranties. These services have an unfavorable impact on DSO as the receivable is recognized on the balance sheet on a gross basis while the corresponding sales amount in the statement of operations is recorded on a net basis. The DPO increase was primarily due to an increase in payables for third-party services, which offsets the related increase in DSO discussed above. These services have a favorable impact on DPO as the payable is recognized on the balance sheet without a corresponding cost of sales in the statement of operations because the cost paid to the vendor or third-party service provider is recorded as a reduction to net sales. The timing of quarter-end payments also had a favorable impact on DPO at December 31, 2013.

#### *Investing Activities*

Net cash used in investing activities increased \$117.7 million in 2014 compared to 2013. We paid \$86.8 million in the fourth quarter of 2014 to acquire a 35% non-controlling interest in Kelway. Additionally, capital expenditures increased \$7.9 million to \$55.0 million from \$47.1 million for 2014 and 2013, respectively, primarily for improvements to our information technology systems during both years.

Net cash used in investing activities increased \$5.4 million in 2013 compared to 2012. Capital expenditures were \$47.1 million and \$41.4 million for 2013 and 2012, respectively, primarily for improvements to our information technology systems during both years.

#### *Financing Activities*

Net cash used in financing activities decreased \$56.3 million in 2014 compared to 2013. The decrease was primarily driven by several debt refinancing transactions during each period and our July 2013 IPO, which generated net proceeds of \$424.7 million after deducting underwriting discounts, expenses and transaction costs. The net impact of our debt transactions resulted in cash outflows of \$161.3 million and \$569.4 million during 2014 and 2013, respectively, as cash was used in each period to reduce our total long-term debt. See Note 7 to the accompanying audited consolidated financial statements included elsewhere in this report for a description of the debt transactions impacting each period.

Net cash used in financing activities decreased \$169.7 million in 2013 compared to 2012. The decrease was primarily driven by various debt transactions during each period and our July 2013 IPO, which generated net proceeds of \$424.7 million after deducting underwriting discounts, expenses and transaction costs. The net impact of our debt transactions resulted

in cash outflows of \$569.4 million and \$310.6 million during 2013 and 2012, respectively, as cash was used in each period to reduce our total long-term debt.

### ***Long-Term Debt and Financing Arrangements***

As of December 31, 2014, we had total indebtedness of \$ 3.2 billion , of which \$1.5 billion was secured indebtedness.

At December 31, 2014, we were in compliance with the covenants under our various credit agreements and indentures. Under the indenture governing the 8.5% Senior Notes due 2019, which contains the most restrictive restricted payment provisions in our various credit agreements and indentures, we are generally restricted from paying dividends and making other restricted payments. For the purpose of determining restricted payment capacity, consolidated net income or loss includes certain adjustments that are defined in the applicable indenture. At December 31, 2014, the amount of cumulative consolidated net income free of restrictions under our credit agreements and indentures was \$230.3 million .

See Note 7 to the accompanying audited consolidated financial statements included elsewhere in this report for further details regarding our debt and each of the transactions described below.

During the year ended December 31, 2014, the following events occurred with respect to our debt structure:

- On January 22, 2014 and February 21, 2014, we redeemed \$30.0 million and \$20.0 million aggregate principal amounts of the 12.535% Senior Subordinated Exchange Notes due 2017, respectively.
- On March 20, 2014, we repurchased and subsequently canceled \$25.0 million aggregate principal amount of the 8.5% Senior Notes due 2019 from an affiliate of Providence Equity in a privately-negotiated transaction on an arms' length basis.
- On May 9, 2014, we redeemed all of the remaining \$42.5 million aggregate principal amount of the 12.535% Senior Subordinated Exchange Notes due 2017.
- On June 6, 2014, we entered into a new five-year \$1,250.0 million senior secured asset-based revolving credit facility which will mature on June 6, 2019.
- On August 5, 2014, we completed the issuance of \$600.0 million aggregate principal amount of 6.0% Senior Notes due 2022 which will mature on August 15, 2022.
- On September 5, 2014, we redeemed all of the remaining \$325.0 million aggregate principal amount of the 12.535% Senior Subordinated Exchange Notes due 2017, plus accrued and unpaid interest through the date of redemption.
- On September 5, 2014, we redeemed \$234.7 million aggregate principal amount of the 8.5% Senior Notes due 2019, plus accrued and unpaid interest through the date of redemption.
- On December 1, 2014, we completed the issuance of \$575.0 million principal amount of 5.5% Senior Notes due 2024 which will mature on December 1, 2024.
- On December 31, 2014, we redeemed \$541.4 million aggregate principal amount of the 8.5% Senior Notes due 2019, plus accrued and unpaid interest through the date of redemption.

### ***Inventory Financing Agreements***

We have entered into agreements with certain financial intermediaries to facilitate the purchase of inventory from various suppliers under certain terms and conditions. These amounts are classified separately as accounts payable-inventory financing on the consolidated balance sheets. We do not incur any interest expense associated with these agreements as balances are paid when they are due. See Note 5 to the accompanying audited consolidated financial statements included elsewhere in this report for further details.

### ***Contractual Obligations***

We have future obligations under various contracts relating to debt and interest payments, operating leases and asset retirement obligations. The following table presents our estimated future payments under contractual obligations that existed as of December 31, 2014, based on undiscounted amounts.

(in millions)	Payments Due by Period				
	Total	< 1 year	1-3 years	4-5 years	> 5 years
Term Loan <sup>(1)</sup>	\$ 1,767.8	\$ 64.4	\$ 127.3	\$ 125.3	\$ 1,450.8
Senior Notes due 2019 <sup>(2)</sup>	696.6	42.8	85.7	568.1	—
Senior Notes due 2022 <sup>(2)</sup>	889.0	37.0	72.0	72.0	708.0
Senior Notes due 2024 <sup>(2)</sup>	891.3	31.6	63.3	63.3	733.1
Operating leases <sup>(3)</sup>	127.5	19.1	31.4	26.4	50.6
Asset retirement obligations <sup>(4)</sup>	0.5	—	0.5	—	—
<b>Total</b>	<b>\$ 4,372.7</b>	<b>\$ 194.9</b>	<b>\$ 380.2</b>	<b>\$ 855.1</b>	<b>\$ 2,942.5</b>

- (1) Includes future principal and cash interest payments on long-term borrowings through scheduled maturity dates. Interest payments for variable rate debt were calculated using interest rates as of December 31, 2014. Excluded from these amounts are the amortization of debt issuance and other costs related to indebtedness.
- (2) Includes future principal and cash interest payments on long-term borrowings through scheduled maturity dates. Interest on the Senior Notes is calculated using the stated interest rates. Excluded from these amounts are the amortization of debt issuance and other costs related to indebtedness.
- (3) Includes the minimum lease payments for non-cancelable leases of properties and equipment used in our operations. Additionally, included in these amounts are future minimum lease payments commencing in the fourth quarter of 2016 that relate to a new lease entered into in December 2014 for our future headquarters in Lincolnshire, Illinois. Also reflected in these amounts is the future expiration of two leases in the first quarter of 2016 for facilities currently in use by us which we plan to consolidate into the new headquarters location and accordingly, these leases will not be renewed.
- (4) Represent commitments to return property subject to operating leases to original condition upon lease termination.

### **Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements that have or are reasonably likely to have a material current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

### **Inflation**

Inflation has not had a material impact on our operating results. We generally have been able to pass along price increases to our customers, though certain economic factors and technological advances in recent years have tended to place downward pressure on pricing. We also have been able to generally offset the effects of inflation on operating costs by continuing to emphasize productivity improvements and by accelerating our overall cash conversion cycle. There can be no assurances, however, that inflation would not have a material impact on our sales or operating costs in the future.

### **Commitments and Contingencies**

The information set forth in Note 14 to the accompanying audited consolidated financial statements included in Part II, Item 8 of this Form 10-K is incorporated herein by reference.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in accordance with GAAP requires management to make use of certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reported periods. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

In Note 1 to the accompanying audited consolidated financial statements, we include a discussion of the significant accounting policies used in the preparation of our consolidated financial statements. We believe the following are the most critical accounting policies and estimates that include significant judgments used in the preparation of our financial statements. We consider an accounting policy or estimate to be critical if it requires assumptions to be made that were uncertain at the time they were made, and if changes in these assumptions could have a material impact on our financial condition or results of operations.



## **Revenue Recognition**

We are a primary distribution channel for a large group of vendors and suppliers, including OEMs, software publishers and wholesale distributors. We record revenue from sales transactions when title and risk of loss are passed to our customer, there is persuasive evidence of an arrangement for sale, delivery has occurred and/or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. Our shipping terms typically specify F.O.B. destination, at which time title and risk of loss have passed to the customer.

Revenues from the sales of hardware products and software products and licenses are generally recognized on a gross basis with the selling price to the customer recorded as sales and the acquisition cost of the product recorded as cost of sales. These items can be delivered to customers in a variety of ways, including (i) as physical product shipped from our warehouse, (ii) via drop-shipment by the vendor or supplier, or (iii) via electronic delivery for software licenses. At the time of sale, we record an estimate for sales returns and allowances based on historical experience. Our vendor partners warrant most of the products we sell.

We leverage drop-shipment arrangements with many of our vendors and suppliers to deliver products to our customers without having to physically hold the inventory at our warehouses, thereby increasing efficiency and reducing costs. We recognize revenue for drop-shipment arrangements on a gross basis upon delivery to the customer with contract terms that typically specify F.O.B. destination. We recognize revenue on a gross basis as the principal in the transaction because we are the primary obligor in the arrangement, we assume inventory risk if the product is returned by the customer, we set the price of the product charged to the customer, we assume credit risk for the amounts invoiced, and we work closely with our customers to determine their hardware and software specifications. These arrangements generally represent approximately 40% to 50% of total net sales, including approximately 15% to 20% related to electronic delivery for software licenses.

Revenue from professional services is either recognized as provided for services billed at an hourly rate or recognized using a proportional performance model for services provided at a fixed fee. Revenue from cloud computing solutions including Software as a Service ("SaaS") and Infrastructure as a Service ("IaaS") arrangements, as well as data center services such as managed and remote managed services, server co-location, internet connectivity and data backup and storage, is recognized over the period service is provided.

We also sell certain products for which we act as an agent. Products in this category include the sale of third-party services, warranties, software assurance ("SA") and third-party hosted SaaS and IaaS arrangements. SA is a product that allows customers to upgrade, at no additional cost, to the latest technology if new applications are introduced during the period that the SA is in effect. These sales do not meet the criteria for gross sales recognition, and thus are recognized on a net basis at the time of sale. Under net sales recognition, the cost paid to the vendor or third-party service provider is recorded as a reduction to sales, resulting in net sales being equal to the gross profit on the transaction.

Our larger customers are offered the opportunity by certain of our vendors to purchase software licenses and SA under enterprise agreements ("EAs"). Under EAs, customers are considered to be compliant with applicable license requirements for the ensuing year, regardless of changes to their employee base. Customers are charged an annual true-up fee for changes in the number of users over the year. With most EAs, our vendors will transfer the license and bill the customer directly, paying resellers such as us an agency fee or commission on these sales. We record these fees as a component of net sales as earned and there is no corresponding cost of sales amount. In certain instances, we bill the customer directly under an EA and account for the individual items sold based on the nature of the item. Our vendors typically dictate how the EA will be sold to the customer.

From time to time, we sell some of our products and services as part of bundled contract arrangements containing multiple deliverables, which may include a combination of the products and services. For each deliverable that represents a separate unit of accounting, total arrangement consideration is allocated based upon the relative selling prices of each element. The allocated arrangement consideration is recognized as revenue in accordance with the principles described above. Selling prices are determined by using vendor specific objective evidence ("VSOE") if it exists. Otherwise, selling prices are determined using third party evidence ("TPE"). If neither VSOE or TPE is available, we use our best estimate of selling prices.

We record freight billed to our customers as net sales and the related freight costs as a cost of sales.

Deferred revenue includes (1) payments received from customers in advance of providing the product or performing services, and (2) amounts deferred if other conditions of revenue recognition have not been met.

We perform an analysis of the estimated number of days of sales in-transit to customers at the end of each period based on a weighted-average analysis of commercial delivery terms that includes drop-shipment arrangements. This analysis is the basis upon which we estimate the amount of sales in-transit at the end of the period and adjust revenue and the related costs

to reflect only what has been received by the customer. Changes in delivery patterns may result in a different number of business days used in making this adjustment and could have a material impact on our revenue recognition for the period.

### ***Inventory Valuation***

Inventory is valued at the lower of cost or market value. Cost is determined using a weighted-average cost method. Price protection is recorded when earned as a reduction to the cost of inventory. We decrease the value of inventory for estimated obsolescence equal to the difference between the cost of inventory and the estimated market value, based upon an aging analysis of the inventory on hand, specifically known inventory-related risks, and assumptions about future demand and market conditions. If future demand or actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

### ***Vendor Programs***

We receive incentives from certain of our vendors related to cooperative advertising allowances, volume rebates, bid programs, price protection and other programs. These incentives generally relate to written agreements with specified performance requirements with the vendors and are recorded as adjustments to cost of sales or inventory, depending on the nature of the incentive. Vendors may change the terms of some or all of these programs, which could have an impact on our results of operations.

We record receivables from vendors related to these programs when the amounts are probable and reasonably estimable. Some programs are based on the achievement of specific targets, and we base our estimates on information provided by our vendors and internal information to assess our progress toward achieving those targets. If actual performance does not match our estimates, we may be required to adjust our receivables. We record reserves for vendor receivables for estimated losses due to vendors' inability to pay or rejections by vendors of claims; however, if actual collections differ from our estimates, we may incur additional losses that could have a material impact on gross margin and operating income.

### ***Goodwill and Other Intangible Assets***

Goodwill is not amortized but is subject to periodic testing for impairment at the reporting unit level. Our reporting units used to assess potential goodwill impairment are the same as our operating segments. We are required to perform an evaluation of goodwill on an annual basis or more frequently if circumstances indicate a potential impairment. The annual test for impairment is conducted as of December 1. We have the option of performing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if it is more likely than not that the reporting unit's goodwill is impaired or performing a quantitative assessment by comparing a reporting unit's estimated fair value to its carrying amount. Under the quantitative assessment, testing for impairment of goodwill is a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill to determine the amount of impairment loss. Fair value of a reporting unit is determined by using a weighted combination of an income approach and a market approach, as this combination is considered the most indicative of the reporting units' fair value in an orderly transaction between market participants. Under the income approach, we determine fair value based on estimated future cash flows of a reporting unit, discounted by an estimated weighted-average cost of capital, which reflects the overall level of inherent risk of a reporting unit and the rate of return an outside investor would expect to earn. Under the market approach, we utilize valuation multiples derived from publicly available information for peer group companies to provide an indication of how much a knowledgeable investor in the marketplace would be willing to pay for a company. We have weighted the income approach and the market approach at 75% and 25%, respectively.

Determining the fair value of a reporting unit (and the allocation of that fair value to individual assets and liabilities within the reporting unit to determine the implied fair value of goodwill in the event a step two analysis is required) is judgmental in nature and requires the use of significant estimates and assumptions. These estimates and assumptions include primarily, but are not limited to, discount rate, terminal growth rate, selection of appropriate peer group companies and control premium applied, and forecasts of revenue growth rates, gross margins, operating margins, and working capital requirements. The allocation requires analysis to determine the fair value of assets and liabilities including, among others, customer relationships, trade names, and property and equipment. Any changes in the judgments, estimates, or assumptions used could produce significantly different results. Although we believe our assumptions are reasonable, actual results may vary significantly and may expose us to material impairment charges in the future.

Intangible assets include customer relationships, trade names, internally developed software and other intangibles. Intangible assets with determinable lives are amortized on a straight-line basis over the estimated useful lives of the assets. The cost of software developed or obtained for internal use is capitalized and amortized on a straight-line basis over the estimated useful life of the software. These intangible assets are reviewed for impairment whenever events or changes in circumstances

indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition. If the carrying amount of an asset exceeds its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value.

### ***Allowance for Doubtful Accounts***

We record an allowance for doubtful accounts related to trade accounts receivable for estimated losses resulting from the inability of our customers to make required payments. We take into consideration historical loss experience, the overall quality of the receivable portfolio and specifically identified customer risks. If actual collections of customer receivables differ from our estimates, additional allowances may be required which could have an impact on our results of operations.

### ***Income Taxes***

Deferred income taxes are provided to reflect the differences between the tax bases of assets and liabilities and their reported amounts in the consolidated financial statements using enacted tax rates in effect for the year in which the differences are expected to reverse. We perform an evaluation of the realizability of our deferred tax assets on a quarterly basis. This evaluation requires us to use estimates and make assumptions and considers all positive and negative evidence and factors, such as the scheduled reversal of temporary differences, the mix of earnings in the jurisdictions in which we operate, and prudent and feasible tax planning strategies.

We account for unrecognized tax benefits based upon our assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities. We report a liability for unrecognized tax benefits resulting from unrecognized tax benefits taken or expected to be taken in a tax return and recognize interest and penalties, if any, related to unrecognized tax benefits in income tax expense.

### **Recent Accounting Pronouncements**

The information set forth in Note 2 to the accompanying audited consolidated financial statements included in Part II, Item 8 of this Form 10-K is incorporated herein by reference.

### **Subsequent Events**

The information set forth in Note 20 to the accompanying audited consolidated financial statements included in Part II, Item 8 of this Form 10-K is incorporated herein by reference.

### **Item 7A. Quantitative and Qualitative Disclosures of Market Risks**

Our market risks relate primarily to changes in interest rates. The interest rates on borrowings under our senior secured asset-based revolving credit facility and our senior secured term loan facility are floating and, therefore, are subject to fluctuations. In order to manage the risk associated with changes in interest rates on borrowings under our senior secured term loan facility, we have entered into interest rate derivative agreements to economically hedge a portion of the cash flows associated with the facility. Our objectives in using interest rate derivatives are to add stability to interest expense and to manage our exposure to interest rate fluctuations.

We utilize interest rate caps for the purpose of limiting current and future exposure to interest rate risk on our floating-rate debt under the senior secured term loan facility.

As of December 31, 2014 we have ten interest rate cap agreements in effect through January 14, 2015 with a combined notional amount of \$1,150.0 million which entitled the Company to payments from the counterparty of the amount, if any, by which three-month LIBOR exceeds a weighted average rate of 2.4% during the agreement period.

During the year ended December 31, 2014, we entered into 14 additional interest rate cap agreements with a combined notional amount of \$1,000.0 million. These interest rate cap agreements have not been designated as cash flow hedges of interest rate risk for GAAP accounting purposes. The entire \$1,000.0 million notional amount entitles us to payments from the counterparty of the amount, if any, by which three-month LIBOR exceeds 2.0% during the agreement period. The interest rate cap agreements are effective from January 14, 2015 through January 14, 2017. See Note 7 to the accompanying audited consolidated financial statements included elsewhere in this report for additional details.

See "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Contractual Obligations" for information on cash flows, interest rates and maturity dates of our debt obligations.

**Item 8. Financial Statements and Supplementary Data**

**Index to Consolidated Financial Statements**

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## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of  
CDW Corporation

We have audited the accompanying consolidated balance sheets of CDW Corporation and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, shareholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2014. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of CDW Corporation and subsidiaries at December 31, 2014 and 2013, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2014, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), CDW Corporation and subsidiaries' internal control over financial reporting as of December 31, 2014, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 26, 2015 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP  
Chicago, Illinois  
February 26, 2015

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(in millions, except per-share amounts)

	December 31,	
	2014	2013
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 344.5	\$ 188.1
Accounts receivable, net of allowance for doubtful accounts of \$5.7 and \$5.4, respectively	1,561.1	1,451.0
Merchandise inventory	337.5	382.0
Miscellaneous receivables	155.6	146.3
Prepaid expenses and other	54.7	46.1
Total current assets	2,453.4	2,213.5
Property and equipment, net	137.2	131.1
Equity investments	86.7	—
Goodwill	2,217.6	2,220.3
Other intangible assets, net	1,168.8	1,328.0
Deferred financing costs, net	33.0	30.1
Other assets	3.2	1.6
<b>Total assets</b>	<b>\$ 6,099.9</b>	<b>\$ 5,924.6</b>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable-trade	\$ 704.0	\$ 662.8
Accounts payable-inventory financing	332.1	256.6
Current maturities of long-term debt	15.4	45.4
Deferred revenue	81.3	94.8
Accrued expenses:		
Compensation	130.1	112.2
Interest	28.1	31.8
Sales taxes	29.1	29.2
Advertising	34.0	33.2
Income taxes	0.2	6.3
Other	113.7	130.3
Total current liabilities	1,468.0	1,402.6
Long-term liabilities:		
Debt	3,174.6	3,205.8
Deferred income taxes	475.0	563.5
Other liabilities	45.8	41.0
Total long-term liabilities	3,695.4	3,810.3
Commitments and contingencies (Note 14)		
Shareholders' equity:		
Preferred shares, \$0.01 par value, 100.0 shares authorized, and no shares issued or outstanding for both periods	—	—
Common shares, \$0.01 par value, 1,000.0 shares authorized; 172.2 and 172.0 shares issued, respectively; 172.2 and 172.0 shares outstanding, respectively	1.7	1.7
Paid-in capital	2,711.9	2,688.1
Accumulated deficit	(1,760.5)	(1,971.8)
Accumulated other comprehensive loss	(16.6)	(6.3)
Total shareholders' equity	936.5	711.7
<b>Total liabilities and shareholders' equity</b>	<b>\$ 6,099.9</b>	<b>\$ 5,924.6</b>

The accompanying notes are an integral part of the consolidated financial statements.



**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

(in millions, except per-share amounts)

	Years Ended December 31,		
	2014	2013	2012
Net sales	\$ 12,074.5	\$ 10,768.6	\$ 10,128.2
Cost of sales	10,153.2	9,008.3	8,458.6
Gross profit	1,921.3	1,760.3	1,669.6
Selling and administrative expenses	1,110.3	1,120.9	1,029.5
Advertising expense	138.0	130.8	129.5
Income from operations	673.0	508.6	510.6
Interest expense, net	(197.3)	(250.1)	(307.4)
Net loss on extinguishments of long-term debt	(90.7)	(64.0)	(17.2)
Other income, net	2.7	1.0	0.1
Income before income taxes	387.7	195.5	186.1
Income tax expense	(142.8)	(62.7)	(67.1)
Net income	<u>\$ 244.9</u>	<u>\$ 132.8</u>	<u>\$ 119.0</u>
Net income per common share:			
Basic	\$ 1.44	\$ 0.85	\$ 0.82
Diluted	\$ 1.42	\$ 0.84	\$ 0.82
Weighted-average number of common shares outstanding:			
Basic	170.6	156.6	145.1
Diluted	172.8	158.7	145.8
Cash dividends declared per common share	\$ 0.1950	\$ 0.0425	\$ —

The accompanying notes are an integral part of the consolidated financial statements.



**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(in millions)

	Years Ended December 31,		
	2014	2013	2012
Net income	\$ 244.9	\$ 132.8	\$ 119.0
Foreign currency translation adjustment (net of tax benefit of \$0.5 million, \$0 million, and \$0 million, respectively)	(10.3)	(6.7)	2.5
Other comprehensive (loss) income	(10.3)	(6.7)	2.5
Comprehensive income	\$ 234.6	\$ 126.1	\$ 121.5

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (DEFICIT)**  
(in millions)

	Preferred Stock		Common Stock		Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Total Shareholders' (Deficit) Equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2011</b>	—	\$ —	144.9	\$ 1.4	\$ 2,184.7	\$ (2,191.3)	\$ (2.1)	\$ (7.3)
Equity-based compensation expense	—	—	—	—	22.1	—	—	22.1
Investment from CDW Holdings LLC	—	—	—	—	2.8	—	—	2.8
Repurchase of common shares	—	—	—	—	—	(0.7)	—	(0.7)
Accrued charitable contribution related to the MPK Coworker Incentive Plan II, net of tax	—	—	0.3	—	(1.4)	—	—	(1.4)
Net income	—	—	—	—	—	119.0	—	119.0
Incentive compensation plan units withheld for taxes	—	—	—	—	(0.5)	—	—	(0.5)
Foreign currency translation adjustment	—	—	—	—	—	—	2.5	2.5
<b>Balance at December 31, 2012</b>	—	\$ —	145.2	\$ 1.4	\$ 2,207.7	\$ (2,073.0)	\$ 0.4	\$ 136.5
Equity-based compensation expense	—	—	—	—	46.6	—	—	46.6
Issuance of common shares	—	—	26.8	0.3	424.4	—	—	424.7
Repurchase of common shares	—	—	—	—	—	(0.2)	—	(0.2)
Dividends declared	—	—	—	—	—	(7.3)	—	(7.3)
Reclassification to goodwill for accrued charitable contributions	—	—	—	—	9.4	—	—	9.4
Incentive compensation plan units withheld for taxes	—	—	—	—	—	(24.1)	—	(24.1)
Net income	—	—	—	—	—	132.8	—	132.8
Foreign currency translation adjustment	—	—	—	—	—	—	(6.7)	(6.7)
<b>Balance at December 31, 2013</b>	—	\$ —	172.0	\$ 1.7	\$ 2,688.1	\$ (1,971.8)	\$ (6.3)	\$ 711.7
Equity-based compensation expense	—	—	—	—	16.4	—	—	16.4
Stock options exercised	—	—	—	—	1.3	—	—	1.3
Excess tax benefits from equity-based compensation	—	—	—	—	0.3	—	—	0.3
Coworker stock purchase plan	—	—	0.2	—	5.8	—	—	5.8
Dividends declared	—	—	—	—	—	(33.6)	—	(33.6)
Net income	—	—	—	—	—	244.9	—	244.9
Foreign currency translation adjustment	—	—	—	—	—	—	(10.3)	(10.3)
<b>Balance at December 31, 2014</b>	—	\$ —	172.2	\$ 1.7	\$ 2,711.9	\$ (1,760.5)	\$ (16.6)	\$ 936.5

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in millions)

	Years Ended December 31,		
	2014	2013	2012
<b>Cash flows from operating activities:</b>			
Net income	\$ 244.9	\$ 132.8	\$ 119.0
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	207.9	208.2	210.2
Equity-based compensation expense	16.4	46.6	22.1
Deferred income taxes	(89.1)	(48.7)	(56.3)
Allowance for doubtful accounts	0.3	—	—
Amortization of deferred financing costs, debt premium, and debt discount, net	6.4	8.8	13.6
Net loss on extinguishments of long-term debt	90.7	64.0	17.2
Income from equity investments	(1.2)	—	—
Other	0.5	1.7	1.0
Changes in assets and liabilities:			
Accounts receivable	(117.6)	(170.8)	(10.4)
Merchandise inventory	44.2	(67.5)	7.1
Other assets	(18.7)	(10.1)	(3.8)
Accounts payable-trade	43.7	146.1	0.8
Other current liabilities	1.7	64.1	(2.1)
Long-term liabilities	4.9	(8.9)	(1.0)
Net cash provided by operating activities	<u>435.0</u>	<u>366.3</u>	<u>317.4</u>
<b>Cash flows from investing activities:</b>			
Capital expenditures	(55.0)	(47.1)	(41.4)
Payment for equity investment	(86.8)	—	—
Payment of accrued charitable contribution related to the MPK Coworker Incentive Plan II	(20.9)	—	—
Premium payments on interest rate cap agreements	(2.1)	—	(0.3)
Net cash used in investing activities	<u>(164.8)</u>	<u>(47.1)</u>	<u>(41.7)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from borrowings under revolving credit facility	—	63.0	289.0
Repayments of borrowings under revolving credit facility	—	(63.0)	(289.0)
Repayments of long-term debt	(15.4)	(51.1)	(201.0)
Proceeds from issuance of long-term debt	1,175.0	1,535.2	135.7
Payments to extinguish long-term debt	(1,299.0)	(2,047.4)	(243.2)
Payments of debt financing costs	(21.9)	(6.1)	(2.1)
Investment from CDW Holdings LLC, net	—	—	2.8
Net change in accounts payable-inventory financing	75.5	7.4	(29.5)
Proceeds from issuance of common shares	—	424.7	—
Proceeds from stock option exercises	1.3	—	—
Proceeds from Coworker Stock Purchase Plan	5.8	—	—
Dividends paid	(33.6)	(7.3)	—
Excess tax benefits from equity-based compensation	0.3	0.6	—
Payment of incentive compensation plan withholding taxes	—	(24.1)	—
Repurchase of common shares	—	(0.2)	(0.7)
Net cash used in financing activities	<u>(112.0)</u>	<u>(168.3)</u>	<u>(338.0)</u>
<b>Effect of exchange rate changes on cash and cash equivalents</b>	<u>(1.8)</u>	<u>(0.7)</u>	<u>0.3</u>
<b>Net increase (decrease) in cash and cash equivalents</b>	<u>156.4</u>	<u>150.2</u>	<u>(62.0)</u>
<b>Cash and cash equivalents – beginning of period</b>	<u>188.1</u>	<u>37.9</u>	<u>99.9</u>
<b>Cash and cash equivalents – end of period</b>	<u>\$ 344.5</u>	<u>\$ 188.1</u>	<u>\$ 37.9</u>
<b>Supplementary disclosure of cash flow information:</b>			

Interest paid	\$	(195.8)	\$	(267.6)	\$	(302.7)
Taxes paid, net of taxes refunded	\$	(241.2)	\$	(82.5)	\$	(123.2)
<b>Non-cash investing and financing activities:</b>						
Capital expenditures accrued in accounts payable-trade	\$	0.6	\$	0.2	\$	0.5

The accompanying notes are an integral part of the consolidated financial statements.

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Description of Business and Summary of Significant Accounting Policies**

Description of Business

CDW Corporation ("Parent") is a Fortune 500 company and a leading provider of integrated information technology ("IT") solutions to small, medium and large business, government, education and healthcare customers in the U.S. and Canada. The Company's offerings range from discrete hardware and software products to integrated IT solutions such as mobility, security, data center optimization, cloud computing, virtualization and collaboration.

Throughout this report, the terms "the Company" and "CDW" refer to Parent and its 100% owned subsidiaries.

Parent has two 100% owned subsidiaries, CDW LLC and CDW Finance Corporation. CDW LLC is an Illinois limited liability company that, together with its 100% owned subsidiaries, holds all material assets and conducts all business activities and operations of the Company. On August 6, 2010, CDW Finance Corporation, a Delaware corporation, was formed for the sole purpose of acting as co-issuer of certain debt obligations as described in Note 18 and does not hold any material assets or engage in any business activities or operations.

CDW Corporation was previously owned directly by CDW Holdings LLC ("CDW Holdings"), a company controlled by investment funds affiliated with Madison Dearborn Partners, LLC ("Madison Dearborn") and Providence Equity Partners L.L.C. ("Providence Equity," and together with Madison Dearborn, the "Sponsors"), certain other co-investors and certain members of CDW management. On July 2, 2013, Parent completed an initial public offering ("IPO") of its common stock. In connection with the IPO, CDW Holdings distributed all of its shares of Parent's common stock to its members in June 2013 in accordance with the members' respective membership interests and was subsequently dissolved in August 2013. See Note 9 for additional discussion of the IPO.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and the rules and regulations of the U.S. Securities and Exchange Commission ("SEC").

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Parent and its 100% owned subsidiaries. All intercompany transactions and accounts are eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements in accordance with GAAP requires management to make use of certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reported periods. The Company bases its estimates on historical experience and on various other assumptions that management believes are reasonable under the circumstances, the results of which form the basis for making judgments about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents include all deposits in banks and short-term (original maturities of three months or less), highly liquid investments that are readily convertible to known amounts of cash and are so near maturity that there is insignificant risk of changes in value due to interest rate changes.

Accounts Receivable

Trade accounts receivable are recorded at the invoiced amount and typically do not bear interest. The Company provides allowances for doubtful accounts related to accounts receivable for estimated losses resulting from the inability of its customers to make required payments. The Company takes into consideration the overall quality of the receivable portfolio along with specifically-identified customer risks.

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Merchandise Inventory

Inventory is valued at the lower of cost or market value. Cost is determined using a weighted-average cost method. Price protection is recorded when earned as a reduction to the cost of inventory. The Company decreases the value of inventory for estimated obsolescence equal to the difference between the cost of inventory and the estimated market value, based upon an aging analysis of the inventory on hand, specifically known inventory-related risks, and assumptions about future demand and market conditions.

Miscellaneous Receivables

Miscellaneous receivables generally consist of amounts due from vendors. The Company receives incentives from vendors related to cooperative advertising allowances, volume rebates, bid programs, price protection and other programs. These incentives generally relate to written vendor agreements with specified performance requirements and are recorded as adjustments to cost of sales or inventory, depending on the nature of the incentive.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. The Company calculates depreciation expense using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the shorter of their useful lives or the initial lease term. Expenditures for major renewals and improvements that extend the useful life of property and equipment are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred. The following table shows estimated useful lives of property and equipment:

Classification	Estimated Useful Lives
Machinery and equipment	5 to 10 years
Building and leasehold improvements	5 to 25 years
Computer and data processing equipment	3 to 5 years
Computer software	3 to 5 years
Furniture and fixtures	5 to 10 years

The Company has asset retirement obligations associated with commitments to return property subject to operating leases to its original condition upon lease termination. The Company's asset retirement liability was \$0.5 million as of December 31, 2014 and 2013.

Equity Investments

If the Company is not required to consolidate its investment in another entity because it does not have control, the Company uses the equity method if it (i) can exercise significant influence over the other entity and (ii) holds common stock of the other entity. Under the equity method, investments are carried at cost, plus or minus the Company's share of equity in the increases and decreases in the investee's net assets after the date of acquisition and adjustments for basis differences. The Company's share of the net income or loss of equity method investees is included in other income, net in the consolidated statements of operations.

Goodwill and Other Intangible Assets

The Company is required to perform an evaluation of goodwill on an annual basis or more frequently if circumstances indicate a potential impairment. The annual test for impairment is conducted as of December 1. The Company's reporting units used to assess potential goodwill impairment are the same as its operating segments. The Company has the option of performing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if it is more likely than not that the reporting unit's goodwill is impaired or performing a quantitative assessment by comparing a reporting unit's estimated fair value to its carrying amount. Under the quantitative assessment, testing for impairment of goodwill is a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill to determine the amount of impairment loss. Fair value of a reporting unit is determined by using a weighted combination of an income approach and a market approach, as this combination is considered the most indicative of the Company's fair value in an orderly transaction between market participants. This assessment uses significant

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

accounting judgments, estimates and assumptions. Any changes in the judgments, estimates or assumptions used could produce significantly different results. During the years ended December 31, 2014, 2013 and 2012, the Company concluded its goodwill was not impaired. See Note 4 for more information on the Company's evaluations of goodwill for impairment.

Intangible assets with determinable lives are amortized on a straight-line basis over their respective estimated useful lives. The cost of computer software developed or obtained for internal use is capitalized and amortized on a straight-line basis over the estimated useful life of the software. These intangible assets are reviewed for impairment when indicators are present using undiscounted cash flows. The Company uses the undiscounted cash flows, excluding interest charges, to assess the recoverability of the carrying value of such assets. To the extent carrying value exceeds the undiscounted cash flows, an impairment loss is recorded based upon the excess of the carrying value over fair value. In addition, each quarter, the Company evaluates whether events and circumstances warrant a revision to the remaining estimated useful life of each of these intangible assets. If the Company were to determine that a change to the remaining estimated useful life of an intangible asset was necessary, then the remaining carrying amount of the intangible asset would be amortized prospectively over that revised remaining useful life. During the years ended December 31, 2014, 2013 and 2012, no impairment existed with respect to the Company's intangible assets with determinable lives and no significant changes to the remaining useful lives were necessary. The following table shows estimated useful lives of definite-lived intangible assets:

Classification	Estimated Useful Lives
Customer relationships	11 to 14 years
Trade name	20 years
Internally developed software	3 to 5 years
Other	1 to 10 years

#### Deferred Financing Costs

Deferred financing costs, such as underwriting, financial advisory, professional fees and other similar fees are capitalized and recognized in interest expense over the estimated life of the related debt instrument using the effective interest method or straight-line method, as applicable.

#### Derivatives

The Company has entered into interest rate cap agreements for the purpose of economically hedging its exposure to fluctuations in interest rates. These derivatives are recorded at fair value in the Company's consolidated balance sheets.

The Company's interest rate cap agreements are not designated as cash flow hedges of interest rate risk. Changes in fair value of the derivatives are recorded directly to interest expense in the Company's consolidated statements of operations.

#### Fair Value Measurements

Fair value is defined under GAAP as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A fair value hierarchy has been established for valuation inputs to prioritize the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels which is determined by the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

Level 1 – observable inputs such as quoted prices for identical instruments traded in active markets.

Level 2 – inputs are based on quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – inputs are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability. The fair values are therefore determined using model-based techniques that include option pricing models, discounted cash flow models and similar techniques.

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Accumulated Other Comprehensive (Loss) Income

Foreign currency translation adjustments are included in shareholders' equity under accumulated other comprehensive (loss) income.

The components of accumulated other comprehensive (loss) income are as follows:

(in millions)	December 31,		
	2014	2013	2012
Foreign currency translation adjustment	\$ (16.6)	\$ (6.3)	\$ 0.4
Accumulated other comprehensive (loss) income	<u>\$ (16.6)</u>	<u>\$ (6.3)</u>	<u>\$ 0.4</u>

Revenue Recognition

The Company is a primary distribution channel for a large group of vendors and suppliers, including original equipment manufacturers ("OEMs"), software publishers and wholesale distributors. The Company records revenue from sales transactions when title and risk of loss are passed to the customer, there is persuasive evidence of an arrangement for sale, delivery has occurred and/or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. The Company's shipping terms typically specify F.O.B. destination, at which time title and risk of loss have passed to the customer.

Revenues from the sales of hardware products and software products and licenses are generally recognized on a gross basis with the selling price to the customer recorded as sales and the acquisition cost of the product recorded as cost of sales. These items can be delivered to customers in a variety of ways, including (i) as physical product shipped from the Company's warehouse, (ii) via drop-shipment by the vendor or supplier, or (iii) via electronic delivery for software licenses. At the time of sale, the Company records an estimate for sales returns and allowances based on historical experience. The Company's vendor partners warrant most of the products the Company sells.

The Company leverages drop-shipment arrangements with many of its vendors and suppliers to deliver products to its customers without having to physically hold the inventory at its warehouses, thereby increasing efficiency and reducing costs. The Company recognizes revenue for drop-shipment arrangements on a gross basis upon delivery to the customer with contract terms that typically specify F.O.B. destination.

Revenue from professional services is either recognized as provided for services billed at an hourly rate or recognized using a proportional performance model for services provided at a fixed fee. Revenue from cloud computing solutions including Software as a Service ("SaaS") and Infrastructure as a Service ("IaaS") arrangements, as well as data center services such as managed and remote managed services, server co-location, internet connectivity and data backup and storage, is recognized over the period service is provided.

The Company also sells certain products for which it acts as an agent. Products in this category include the sale of third-party services, warranties, software assurance ("SA") and third-party hosted SaaS and IaaS arrangements. SA is a product that allows customers to upgrade, at no additional cost, to the latest technology if new applications are introduced during the period that the SA is in effect. These sales do not meet the criteria for gross sales recognition, and thus are recognized on a net basis at the time of sale. Under net sales recognition, the cost paid to the vendor or third-party service provider is recorded as a reduction to sales, resulting in net sales being equal to the gross profit on the transaction.

The Company's larger customers are offered the opportunity by certain of its vendors to purchase software licenses and SA under enterprise agreements ("EAs"). Under EAs, customers are considered to be compliant with applicable license requirements for the ensuing year, regardless of changes to their employee base. Customers are charged an annual true-up fee for changes in the number of users over the year. With most EAs, the Company's vendors will transfer the license and bill the customer directly, paying resellers such as the Company an agency fee or commission on these sales. The Company records these fees as a component of net sales as earned and there is no corresponding cost of sales amount. In certain instances, the Company bills the customer directly under an EA and accounts for the individual items sold based on the nature of the item. The Company's vendors typically dictate how the EA will be sold to the customer.

From time to time, the Company sells some of its products and services as part of bundled contract arrangements containing multiple deliverables, which may include a combination of products and services. For each deliverable that represents a separate unit of accounting, total arrangement consideration is allocated based upon the relative selling



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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

prices of each element. The allocated arrangement consideration is recognized as revenue in accordance with the principles described above. Selling prices are determined by using vendor specific objective evidence (“VSOE”) if it exists. Otherwise, selling prices are determined using third party evidence (“TPE”). If neither VSOE or TPE is available, the Company uses its best estimate of selling prices.

The Company records freight billed to its customers as net sales and the related freight costs as a cost of sales.

Deferred revenue includes (1) payments received from customers in advance of providing the product or performing services, and (2) amounts deferred if other conditions of revenue recognition have not been met.

The Company performs an analysis of the estimated number of days of sales in-transit to customers at the end of each period based on a weighted-average analysis of commercial delivery terms that includes drop-shipment arrangements. This analysis is the basis upon which the Company estimates the amount of sales in-transit at the end of the period and adjusts revenue and the related costs to reflect only what has been received by the customer. Changes in delivery patterns may result in a different number of business days used in making this adjustment and could have a material impact on the Company's revenue recognition for the period.

#### Sales Taxes

Sales tax amounts collected from customers for remittance to governmental authorities are presented on a net basis in the Company's consolidated statements of operations.

#### Advertising

Advertising costs are generally charged to expense in the period incurred. Cooperative reimbursements from vendors are recorded in the period the related advertising expenditure is incurred. The Company classifies vendor consideration as a reduction to cost of sales.

#### Equity-Based Compensation

The Company measures all equity-based payments using a fair-value-based method and records compensation expense over the requisite service period using the straight-line method in its consolidated financial statements. Estimated forfeiture rates have been developed based upon historical experience.

#### Interest Expense

Interest expense is typically recognized in the period incurred at the applicable interest rate in effect. For increasing-rate debt, the Company determines the periodic interest cost using the effective interest method over the estimated outstanding term of the debt. The difference between interest expense recorded and cash interest paid is reflected as short-term or long-term accrued interest in the Company's consolidated balance sheets.

#### Foreign Currency Translation

The Company's functional currency is the U.S. dollar. The functional currency of the Company's Canadian subsidiary is the local currency, the Canadian dollar. The functional currency of the Company's equity investment in Kelway TopCo Limited ("Kelway") is the local currency, the British pound sterling. Assets and liabilities of the Canadian subsidiary and the Company's share of assets and liabilities in Kelway are translated at the spot rate in effect at the applicable reporting date and the consolidated results of operations of the Canadian subsidiary and the Company's share of the net income or loss of Kelway are translated at the average exchange rates in effect during the applicable period. The resulting foreign currency translation adjustment is recorded as accumulated other comprehensive (loss) income, which is reflected as a separate component of shareholders' equity.

#### Income Taxes

Deferred income taxes are provided to reflect the differences between the tax bases of assets and liabilities and their reported amounts in the consolidated financial statements using enacted tax rates in effect for the year in which the differences are expected to reverse. The Company performs an evaluation of the realizability of deferred tax assets on a quarterly basis. This evaluation requires management to make use of estimates and assumptions and considers all positive and negative evidence and factors, such as the scheduled reversal of temporary differences, the mix of earnings in the jurisdictions in which the Company operates, and prudent and feasible tax planning strategies.

**CDW CORPORATION AND SUBSIDIARIES**  
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The Company accounts for unrecognized tax benefits based upon its assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities. The Company reports a liability for unrecognized tax benefits resulting from unrecognized tax benefits taken or expected to be taken in a tax return and recognizes interest and penalties, if any, related to its unrecognized tax benefits in income tax expense.

**2. Recent Accounting Pronouncements**

Stock Compensation - Performance Share Awards

In June 2014, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") 2014-12, "Compensation - Stock Compensation," which amended the standard on how to account for share-based payments when the terms of an award provide that a performance target could be achieved after the requisite service period. Under this ASU, a performance target that could be achieved after the requisite service period is required to be treated as a performance condition that affects the vesting of the award and should not be reflected in estimating the fair value of the award at the grant date. This ASU is effective for the first quarter of 2016 with early adoption permitted. The Company already accounts for performance shares utilizing the method outlined by this ASU and is not impacted by the new standard.

Revenue Recognition

In May 2014, the FASB issued ASU 2014-09, "Revenue from Contracts with Customers," which outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes the most current revenue recognition standard. This ASU is effective for the Company for the first quarter of 2017 and early adoption is not permitted. This ASU allows for either a full retrospective adoption approach or a modified retrospective adoption approach. The Company is currently evaluating the impact that this ASU will have on its consolidated financial position, results of operations and cash flows.

**3. Property and Equipment**

Property and equipment consisted of the following:

(in millions)	December 31,	
	2014	2013
Land	\$ 27.7	\$ 27.7
Machinery and equipment	54.3	53.0
Building and leasehold improvements	105.1	104.8
Computer and data processing equipment	65.6	61.2
Computer software	10.6	30.9
Furniture and fixtures	21.7	21.6
Construction in progress	24.7	10.9
Property and equipment	309.7	310.1
Less: accumulated depreciation	172.5	179.0
Property and equipment, net	<u>\$ 137.2</u>	<u>\$ 131.1</u>

During 2014, 2013 and 2012, the Company recorded disposals of \$32.0 million, \$7.9 million and \$12.2 million, respectively, to remove assets that were no longer in use from property and equipment. The Company recorded a pre-tax loss of \$0.1 million, \$0.0 million and \$0.1 million in 2014, 2013 and 2012, respectively, for certain disposed assets that were not fully depreciated.

Depreciation expense for the years ended December 31, 2014, 2013 and 2012 was \$25.8 million, \$27.2 million and \$32.0 million, respectively.

**4. Goodwill and Other Intangible Assets**

As described in Note 1, the Company is required to perform an evaluation of goodwill on an annual basis or more frequently if circumstances indicate a potential impairment. The annual test for impairment is conducted as of December 1. The Company's reporting units used to assess potential goodwill impairment are the same as its operating segments. The Company has two reportable segments: Corporate, which is comprised primarily of business customers,

**CDW CORPORATION AND SUBSIDIARIES**  
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and Public, which is comprised of government entities and education and healthcare institutions. The Company also has three other operating segments, CDW Advanced Services, Canada, and Kelway, which do not meet the reportable segment quantitative thresholds and, accordingly, are combined together as “Other” for segment reporting purposes. The Company has the option of performing a qualitative assessment of a reporting unit's fair value from the last quantitative assessment to determine if it is more likely than not that the reporting unit's goodwill is impaired or performing a quantitative assessment by comparing a reporting unit's estimated fair value to its carrying amount. Under the quantitative assessment, testing for impairment of goodwill is a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill to determine the amount of impairment loss. Fair value of a reporting unit is determined by using a weighted combination of an income approach and a market approach, as this combination is considered the most indicative of the Company's fair value in an orderly transaction between market participants. Under the income approach, the Company determined fair value based on estimated future cash flows of a reporting unit, discounted by an estimated weighted-average cost of capital, which reflects the overall level of inherent risk of a reporting unit and the rate of return an outside investor would expect to earn. Under the market approach, the Company utilized valuation multiples derived from publicly available information for guideline companies to provide an indication of how much a knowledgeable investor in the marketplace would be willing to pay for a company. The valuation multiples were applied to the reporting units. Determining the fair value of a reporting unit is judgmental in nature and requires the use of significant estimates and assumptions, including revenue growth rates, gross margins, operating margins, discount rates and future market conditions, among others.

#### December 1, 2014 Evaluation

The Company performed its annual evaluation of goodwill as of December 1, 2014 by utilizing a quantitative assessment for all reporting units. All reporting units passed the first step of the goodwill evaluation (with the fair value exceeding the carrying value by 169% , 147% , 276% and 78% for the Corporate, Public, Canada and CDW Advanced Services reporting units, respectively) and, accordingly, the Company was not required to perform the second step of the goodwill evaluation.

To determine the fair value of the reporting units, the Company used a 75% / 25% weighting of the income approach and market approach, respectively. Under the income approach, the Company estimated future cash flows of each reporting unit based on internally generated forecasts for the remainder of 2014 and the next six years. The Company used a 3.5% long-term assumed consolidated annual revenue growth rate for periods after the six-year forecast. The estimated future cash flows for the Corporate and Public reporting units were discounted at 9.0% ; cash flows for the Canada and CDW Advanced Services reporting units were discounted at 9.3% and 11.5% , respectively, based on the future growth rates assumed in the discounted cash flows. Discount rates utilized during the 2014 goodwill evaluation declined compared to those used in 2013 as a result of the market performance of the Company's common stock and a lower equity risk premium with the exception of CDW Advanced Services. The discount rate for CDW Advanced Services increased to account for additional forecast risk.

#### December 1, 2013 Evaluation

The Company performed its annual evaluation of goodwill as of December 1, 2013 by utilizing a quantitative assessment for all reporting units. All reporting units passed the first step of the goodwill evaluation (with the fair value exceeding the carrying value by 107% , 82% , 167% and 168% for the Corporate, Public, Canada and CDW Advanced Services reporting units, respectively) and, accordingly, the Company was not required to perform the second step of the goodwill evaluation.

To determine the fair value of the reporting units, the Company used a 75% / 25% weighting of the income approach and market approach, respectively. Under the income approach, the Company estimated future cash flows of each reporting unit based on internally generated forecasts for the remainder of 2013 and the next six years. The Company used a 3.5% long-term assumed consolidated annual revenue growth rate for periods after the six-year forecast. The estimated future cash flows for the Corporate and Public reporting units were discounted at 10.0% ; cash flows for the Canada and CDW Advanced Services reporting units were discounted at 10.3% and 10.5% , respectively, based on the future growth rates assumed in the discounted cash flows. Discount rates utilized during the 2013 goodwill evaluation declined compared to those used in 2012 as a result of the market performance of the Company's common stock and a lower equity risk premium.

#### December 1, 2012 Evaluation

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The Company performed its annual evaluation of goodwill as of December 1, 2012 by utilizing a quantitative assessment for all reporting units. All reporting units passed the first step of the goodwill evaluation (with the fair value exceeding the carrying value by 49% , 44% , 104% and 17% for the Corporate, Public, Canada and CDW Advanced Services reporting units, respectively) and, accordingly, the Company was not required to perform the second step of the goodwill evaluation.

To determine the fair value of the reporting units, the Company used a 75% / 25% weighting of the income approach and market approach, respectively. Under the income approach, the Company estimated future cash flows of each reporting unit based on internally generated forecasts for the remainder of 2012 and the next six years. The Company used a 3.5% long-term assumed consolidated annual revenue growth rate for periods after the six-year forecast. The estimated future cash flows for the Corporate and Public reporting units were discounted at 11.5% ; cash flows for the Canada and CDW Advanced Services reporting units were discounted at 11.8% and 12.0% , respectively, based on the future growth rates assumed in the discounted cash flows.

The following table presents the change in goodwill by segment for the years ended December 31, 2014 and 2013 :

(in millions)	Corporate	Public	Other <sup>(1)</sup>	Consolidated
Balances as of December 31, 2012:				
Goodwill	\$ 2,794.4	\$ 1,261.4	\$ 107.3	\$ 4,163.1
Accumulated impairment charges	(1,571.4)	(354.1)	(28.3)	(1,953.8)
	<u>\$ 1,223.0</u>	<u>\$ 907.3</u>	<u>\$ 79.0</u>	<u>\$ 2,209.3</u>
2013 Activity:				
Translation adjustment	\$ —	\$ —	\$ (2.1)	\$ (2.1)
Contingent consideration <sup>(2)</sup>	8.8	4.0	0.3	13.1
	<u>\$ 8.8</u>	<u>\$ 4.0</u>	<u>\$ (1.8)</u>	<u>\$ 11.0</u>
Balances as of December 31, 2013:				
Goodwill	\$ 2,803.2	\$ 1,265.4	\$ 105.5	\$ 4,174.1
Accumulated impairment charges	(1,571.4)	(354.1)	(28.3)	(1,953.8)
	<u>\$ 1,231.8</u>	<u>\$ 911.3</u>	<u>\$ 77.2</u>	<u>\$ 2,220.3</u>
2014 Activity:				
Translation adjustment	\$ —	\$ —	\$ (2.7)	\$ (2.7)
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ (2.7)</u>	<u>\$ (2.7)</u>
Balances as of December 31, 2014:				
Goodwill	\$ 2,803.2	\$ 1,265.4	\$ 102.8	\$ 4,171.4
Accumulated impairment charges	(1,571.4)	(354.1)	(28.3)	(1,953.8)
	<u><u>\$ 1,231.8</u></u>	<u><u>\$ 911.3</u></u>	<u><u>\$ 74.5</u></u>	<u><u>\$ 2,217.6</u></u>

- (1) Other is comprised of CDW Advanced Services, Canada, and Kelway reporting units. There is no goodwill attributable to the Kelway reporting unit.
- (2) During 2013, the Company recorded a \$13.1 million net-of-tax addition to goodwill in connection with the settlement of the MPK Coworker Incentive Plan II and related charitable contribution. The charitable contribution was accounted for as additional purchase price (goodwill) in accordance with pre-2009 business combinations accounting guidance. See Note 10 for additional discussion of this transaction.

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The following table presents a summary of intangible assets at December 31, 2014 and 2013 :

(in millions)

December 31, 2014	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Customer relationships	\$ 1,859.7	\$ 1,012.1	\$ 847.6
Trade name	421.0	152.0	269.0
Internally developed software	110.1	58.9	51.2
Other	3.2	2.2	1.0
<b>Total</b>	<b>\$ 2,394.0</b>	<b>\$ 1,225.2</b>	<b>\$ 1,168.8</b>

December 31, 2013	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Customer relationships	\$ 1,860.8	\$ 872.8	\$ 988.0
Trade name	421.0	130.9	290.1
Internally developed software	128.5	79.8	48.7
Other	3.1	1.9	1.2
<b>Total</b>	<b>\$ 2,413.4</b>	<b>\$ 1,085.4</b>	<b>\$ 1,328.0</b>

During 2014, the Company recorded disposals of \$41.7 million to remove fully amortized internally developed software assets that were no longer in use from intangible assets.

Amortization expense related to intangible assets for the years ended December 31, 2014, 2013 and 2012 was \$182.1 million , \$181.0 million and \$178.2 million , respectively.

Estimated future amortization expense related to intangible assets for the next five years is as follows:

(in millions)

Years ending December 31,	Amount
2015	\$ 180.7
2016	172.8
2017	167.1
2018	160.4
2019	158.9

## 5. Inventory Financing Agreements

The Company has entered into agreements with certain financial intermediaries to facilitate the purchase of inventory from various suppliers under certain terms and conditions, as described below. These amounts are classified separately as accounts payable-inventory financing on the accompanying consolidated balance sheets. The Company does not incur any interest expense associated with these agreements as balances are paid when they are due.

The following table presents the amounts included in accounts payable-inventory financing:

(in millions)	December 31,	
	2014	2013
Revolving Loan inventory financing agreement	\$ 330.1	\$ 256.1
Other inventory financing agreements	2.0	0.5
<b>Accounts payable-inventory financing</b>	<b>\$ 332.1</b>	<b>\$ 256.6</b>

As described in Note 7, in June 2014, the Company entered into a new senior secured asset-based revolving credit facility, which incorporates the previous inventory floorplan sub-facility and, among other changes, removes the \$400.0 million limit on the size of the floorplan sub-facility. In connection with the floorplan sub-facility, the Company maintains an inventory financing agreement on an unsecured basis with a financial intermediary to facilitate



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the purchase of inventory from this vendor (the “Revolving Loan inventory financing agreement”). Amounts outstanding under the Revolving Loan inventory financing agreement are unsecured and non-interest bearing.

The Company also maintains other inventory financing agreements with financial intermediaries to facilitate the purchase of inventory from certain vendors. At December 31, 2014 and 2013, amounts owed under other inventory financing agreements of \$2.0 million and \$0.5 million, respectively, were collateralized by the inventory purchased under these financing agreements and a second lien on the related accounts receivable.

## 6. Lease Commitments

The Company is obligated under various non-cancelable operating lease agreements for office facilities that generally provide for minimum rent payments and a proportionate share of operating expenses and property taxes and include certain renewal and expansion options. For the years ended December 31, 2014, 2013 and 2012, rent expense under these lease arrangements was \$21.4 million, \$20.7 million and \$22.4 million, respectively.

Future minimum lease payments are as follows:

(in millions)

Years ending December 31,

2015	\$	19.1
2016		15.3
2017		16.1
2018		13.6
2019		12.8
Thereafter		50.6
Total future minimum lease payments <sup>(1)</sup>	\$	<u>127.5</u>

(1) Included in these amounts are future minimum lease payments commencing in the fourth quarter of 2016 that relate to a new lease entered into in December 2014 for the Company’s future headquarters in Lincolnshire, Illinois. Also reflected in these amounts is the future expiration of two leases in the first quarter of 2016 for facilities currently in use by the Company which the Company plans to consolidate into the new headquarters location and accordingly, these leases will not be renewed.

## 7. Long-Term Debt

Long-term debt was as follows:

(dollars in millions)

	Interest Rate <sup>(1)</sup>	December 31,	
		2014	2013
Senior secured asset-based revolving credit facility	—%	\$ —	\$ —
Senior secured term loan facility	3.25%	1,513.5	1,528.9
Unamortized discount on senior secured term loan facility		(3.7)	(4.4)
Senior secured notes due 2018	—%	—	325.0
Senior notes due 2019	8.5%	503.9	1,305.0
Unamortized premium on senior notes due 2019		1.3	4.2
Senior notes due 2022	6.0%	600.0	—
Senior notes due 2024	5.5%	575.0	—
Senior subordinated notes due 2017	—%	—	92.5
Total long-term debt		<u>3,190.0</u>	<u>3,251.2</u>
Less current maturities of long-term debt		<u>(15.4)</u>	<u>(45.4)</u>
Long-term debt, excluding current maturities		<u>\$ 3,174.6</u>	<u>\$ 3,205.8</u>

(1) Interest rate at December 31, 2014.

At December 31, 2014, the Company was in compliance with the covenants under its various credit agreements and indentures as described below. Under the indenture governing the 8.5% Senior Notes due 2019, which contains the





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most restrictive restricted payment provisions in the Company's various credit agreements and indentures, CDW LLC and its restricted subsidiaries are generally restricted from paying dividends and making other restricted payments. For the purpose of determining restricted payment capacity, consolidated net income or loss includes certain adjustments that are defined in the applicable indenture. At December 31, 2014, the amount of cumulative consolidated net income free of restrictions under the credit agreements and indentures ("Restricted Payment Capacity") was \$230.3 million.

Senior Secured Asset-Based Revolving Credit Facility ("Revolving Loan")

At December 31, 2014, the Company had no outstanding borrowings under the Revolving Loan, \$2.1 million of undrawn letters of credit and \$312.3 million reserved related to the floorplan sub-facility.

On June 6, 2014, the Company entered into the Revolving Loan, a new five-year \$1,250.0 million senior secured asset-based revolving credit facility, with the facility being available to the Company for borrowings, issuance of letters of credit and floorplan financing for certain vendor products. The Revolving Loan matures on June 6, 2019, subject to an acceleration provision discussed below. The Revolving Loan replaces the Company's previous revolving loan credit facility that was to mature on June 24, 2016. The Revolving Loan (i) increases the overall revolving credit facility capacity available to the Company from \$900.0 million to \$1,250.0 million, (ii) increases the maximum aggregate amount of increases that may be made to the revolving credit facility from \$200.0 million to \$300.0 million, (iii) maintains a maturity acceleration provision based upon excess cash availability whereby the Revolving Loan may mature 45 days prior to the final maturity of any then outstanding senior debt if excess cash availability does not exceed the outstanding borrowings of the subject maturing debt at the time of the test plus \$150.0 million, (iv) decreases the fee on the unused portion of the revolving credit facility from either 37.5 or 50 basis points, depending on the amount of utilization, to 25 basis points, (v) decreases the applicable interest rate margin by 50 basis points, and (vi) amends the existing inventory floorplan sub-facility as discussed below. In connection with the termination of the previous facility, the Company recorded a loss on extinguishment of long-term debt of \$0.4 million in the consolidated statement of operations for the year ended December 31, 2014, representing a write-off of a portion of unamortized deferred financing costs. Fees of \$6.4 million related to the Revolving Loan were capitalized as deferred financing costs and are being amortized over the five-year term of the facility on a straight-line basis.

The Revolving Loan incorporates the previous inventory floorplan sub-facility and related Revolving Loan inventory financing agreement while removing the previous \$400.0 million limit on the size of the floorplan sub-facility and the in-transit reserve of 15% of open orders. At December 31, 2014, the financial intermediary reported an outstanding balance of \$312.3 million under the Revolving Loan inventory financing agreement. The amount included on the Company's consolidated balance sheet as of December 31, 2014 as accounts payable-inventory financing related to the Revolving Loan inventory financing agreement of \$330.1 million includes a \$17.8 million accrual for amounts in transit.

Borrowings under the Revolving Loan bear interest at a variable interest rate plus an applicable margin. The interest rate margin is based on one of two indices, either (i) LIBOR, or (ii) the Alternate Base Rate ("ABR") with the ABR being the greater of (a) the prime rate, (b) the federal funds effective rate plus 50 basis points or (c) the one-month LIBOR plus 1.00%. The applicable margin varies (1.50% to 2.00% for LIBOR borrowings and 0.50% to 1.00% for ABR borrowings) depending upon average daily excess cash availability under the agreement evidencing the Revolving Loan and is subject to a reduction of 0.25% if, and for as long as, CDW LLC's corporate credit rating from Standard & Poor's Rating Services is BB or better and CDW LLC's corporate family rating from Moody's Investors Service, Inc. is Ba3 or better (in each case with stable or better outlook).

Under the new Revolving Loan, the Company is permitted to borrow an aggregate amount of \$1,250.0 million; however, its ability to borrow under the Revolving Loan is limited by a borrowing base. The borrowing base is (a) the sum of the products of the applicable advance rates on eligible accounts receivable and on eligible inventory as defined in the agreement less (b) any reserves. At December 31, 2014, the borrowing base was \$1,253.4 million based on the amount of eligible inventory and accounts receivable balances as of November 30, 2014. The Company could have borrowed up to an additional \$935.6 million under the Revolving Loan at December 31, 2014.

The ability to borrow under the Revolving Loan also remains limited by a minimum liquidity condition which provides that, if excess cash availability is less than the lesser of (i) \$125.0 million and (ii) the greater of (A) 10.0% of the borrowing base and (B) \$100.0 million, the lenders are not required to lend any additional amounts under the Revolving Loan unless the consolidated fixed charge coverage ratio (as described in the agreement evidencing the Revolving Loan) is at least 1.00 to 1.00.

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CDW LLC is the borrower under the Revolving Loan. All obligations under the Revolving Loan are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. Borrowings under the Revolving Loan are collateralized by a first priority interest in inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5), deposits, and accounts receivable, and a second priority interest in substantially all other assets. The Revolving Loan contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The Revolving Loan also includes maintenance of a minimum average daily excess cash availability requirement. Should the Company fall below the minimum average daily excess cash availability requirement for five consecutive business days, the Company becomes subject to a fixed charge coverage ratio until such time as the daily excess cash availability requirement is met for 30 consecutive business days.

Senior Secured Term Loan Facility

On April 29, 2013, the Company entered into a seven-year, \$1,350.0 million aggregate principal amount senior secured term loan facility (the "Term Loan"). The Term Loan was issued at a price that was 99.75% of par, which resulted in a discount of \$3.4 million. Substantially all of the proceeds from the Term Loan were used to repay the \$1,299.5 million outstanding aggregate principal amount of the prior senior secured term loan facility (the "Prior Term Loan Facility"). In connection with this refinancing, the Company recorded a loss on extinguishment of long-term debt of \$10.3 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented a write-off of the remaining unamortized deferred financing costs related to the Prior Term Loan Facility.

On July 31, 2013, the Company borrowed an additional \$190.0 million aggregate principal amount under the Term Loan at a price that was 99.25% of par, which resulted in a discount of \$1.4 million. Such proceeds were used to redeem a portion of outstanding Senior Subordinated Notes. The discounts are reported on the consolidated balance sheet as a reduction to the face amount of the Term Loan and are being amortized to interest expense over the term of the related debt. Fees of \$6.1 million related to the Term Loan were capitalized as deferred financing costs and are being amortized over the term of the facility using the effective interest method.

The Company is required to pay quarterly principal installments equal to 0.25% of the original principal amount of the Term Loan, with the remaining principal amount payable on the maturity date of April 29, 2020. The quarterly principal installment payments commenced during the quarter ended June 30, 2013. At December 31, 2014, the outstanding principal amount of the Term Loan was \$1,513.5 million, excluding \$3.7 million in unamortized discount.

Borrowings under the Term Loan bear interest at either (a) the alternate base rate ("ABR") plus a margin or (b) LIBOR plus a margin; provided that for the purposes of the Term Loan, LIBOR shall not be less than 1.00% per annum at any time ("LIBOR Floor"). The margin is based upon a net leverage ratio as defined in the agreement governing the Term Loan, ranging from 1.25% to 1.50% for ABR borrowings and 2.25% to 2.50% for LIBOR borrowings. The total net leverage ratio was 3.1 at December 31, 2014. An interest rate of 3.25%, LIBOR Floor plus a 2.25% margin, was in effect during the three-month period ended December 31, 2014.

In order to manage the risk associated with changes in interest rates on borrowings under the Term Loan, the Company has entered into interest rate cap agreements. The Company had ten interest rate cap agreements in effect through January 14, 2015 with a combined notional amount of \$1,150.0 million which entitled the Company to payments from the counterparty of the amount, if any, by which three-month LIBOR exceeds a weighted average rate of 2.4% during the agreement period. The fair value of these interest rate cap agreements was zero at both December 31, 2014 and 2013.

In connection with the expiration of the ten interest rate cap agreements noted above, during the year ended December 31, 2014, the Company entered into 14 additional interest rate cap agreements with a combined notional amount of \$1,000.0 million. Under these agreements, the Company made premium payments totaling \$2.1 million to the counterparties in exchange for the right to receive payments equal to the amount, if any, by which three-month LIBOR exceeds 2.0% during the agreement period. These interest rate cap agreements are effective from January 14, 2015 through January 14, 2017. The fair value of these interest rate cap agreements was \$1.7 million at December 31, 2014.

The Company's interest rate cap agreements have not been designated as cash flow hedges of interest rate risk for GAAP accounting purposes. The interest rate cap agreements are recorded at fair value on the Company's

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consolidated balance sheet in Other Assets each period, with changes in fair value recorded directly to interest expense in the Company's consolidated statements of operations. The fair value of the Company's interest rate cap agreements is classified as Level 2 in the fair value hierarchy. The valuation of the interest rate cap agreements is derived by using a discounted cash flow analysis on the expected cash receipts that would occur if variable interest rates rise above the strike rates of the caps. This analysis reflects the contractual terms of the interest rate cap agreements, including the period to maturity, and uses observable market-based inputs, including LIBOR curves and implied volatilities. The Company also incorporates insignificant credit valuation adjustments to appropriately reflect the respective counterparty's nonperformance risk in the fair value measurements. The counterparty credit spreads are based on publicly available credit information obtained from a third party credit data provider.

See Note 20 for a description of the interest rate cap agreements entered into during the first quarter of 2015.

On January 30, 2013, the Company made an optional prepayment of \$40.0 million aggregate principal amount outstanding under the Prior Term Loan Facility. The optional prepayment satisfied the excess cash flow payment provision of the Prior Term Loan Facility with respect to the year ended December 31, 2012.

CDW LLC is the borrower under the Term Loan. All obligations under the Term Loan are guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The Term Loan is collateralized by a second priority interest in substantially all inventory (excluding inventory collateralized under the inventory floorplan arrangements as described in Note 5), deposits, and accounts receivable, and by a first priority interest in substantially all other assets. The Term Loan contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates.

8.0% Senior Secured Notes due 2018 ("Senior Secured Notes")

At December 31, 2014, there were no outstanding Senior Secured Notes.

On August 5, 2014, the proceeds from the issuance of the 2022 Senior Notes discussed below, along with cash on hand, were deposited with the trustee to redeem all of the remaining \$325.0 million aggregate principal amount of the Senior Secured Notes at a redemption price of 106.061% of the principal amount redeemed, plus accrued and unpaid interest through the date of redemption. On the same date, the indenture governing the Senior Secured Notes was satisfied and discharged. The redemption date was September 5, 2014. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$23.7 million in the consolidated statement of operations for the year ended December 31, 2014, which was comprised of \$4.0 million for the write-off of the unamortized deferred financing fees, a redemption premium of \$13.0 million and a make-whole interest payment of \$6.7 million.

On July 2, 2013, the Company used a portion of the net proceeds from the IPO to redeem \$175.0 million aggregate principal amount of Senior Secured Notes. The redemption price of the Senior Secured Notes was 108.0% of the principal amount redeemed, plus \$0.7 million of accrued and unpaid interest to the date of redemption. The Company used cash on hand to pay such accrued and unpaid interest. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$16.7 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$14.0 million in redemption premium and \$2.7 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Secured Notes.

8.5% Senior Notes due 2019 ("2019 Senior Notes")

At December 31, 2014, the outstanding principal amount of 2019 Senior Notes was \$503.9 million, excluding \$1.3 million in unamortized premium. The 2019 Senior Notes mature on April 1, 2019.

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On December 1, 2014, the proceeds from the issuance of the 2024 Senior Notes discussed below, along with cash on hand, were deposited with the trustee to redeem \$541.4 million aggregate principal amount of the 2019 Senior Notes at a redemption price of 106.202% of the principal amount redeemed, plus accrued and unpaid interest through the date of redemption. The redemption date was December 31, 2014. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$36.9 million in the consolidated statement of operations for the year ended December 31, 2014, which was comprised of \$4.7 million for the write-off of a portion of the unamortized deferred financing fees, a redemption premium of \$23.0 million, and a make-whole interest payment of \$10.6 million, partially offset by \$1.4 million for the write-off of a portion of the unamortized premium.

On August 5, 2014, the proceeds from the issuance of the 2022 Senior Notes discussed below, along with cash on hand, were deposited with the trustee to redeem \$234.7 million aggregate principal amount of the 2019 Senior Notes at a redemption price of 108.764% of the principal amount redeemed, plus accrued and unpaid interest through the date of redemption. The redemption date was September 5, 2014. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$22.1 million in the consolidated statement of operations for the year ended December 31, 2014, which was comprised of \$2.2 million for the write-off of a portion of the unamortized deferred financing fees, a redemption premium of \$10.0 million, and a make-whole interest payment of \$10.6 million, partially offset by \$0.7 million for the write-off of a portion of the unamortized premium.

On March 20, 2014, the Company repurchased and subsequently canceled \$25.0 million aggregate principal amount of the 2019 Senior Notes from an affiliate of Providence Equity in a privately negotiated transaction on an arms' length basis at a price of 109.75% of the principal amount. Cash on hand was used to fund the repurchase of \$25.0 million aggregate principal amount, \$2.4 million of repurchase premium and \$1.0 million in accrued and unpaid interest to the date of repurchase. In connection with this repurchase, the Company recorded a loss on extinguishment of long-term debt of \$2.7 million in the Company's consolidated statement of operations for the year ended December 31, 2014. This loss represented \$2.4 million in repurchase premium and \$0.3 million for the write-off of a portion of the unamortized deferred financing costs related to the 2019 Senior Notes.

CDW LLC and CDW Finance Corporation are the co-issuers of the 2019 Senior Notes. Obligations under the 2019 Senior Notes are guaranteed on an unsecured senior basis by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries. The 2019 Senior Note indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to dispose of assets, incur additional indebtedness, incur guarantee obligations, prepay other indebtedness, make distributions or other restricted payments, create liens, make equity or debt investments, make acquisitions, engage in mergers or consolidations, or engage in certain transactions with affiliates. The 2019 Senior Notes do not contain any financial covenants.

6.0% Senior Notes due 2022 ("2022 Senior Notes")

On August 5, 2014, CDW LLC and CDW Finance Corporation, as co-issuers, completed the issuance of \$600.0 million aggregate principal amount of 2022 Senior Notes at par. Fees of \$8.0 million related to the 2022 Senior Notes were capitalized as deferred financing costs and are being amortized over the term of the notes on a straight-line basis. The 2022 Senior Notes will mature on August 15, 2022 and bear interest at a rate of 6.00% per annum, payable semi-annually on February 15 and August 15 of each year. The first interest payment date was February 15, 2015.

CDW LLC and CDW Finance Corporation are the co-issuers of the 2022 Senior Notes and the obligations under the notes are guaranteed by Parent and each of CDW LLC's direct and indirect, wholly owned, domestic subsidiaries. The 2022 Senior Notes indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to enter into sale and lease-back transactions, incur additional secured indebtedness, and create liens. The indenture governing the 2022 Senior Notes does not contain any financial covenants.

5.5% Senior Notes due 2024 ("2024 Senior Notes")

On December 1, 2014, CDW LLC and CDW Finance Corporation, as co-issuers, completed the issuance of \$575.0 million aggregate principal amount of 2024 Senior Notes at par. Fees of \$7.5 million related to the 2024 Senior Notes were capitalized as deferred financing costs and are being amortized over the term of the notes on a straight-line basis. The 2024 Senior Notes will mature on December 1, 2024 and bear interest at a rate of 5.50% per annum, payable semi-annually on June 1 and December 1 of each year. The first interest payment date will be June 1, 2015.

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CDW LLC and CDW Finance Corporation are the co-issuers of the 2024 Senior Notes and the obligations under the notes are guaranteed by Parent and each of CDW LLC's direct and indirect, wholly owned, domestic subsidiaries. The 2024 Senior Notes indenture contains negative covenants that, among other things, place restrictions and limitations on the ability of Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries to enter into sale and lease-back transactions, incur additional secured indebtedness, and create liens. The indenture governing the 2024 Senior Notes does not contain any financial covenants.

12.535% Senior Subordinated Exchange Notes due 2017 (“Senior Subordinated Notes”)

At December 31, 2014 , there were no outstanding Senior Subordinated Notes.

On May 9, 2014, the Company redeemed all of the remaining \$42.5 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 104.178% of the principal amount redeemed. Cash on hand was used to fund the redemption of \$42.5 million aggregate principal amount, \$1.8 million in redemption premium and \$0.4 million in accrued and unpaid interest to the date of redemption. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$2.2 million in the consolidated statement of operations for the year ended December 31, 2014 . This loss represented \$1.8 million in redemption premium and \$0.4 million for the write-off of the remaining deferred financing costs related to the Senior Subordinated Notes.

On January 22, 2014 and February 21, 2014, the Company redeemed \$30.0 million and \$20.0 million aggregate principal amounts of Senior Subordinated Notes, respectively, at redemption prices that were 104.178% of the principal amounts redeemed. Cash on hand was used to fund the redemptions of \$50.0 million aggregate principal amount, \$2.1 million in redemption premiums and \$1.9 million in aggregate accrued and unpaid interest to the dates of redemption. In connection with these redemptions, the Company recorded a loss on extinguishment of long-term debt of \$2.7 million in the consolidated statement of operations for the year ended December 31, 2014 . This loss represented \$2.1 million in redemption premiums and \$0.6 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Subordinated Notes.

On October 18, 2013, the Company redeemed \$155.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 104.178% of the principal amount redeemed. A combination of cash on hand and the net proceeds from the sale of shares of common stock related to the underwriters' exercise in full of the overallotment option granted to them in connection with the IPO, in the amount of \$56.0 million , was used to fund the redemption of \$155.0 million aggregate principal amount, \$6.5 million of redemption premium and \$0.2 million in accrued and unpaid interest to the date of redemption. See Note 9 for additional discussion of the underwriters' overallotment option. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$8.5 million in the Company's consolidated statement of operations for the year ended December 31, 2013. This loss represented \$6.5 million in redemption premium and \$2.0 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

On August 1, 2013, the Company redeemed \$324.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. The Company used a portion of the net proceeds from the IPO to redeem \$146.0 million aggregate principal amount of Senior Subordinated Notes and incremental borrowings of \$190.0 million under the Term Loan to redeem \$178.0 million aggregate principal amount of Senior Subordinated Notes. The Company used cash on hand to pay \$12.0 million of accrued and unpaid interest to the date of redemption. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$24.6 million in the consolidated statement of operations for the year ended December 31, 2013. This loss represented \$20.3 million in redemption premium and \$4.3 million for the write-off of a portion of the remaining deferred financing costs related to the Senior Subordinated Notes.

On March 8, 2013, the Company redeemed \$50.0 million aggregate principal amount of Senior Subordinated Notes at a redemption price that was 106.268% of the principal amount redeemed. Cash on hand was used to fund the redemption of \$50.0 million aggregate principal amount, \$3.1 million of redemption premium and \$2.5 million in accrued and unpaid interest to the date of redemption. In connection with this redemption, the Company recorded a loss on extinguishment of long-term debt of \$3.9 million in the Company's consolidated statement of operations for the year ended December 31, 2013. This loss represented \$3.1 million in redemption premium and \$0.8 million for the write-off of a portion of the remaining unamortized deferred financing costs related to the Senior Subordinated Notes.

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Long-Term Debt Maturities

As of December 31, 2014 , the maturities of long-term debt were as follows:

(in millions)

Years ending December 31,

2015	\$	15.4
2016		—
2017		—
2018		—
2019		503.9
Thereafter		2,673.1
	\$	<u>3,192.4</u>

Fair Value

The fair value of the Company's long-term debt instruments at December 31, 2014 was \$3,208.7 million . The fair value of the 2019 Senior Notes, the 2022 Senior Notes, and the 2024 Senior Notes was estimated using quoted market prices for identical assets or liabilities that are traded in over-the-counter secondary markets that are not considered active. The fair value of the Term Loan was estimated using dealer quotes for identical assets or liabilities in markets that are not considered active. Consequently, the Company's long-term debt is classified as Level 2 within the fair value hierarchy.

At December 31, 2014 , the carrying value of the Company's long-term debt was \$3,192.4 million , excluding \$1.3 million in unamortized premium and \$3.7 million in unamortized discount.

Deferred Financing Costs

The following table summarizes the deferred financing costs activity for the years ended December 31, 2014 and 2013 :

(in millions)

	December 31,	
	2014	2013
Beginning balance	\$ 30.1	\$ 53.2
Additional costs capitalized	21.9	6.1
Recognized in interest expense	(6.4)	(9.1)
Write-off of unamortized deferred financing costs	(12.6)	(20.1)
Ending balance	<u>\$ 33.0</u>	<u>\$ 30.1</u>

As of December 31, 2014 and December 31, 2013 , the weighted-average remaining life of unamortized deferred financing costs was 6.6 and 4.9 years, respectively.

**8. Income Taxes**

Income before income taxes was taxed under the following jurisdictions:

(in millions)

	Years Ended December 31,		
	2014	2013	2012
Domestic	\$ 366.6	\$ 179.4	\$ 170.3
Foreign	21.1	16.1	15.8
Total	<u>\$ 387.7</u>	<u>\$ 195.5</u>	<u>\$ 186.1</u>

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Components of income tax expense (benefit) consisted of the following:

(in millions)	Years Ended December 31,		
	2014	2013	2012
<b>Current:</b>			
Federal	\$ 206.8	\$ 96.7	\$ 110.3
State	19.3	10.1	8.0
Foreign	5.8	4.6	5.1
<b>Total current</b>	<b>231.9</b>	<b>111.4</b>	<b>123.4</b>
<b>Deferred:</b>			
Domestic	(89.0)	(48.6)	(56.2)
Foreign	(0.1)	(0.1)	(0.1)
<b>Total deferred</b>	<b>(89.1)</b>	<b>(48.7)</b>	<b>(56.3)</b>
<b>Income tax expense</b>	<b>\$ 142.8</b>	<b>\$ 62.7</b>	<b>\$ 67.1</b>

The reconciliation between the statutory tax rate expressed as a percentage of income before income taxes and the effective tax rate is as follows:

(dollars in millions)	Years Ended December 31,					
	2014		2013		2012	
Statutory federal income tax rate	\$ 135.7	35.0 %	\$ 68.4	35.0 %	\$ 65.1	35.0 %
State taxes, net of federal effect	6.5	1.6	(5.0)	(2.6)	0.4	0.2
Equity-based compensation	1.1	0.3	1.5	0.7	5.7	3.1
Effect of rates different than statutory	(1.9)	(0.5)	(1.4)	(0.7)	(1.4)	(0.8)
Other	1.4	0.4	(0.8)	(0.3)	(2.7)	(1.5)
<b>Effective tax rate</b>	<b>\$ 142.8</b>	<b>36.8 %</b>	<b>\$ 62.7</b>	<b>32.1 %</b>	<b>\$ 67.1</b>	<b>36.0 %</b>

The tax effect of temporary differences that give rise to the net deferred income tax liability is presented below:

(in millions)	December 31,	
	2014	2013
<b>Deferred Tax Assets:</b>		
Deferred interest	\$ 32.9	\$ 43.5
State net operating loss and credit carryforwards, net	18.8	21.1
Payroll and benefits	27.0	16.2
Rent	5.5	6.4
Accounts receivable	6.3	5.4
Equity compensation plans	6.5	1.6
Trade credits	1.5	1.5
Other	5.0	7.1
<b>Total deferred tax assets</b>	<b>103.5</b>	<b>102.8</b>
<b>Deferred Tax Liabilities:</b>		
Software and intangibles	425.3	486.2
Deferred income	116.2	145.5
Property and equipment	22.5	25.0
Other	15.3	11.6
<b>Total deferred tax liabilities</b>	<b>579.3</b>	<b>668.3</b>
Deferred tax asset valuation allowance	—	—
<b>Net deferred tax liability</b>	<b>\$ 475.8</b>	<b>\$ 565.5</b>

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The Company has state income tax net operating loss carryforwards of \$124.0 million , which will expire at various dates from 2015 through 2033 and state tax credit carryforwards of \$19.6 million , which expire at various dates from 2016 through 2019.

The Company has not provided for U.S. federal income taxes or tax benefits on the undistributed earnings of its international subsidiary because such earnings are reinvested and it is currently intended that they will continue to be reinvested indefinitely. At December 31, 2014 , the Company has not provided for federal income taxes on earnings of approximately \$66.6 million from its international subsidiary.

The Company had no unrecognized tax benefits at December 31, 2014, 2013 and 2012 .

In the ordinary course of business, the Company is subject to review by domestic and foreign taxing authorities, including the Internal Revenue Service (“IRS”). In general, the Company is no longer subject to audit by the IRS for tax years through 2010 and state, local or foreign taxing authorities for tax years through 2009. Various other taxing authorities are in the process of auditing income tax returns of the Company and its subsidiaries. The Company does not anticipate that any adjustments from the audits would have a material impact on its consolidated financial position, results of operations or cash flows.

The Company accrues net interest and penalties related to unrecognized tax benefits in income tax expense in its consolidated statements of operations. For the years ended December 31, 2014, 2013 and 2012 , the Company had no liability recorded for the payment of interest and penalties on unrecognized tax benefits and did not recognize any such interest and penalty expense.

**9. Shareholders' Equity**

The Company declared and paid cash dividends per common share during the periods presented as follows:

(in millions, except per share amounts)	Dividends Per Share	Amount
2014:		
First Quarter	\$ 0.0425	\$ 7.3
Second Quarter	0.0425	7.3
Third Quarter	0.0425	7.3
Fourth Quarter	0.0675	11.7
2013:		
First Quarter	\$ —	\$ —
Second Quarter	—	—
Third Quarter	—	—
Fourth Quarter	0.0425	7.3

See Note 20 for a discussion of the dividend declared during the first quarter of 2015. Future dividends will be subject to the approval of the Company's Board of Directors and will depend upon the Company's results of operations, financial condition, business prospects, capital requirements, contractual restrictions, any potential indebtedness the Company may incur, restrictions imposed by applicable law, tax considerations and other factors that the Company's Board of Directors deems relevant. In addition, the Company's ability to pay dividends on its common stock will be limited by restrictions on the ability of subsidiaries to pay dividends or make distributions to the Company, in each case, under the terms of certain current and future agreements governing the Company's indebtedness.

On November 6, 2014, the Company announced that its Board of Directors approved a \$500.0 million share repurchase program effective immediately under which the Company may repurchase shares of its common stock in the open market or through privately negotiated transactions, depending on share price, market conditions and other factors. The share repurchase program does not obligate the Company to repurchase any dollar amount or number of shares, and repurchases may be commenced or suspended from time to time without prior notice. As of the date of this filing, no shares have been repurchased under the share repurchase program.

On January 1, 2014, the first offering period under the Company's Coworker Stock Purchase Plan (the “CSPP”) commenced. The CSPP provides the opportunity for eligible coworkers to acquire shares of the Company's common



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stock at a 5% discount from the closing market price on the final day of the offering period. There is no compensation expense associated with the CSPP.

On July 2, 2013, the Company completed an IPO of 23,250,000 shares of common stock. On July 31, 2013, the Company completed the sale of an additional 3,487,500 shares of common stock to the underwriters of the IPO pursuant to the underwriters' July 26, 2013 exercise in full of the overallotment option granted to them in connection with the IPO. Such shares were registered under the Securities Act of 1933, as amended, pursuant to the Company's Registration Statement on Form S-1, which was declared effective by the SEC on June 26, 2013. The shares of common stock are listed on the NASDAQ Global Select Market under the symbol "CDW." The Company's shares of common stock were sold to the underwriters at a price of \$17.00 per share in the IPO and upon the exercise of the overallotment option, which together generated aggregate net proceeds of \$424.7 million to the Company after deducting underwriting discounts, expenses and transaction costs.

The Company has completed the following secondary public offerings, whereby certain selling stockholders sold shares of common stock to the underwriters. The Company did not receive any proceeds from these sales of shares.

Secondary Offering Shares	Completion Date of Secondary Offering	Overallotment Shares <sup>(1)</sup>	Completion Date of Overallotment Shares	Secondary Offering Expenses (in millions)
15,000,000	11/19/2013	2,250,000	12/18/2013	\$ 0.6
10,000,000	3/12/2014	1,500,000	3/12/2014	\$ 0.4
15,000,000	5/28/2014	2,250,000	6/4/2014	\$ 0.5
15,000,000	9/8/2014 <sup>(2)</sup>	—	—	\$ 0.3
15,000,000	12/8/2014	2,250,000	12/8/2014	\$ 0.2

(1) Under each underwriting agreement, the selling stockholders granted the underwriters an option, exercisable for thirty days, to purchase up to the additional amount of shares noted.

(2) The option to purchase additional shares was not exercised in connection with the September 2014 secondary offering.

The following pre-tax IPO-related expenses and secondary-offering-related expenses were included within selling and administrative expenses in the consolidated statements of operations for the years ended December 31, 2014 and 2013, respectively.

(in millions)	Year Ended December 31,	
	2014	2013
Acceleration charge for certain equity awards and related employer payroll taxes <sup>(1)</sup>	\$ —	\$ 40.7
RDU Plan cash retention pool accrual <sup>(2)</sup>	—	7.5
Management services agreement termination fee <sup>(3)</sup>	—	24.4
Other expenses <sup>(4)</sup>	1.4	2.4
IPO- and secondary-offering-related expenses	\$ 1.4	\$ 75.0

(1) See Note 10 for additional discussion of the impact of the IPO on the Company's equity awards.

(2) See Note 12 for additional discussion of this transaction.

(3) Represents the payment of a termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities.

(4) Other expenses include secondary-offering expenses of \$1.4 million and \$0.6 million for the years ended December 31, 2014 and 2013, respectively.

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In June 2013, the Company's Board of Directors and the Company's sole shareholder at that time, CDW Holdings, approved the reclassification of the Company's Class A common shares and Class B common shares into a single class of common shares and a 143.0299613 -for-1 stock split, effective immediately. The par value of the common shares was maintained at \$0.01 per share. All references to common shares and per share amounts in the accompanying consolidated financial statements have been adjusted to reflect the reclassification and stock split on a retroactive basis.

In June 2013, the Company amended and restated its certificate of incorporation to authorize the issuance of 100,000,000 shares of preferred stock with a par value of \$0.01. No shares of preferred stock have been issued or are outstanding as of December 31, 2014. Additionally, the amended and restated certificate of incorporation increased the number of authorized common shares to 1,000,000,000.

## 10. Equity-Based Compensation

The 2013 Long-Term Incentive Plan ("2013 LTIP") provides for the grant of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, restricted stock units, bonus stock and performance awards. The maximum aggregate number of shares that may be issued under the 2013 LTIP is 11,700,000 shares of the Company's common stock, in addition to the 3,798,508 shares of restricted stock granted in exchange for unvested Class B Common Units in connection with the Company's IPO, as discussed below. As of December 31, 2014, 7,541,891 shares were available for issuance under the 2013 LTIP which was approved by the Company's pre-IPO shareholders. Authorized but unissued shares are reserved for issuance in connection with equity-based awards.

The following table summarizes equity-based compensation expense, which is included in selling and administrative expenses, for the years ended December 31, 2014, 2013 and 2012 :

(in millions)	Year Ended December 31,		
	2014	2013 <sup>(1)</sup>	2012 <sup>(2)</sup>
Equity-based compensation expense	\$ 16.4	\$ 46.6	\$ 22.1
Income tax benefit	(5.1)	(16.5)	(2.3)
Total (net of tax)	<u>\$ 11.3</u>	<u>\$ 30.1</u>	<u>\$ 19.8</u>

- (1) Includes pre-tax expense of \$36.7 million related to the accelerated vesting of certain equity awards granted prior to our IPO. All unvested awards granted pursuant to the MPK Coworker Incentive Plan II (the "MPK Plan") vested in connection with the IPO as discussed further below in the section labeled "MPK II Units."
- (2) Includes pre-tax expense of \$6.6 million in connection with the modification of Class B Common Unit awards granted pursuant to the CDW Holdings LLC 2007 Incentive Equity Plan to the Company's former Chief Executive Officer, as discussed further below in the section labeled "Class B Common Units."

The total unrecognized compensation cost related to nonvested awards was \$28.9 million at December 31, 2014 and is expected to be recognized over a weighted-average period of 2.3 years.

### *Stock Options*

During the year ended December 31, 2014, the Company granted 1,245,513 stock options under the 2013 LTIP. These options vest annually over three years and have a contractual term of 10 years. The exercise price of a stock option is equal to the fair value of a share of the Company's common stock on the date of the grant. The Company uses the Black-Scholes option pricing model to estimate the fair value of stock options granted. The Black-Scholes option pricing model incorporates various assumptions including volatility, expected term, risk-free interest rates and dividend yields. The weighted-average assumptions used to value the stock options granted during the years ended December 31, 2014 and 2013 are presented below.

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	Year Ended December 31,	
	2014	2013
Weighted-average grant date fair value	\$ 7.23	\$ 4.75
Weighted-average volatility <sup>(1)</sup>	30.00%	35.00%
Weighted-average risk-free rate <sup>(2)</sup>	1.77%	1.58%
Dividend yield	0.70%	1.00%
Expected term (in years) <sup>(3)</sup>	6.0	5.4

- (1) Based upon an assessment of the two-year, five-year and implied volatility for the Company's selected peer group, adjusted for the Company's leverage.
- (2) Based on a composite U.S. Treasury rate.
- (3) Calculated using the simplified method. The simplified method defines the expected term as the average of the option's contractual term and the option's weighted-average vesting period. The Company utilizes this method as it has limited historical stock option data that is sufficient to derive a reasonable estimate of the expected stock option term.

The following table summarizes the Company's stock option activity for the year ended December 31, 2014 :

Options	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (millions)
Outstanding at January 1, 2014	1,280,255	\$17.00		
Granted	1,245,513	24.40		
Forfeited/Expired	(31,209)	21.33		
Exercised	(73,487)	17.00		
Outstanding at December 31, 2014	<u>2,421,072</u>	\$20.75	8.3	\$34.9
Exercisable at December 31, 2014	576,963	\$17.00	7.2	\$10.5
Vested and expected to vest at December 31, 2014	2,378,364	\$20.74	8.3	\$34.3

The total intrinsic value of stock options exercised during the years ended December 31, 2014 and 2013 was \$1.0 million and zero , respectively.

*Restricted Stock Units ("RSUs")*

Restricted stock units represent the right to receive unrestricted shares of the Company's stock at the time of vesting. RSUs generally cliff-vest at the end of four years.

The following table summarizes the Company's RSU activity for the year ended December 31, 2014 :

	Number of Units	Weighted-Average Grant-Date Fair Value
Nonvested at January 1, 2014	1,351,572	\$ 17.04
Granted	25,895	24.29
Vested/Settled	(5,984)	17.00
Forfeited	(126,781)	17.04
Nonvested at December 31, 2014	<u>1,244,702</u>	\$ 17.19

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The weighted-average grant date fair value of RSUs granted during the year ended December 31, 2014 and 2013 was \$24.29 and \$17.03, respectively. The aggregate fair value of RSUs that vested during the years ended December 31, 2014 and 2013, was \$0.2 million and zero, respectively.

*Performance Share Units ("PSUs")*

During the year ended December 31, 2014, the Company granted 417,784 PSUs under the 2013 LTIP which cliff-vest on December 31, 2016. The percentage of shares that shall vest will range from 0% to 200% of the number of PSUs granted based on the Company's performance against a cumulative adjusted free cash flow measure and cumulative non-GAAP net income per diluted share measure over a three-year performance period. The weighted-average grant-date fair value of the PSUs granted during the period was \$24.40 per unit. During the year ended December 31, 2014, 6,204 PSUs were forfeited at a weighted-average grant-date fair value of \$24.29. As of December 31, 2014, 411,580 PSUs were outstanding at a weighted-average grant date fair value of \$24.40. No units vested during the year ended December 31, 2014.

*Restricted Stock*

In connection with the IPO, CDW Holdings distributed all of its shares of the Company's common stock to its existing members in accordance with their respective membership interests. Common stock received by holders of Class B Common Units in connection with the distribution is subject to any vesting provisions previously applicable to the holder's Class B Common Units. Class B Common Unit holders received 3,798,508 shares of restricted stock with respect to Class B Common Units that had not yet vested at the time of the distribution. For the year ended December 31, 2014, 2,321,973 shares of such restricted stock vested/settled and 9,546 shares were forfeited. As of December 31, 2014, 260,514 shares of restricted stock were outstanding. The aggregate fair value of restricted stock that vested during the years ended December 31, 2014 and 2013 was \$68.6 million and \$26.7 million, respectively.

Pre-IPO Equity Awards

Prior to the IPO, the Company had the following equity-based compensation plans in place:

*Class B Common Units*

The Board of Managers of CDW Holdings adopted the CDW Holdings LLC 2007 Incentive Equity Plan (the "Plan") for coworkers, managers, consultants and advisors of the Company and its subsidiaries. The Plan permitted a committee designated by the Board of Managers of CDW Holdings (the "Committee") to grant or sell to any participant Class A Common Units or Class B Common Units of CDW Holdings in such quantity, at such price, on such terms and subject to such conditions that were consistent with the Plan and as established by the Committee.

The Class B Common Units that were granted vested daily on a pro rata basis between the date of grant and the fifth anniversary thereof and were subject to repurchase by, with respect to vested units, or forfeiture to, with respect to unvested units, the Company upon the coworker's separation from service as was set forth in each holder's Class B Common Unit Grant Agreement.

On June 30, 2011, the Board of Managers approved the terms of a modified Class B Common Unit grant agreement with the Company's former Chief Executive Officer, who retired as the Company's Chief Executive Officer effective October 1, 2011 but continued to serve as Chairman of the Board through December 31, 2012. As a result of this modification, the Company recorded incremental equity-based compensation expense of \$6.6 million during the year ended December 31, 2012.

The grant date fair value of Class B Common Unit grants was calculated using the Option-Pricing Method. This method considered Class A Common Units and Class B Common Units as call options on the total equity value, giving consideration to liquidation preferences and conversion of the preferred units. Such Class A Common Units and Class B Common Units were modeled as call options that gave their owners the right, but not the obligation, to buy the underlying equity value at a predetermined (or exercise) price. Class B Common Units were considered to be call options with a claim on equity value at an exercise price equal to the remaining value immediately after the Class A Common Units and Class B Common Units with a lower participation threshold were liquidated. The Option-Pricing Method is highly sensitive to key assumptions, such as the volatility assumption. As such, the use of this method can be applied when the range of possible future outcomes is difficult to predict.

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The following table summarizes the assumptions and resulting fair value of the Class B Common Unit grants for the years ended December 31, 2013 and 2012:

<u>Assumptions</u>	Years Ended December 31,	
	2013	2012
Weighted-average grant date fair value	\$ 119.00	\$ 125.65
Weighted-average volatility <sup>(1)</sup>	65.50%	65.26%
Weighted-average risk-free rate <sup>(2)</sup>	0.18%	0.19%
Dividend yield	0.00%	0.00%

(1) Based upon an assessment of the two-year, five-year and implied volatility for the Company's selected peer group, adjusted for the Company's leverage.

(2) Based on a composite U.S. Treasury rate.

#### *MPK II Units*

Contemporaneous with the Acquisition, the Company agreed with Michael P. Krasny, CDW Corporation founder, former chairman and CEO and significant selling shareholder, to establish the MPK Plan for the benefit of all of the coworkers of the Company other than members of senior management who received incentive equity awards under the Plan.

The MPK Plan established an "account" for each eligible participant which was notionally credited with a number of Class A Common Units of CDW Holdings LLC on October 15, 2007, the day the plan was established. The notional units credited to participants' accounts were to cliff-vest at the end of ten years, subject to acceleration upon the occurrence of certain events. Notional units granted under the MPK Plan were valued on the grant date at \$1,000 per unit, the fair value equivalent of the Class A Common Units at the time the awards were granted.

On July 2, 2013, the Company completed an IPO of its common shares. Under the terms of the MPK Plan, vesting accelerated for all unvested units upon completion of the IPO. The Company recorded a pre-tax charge of \$36.7 million for compensation expense related to the acceleration of the expense recognition for MPK Plan units in the year ended December 31, 2013. In connection with the completion of the IPO, the Company distributed common stock to each participant and withheld the number of shares of common stock equal to the required tax withholding for each participant. The Company paid required withholding taxes of \$24.0 million to federal, state and foreign taxing authorities. This amount is reported as a financing activity in the consolidated statement of cash flows and as an increase to accumulated deficit in the consolidated statement of shareholders' equity for the year ended December 31, 2013. In addition, the Company paid \$4.0 million of employer payroll taxes that are included as an operating activity in the consolidated statement of cash flows for the year ended December 31, 2013.

The following table sets forth a summary of pre-IPO equity plan activity for the year ended December 31, 2013 :

	Class B Common Units	MPK Plan Units
Outstanding at January 1, 2013	216,483	66,137
Granted	400	—
Forfeited	(860)	(2,228)
Converted/Settled <sup>(1)</sup>	(216,023)	(63,909)
Outstanding at December 31, 2013	—	—
Vested at December 31, 2013	—	—

(1) As discussed above, the Class B Common Units and MPK Plan Units were converted/settled into shares of the Company's common stock upon completion of the IPO. The converted Class B Common Units, to the extent unvested at the time of the IPO, relate to the grants of restricted stock disclosed above.

In connection with the establishment of the MPK Plan, the Company agreed to make charitable contributions in amounts equal to the net income tax benefits derived from payouts to participants under the MPK Plan (net of any

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related employer payroll tax costs). The contributions of these amounts are due by March 15 of the calendar year following the year in which the Company realizes the benefits of the deductions. This arrangement has been accounted for as contingent consideration. Pre-2009 business combinations were accounted for under a former accounting standard which, among other aspects, precluded the recognition of certain contingent consideration as of the business combination date. Instead, under the former accounting standard, contingent consideration is accounted for as additional purchase price (goodwill) at the time the contingency is resolved. As of December 31, 2013, the Company accrued \$20.9 million related to this arrangement within other current liabilities, as the Company realized the tax benefit of the compensation deductions during the 2013 tax year. The Company made the related cash contribution during the first quarter of 2014.

**11. Earnings Per Share**

The numerator for both basic and diluted earnings per share is net income. The denominator for basic earnings per share is the weighted-average number of common shares outstanding during the period. The 2013 denominator was impacted by the common shares issued during both the IPO and the underwriters' exercise in full of the overallotment option granted to them in connection with the IPO. Because such common shares were issued on July 2, 2013 and July 31, 2013, respectively, they are only partially reflected in the 2013 denominator. Such shares are fully reflected in the 2014 denominator. See Note 9 for additional discussion of the IPO.

The dilutive effect of outstanding restricted stock, restricted stock units, stock options, Coworker Stock Purchase Plan units and MPK Plan units is reflected in the denominator for diluted earnings per share using the treasury stock method.

The following is a reconciliation of basic shares to diluted shares:

(in millions)	Years Ended December 31,		
	2014	2013	2012
Weighted-average shares - basic	170.6	156.6	145.1
Effect of dilutive securities	2.2	2.1	0.7
Weighted-average shares - diluted	<u>172.8</u>	<u>158.7</u>	<u>145.8</u>

There was an insignificant amount of potential common shares excluded from diluted earnings per share for the years ended December 31, 2014, 2013 and 2012, as their inclusion would have had an anti-dilutive effect.

**12. Deferred Compensation Plan**

On March 10, 2010, in connection with the Company's purchase of \$28.5 million principal amount of its outstanding senior subordinated debt, the Company established the Restricted Debt Unit Plan (the "RDU Plan"), an unfunded nonqualified deferred compensation plan. The total number of RDUs that could be granted under the RDU Plan was 28,500. As of December 31, 2014, 28,500 RDUs were outstanding. RDUs vested daily on a pro rata basis over the three -year period from January 1, 2012 (or, if later, the date of hire or the date of a subsequent RDU grant) through December 31, 2014. All outstanding RDUs were vested as of December 31, 2014. Participants have no rights to the underlying debt.

The total amount of compensation available to be paid under the RDU Plan was initially to be based on two components, a principal component and an interest component. The principal component credits the RDU Plan with a notional amount equal to the \$28.5 million face value of the Senior Subordinated Notes (the "Debt Pool"), together with certain redemption premium equivalents as noted below. The interest component credited the RDU Plan with amounts equal to the interest that would have been earned on the Debt Pool from March 10, 2010 through maturity on October 12, 2017, except as discussed below. Interest amounts for 2010 and 2011 were deferred until 2012, and thereafter, interest amounts were paid to participants semi-annually on the interest payment due dates.

The Company used a portion of the IPO proceeds together with incremental borrowings to redeem \$324.0 million of the total Senior Subordinated Notes outstanding on August 1, 2013. In connection with the IPO and the partial redemption of the Senior Subordinated Notes, the Company amended the RDU Plan to increase the retentive value of the plan. In accordance with the original terms of the RDU Plan, the principal component of the RDUs converted to a cash-denominated pool upon the redemption of the Senior Subordinated Notes. In addition, the Company added \$0.1

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million and \$1.4 million to the principal component in the years ended December 31, 2014 and 2013, respectively, as redemption premium equivalents in accordance with the terms of the RDU plan.

Under the terms of the amended RDU Plan, upon the partial redemption of outstanding Senior Subordinated Notes, the RDUs ceased to accrue the proportionate related interest component credits. The amended RDU Plan provides participants the opportunity to share on a pro rata basis in cash retention pools payable to participants who satisfy certain retention requirements. The aggregate amount of the retention pools was determined to be \$15.0 million based upon the amount of interest component credits that would have been allocated to the RDU Plan if the Senior Subordinated Notes had remained outstanding from August 1, 2013 through maturity. The Company recorded a pre-tax charge of \$7.5 million in the year ended December 31, 2013 for payment of the first cash retention pool. The second cash retention pool payment is expected to be made to participants who remain employed through December 31, 2015 in the first quarter of 2016. Participants continued to accrue an interest component credit for the proportionate amount of Senior Subordinated Notes while outstanding, payable on the aforementioned semi-annual due dates; such payments, however, will be deducted from the second retention pool payment amount of \$7.5 million .

Unrecognized compensation expense as of December 31, 2014 of approximately \$5 million is expected to be recognized through 2015 and approximately \$3 million in 2016 through 2017. Payments under the RDU Plan may be impacted if certain significant events occur or circumstances change that would impact the financial condition or structure of the Company.

Compensation expense of \$8.8 million , \$16.8 million , and \$8.4 million related to the RDU Plan was recognized in the years ended December 31, 2014, 2013 and 2012 , respectively. At December 31, 2014 and 2013 , the Company had \$30.4 million and \$21.8 million of liabilities related to the RDU Plan recorded on the consolidated balance sheets, respectively.

Payment of the principal component of the RDU Plan is expected to be made on October 12, 2017, unless accelerated due to a sale of the Company.

**13. Profit Sharing and 401(k) Plan**

The Company has a profit sharing plan that includes a salary reduction feature established under the Internal Revenue Code Section 401 (k) covering substantially all coworkers. Company contributions to the profit sharing plan are made in cash and determined at the discretion of the Board of Directors. For the years ended December 31, 2014, 2013 and 2012 , the amounts charged to expense for this plan totaled \$21.9 million , \$17.3 million and \$14.6 million , respectively.

**14. Commitments and Contingencies**

The Company is party to various legal proceedings that arise in the ordinary course of its business, which include commercial, intellectual property, employment, tort and other litigation matters. The Company is also subject to audit by federal, state and local authorities, and by various partners, group purchasing organizations and customers, including government agencies, relating to purchases and sales under various contracts. In addition, the Company is subject to indemnification claims under various contracts. From time to time, certain customers of the Company file voluntary petitions for reorganization or liquidation under the U.S. bankruptcy laws. In such cases, certain pre-petition payments received by the Company could be considered preference items and subject to return to the bankruptcy administrator.

As of December 31, 2014, the Company does not believe that there is a reasonable possibility that any material loss exceeding the amounts already recognized for these proceedings and matters, if any, has been incurred. However, the ultimate resolutions of these proceedings and matters are inherently unpredictable. As such, the Company's financial condition and results of operations could be adversely affected in any particular period by the unfavorable resolution of one or more of these proceedings or matters.

**15. Equity Investments**

On November 10, 2014 , the Company acquired a 35% non-controlling interest in Kelway, a UK-based IT solutions provider, which has global supply chain relationships that enable it to conduct business in over 100 countries. The Company paid \$86.8 million to acquire its ownership interest in Kelway, with the option to purchase the remaining 65% between June 2015 and June 2017. The Company accounts for its investment in Kelway using the equity method. As of December 31, 2014 , the amount assigned to goodwill and definite-lived intangible assets related to the

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Company's 35% non-controlling equity investment in Kelway was \$119.2 million, which represented the excess of the purchase price plus liabilities assumed less tangible assets acquired.

**16. Related Party Transactions**

The Company had previously entered into a management services agreement with the Sponsors pursuant to which they had agreed to provide it with management and consulting services and financial and other advisory services. Pursuant to such agreement, the Sponsors received an annual management fee of \$5.0 million and reimbursement of out-of-pocket expenses incurred in connection with the provision of such services. Such amounts were classified as selling and administrative expenses within the consolidated statements of operations. The management services agreement included customary indemnification and provisions in favor of the Sponsors.

On July 2, 2013, the Company completed an IPO of its common stock. Using a portion of the net proceeds from the IPO, the Company paid a \$24.4 million termination fee to affiliates of the Sponsors in connection with the termination of the management services agreement with such entities that was effective upon completion of the IPO. The Company paid an annual management fee of \$2.5 million and \$5.0 million in the years ended December 31, 2013 and 2012, respectively. There was no management fee paid for the year ended December 31, 2014.

On March 20, 2014, the Company repurchased and subsequently canceled \$25.0 million aggregate principal amount of the 2019 Senior Notes from an affiliate of Providence Equity. See Note 7 for additional information related to this transaction.

**17. Segment Information**

Segment information is presented in accordance with a "management approach," which designates the internal reporting used by the chief operating decision-maker for making decisions and assessing performance as the source of the Company's reportable segments. The Company's segments are organized in a manner consistent with which separate financial information is available and evaluated regularly by the chief operating decision-maker in deciding how to allocate resources and in assessing performance.

The Company has two reportable segments: Corporate, which is comprised primarily of business customers, and Public, which is comprised of government entities and education and healthcare institutions. The Company also has three other operating segments, CDW Advanced Services, Canada and Kelway, which do not meet the reportable segment quantitative thresholds and, accordingly, are combined together as "Other." In November 2014, the Company acquired a 35% non-controlling equity interest in Kelway. See Note 15 for additional information on Kelway.

The Company has centralized logistics and headquarters functions that provide services to the segments. The logistics function includes purchasing, distribution and fulfillment services to support both the Corporate and Public segments. As a result, costs and intercompany charges associated with the logistics function are fully allocated to both of these segments based on a percent of sales. The centralized headquarters function provides services in areas such as accounting, information technology, marketing, legal and coworker services. Headquarters' function costs that are not allocated to the segments are included under the heading of "Headquarters" in the tables below. Depreciation expense is included in Headquarters as it is not allocated among segments or used in measuring segment performance.

IPO- and secondary-offering related expenses primarily relating to coworker compensation were included within operating segment results for the year ended December 31, 2013. See Note 9 for additional discussion of IPO- and secondary-offering related expenses.

The Company allocates resources to and evaluates performance of its segments based on net sales, income (loss) from operations and Adjusted EBITDA, a non-GAAP measure as defined in the Company's credit agreements. However, the Company has concluded that income (loss) from operations is the more useful measure in terms of discussion of operating results, as it is a GAAP measure.

Segment information for total assets and capital expenditures is not presented, as such information is not used in measuring segment performance or allocating resources between segments.



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Selected Segment Financial Information

The following table presents information about the Company's segments for the years ended December 31, 2014, 2013 and 2012 :

(in millions)	Corporate	Public	Other	Headquarters	Total
<b>2014:</b>					
Net sales	\$ 6,475.5	\$ 4,879.4	\$ 719.6	\$ —	\$ 12,074.5
Income (loss) from operations	439.8	313.2	32.9	(112.9)	673.0
Depreciation and amortization expense	(96.3)	(43.8)	(8.8)	(59.0)	(207.9)
<b>2013:</b>					
Net sales	\$ 5,960.1	\$ 4,164.5	\$ 644.0	\$ —	\$ 10,768.6
Income (loss) from operations <sup>(1)</sup>	363.3	246.5	27.2	(128.4)	508.6
Depreciation and amortization expense	(97.3)	(44.0)	(8.6)	(58.3)	(208.2)
<b>2012:</b>					
Net sales	\$ 5,512.8	\$ 4,023.0	\$ 592.4	\$ —	\$ 10,128.2
Income (loss) from operations	349.0	246.7	18.6	(103.7)	510.6
Depreciation and amortization expense	(97.6)	(44.0)	(9.3)	(59.3)	(210.2)

(1) Includes \$75.0 million of IPO- and secondary-offering related expenses, as follows: Corporate \$26.4 million ; Public \$14.4 million ; Other \$3.6 million ; and Headquarters \$30.6 million .

Major Customers, Geographic Areas, and Product Mix

Net sales to the federal government were \$884.2 million , \$764.4 million and \$964.7 million and accounted for approximately 7% , 7% and 10% of total net sales in 2014, 2013 and 2012, respectively. Net sales to customers outside of the U.S., primarily in Canada, were approximately 4% of the Company's total net sales in 2014, 2013 and 2012. Approximately 1% of the Company's long-lived assets were located outside of the U.S. as of December 31, 2014 and 2013.

The following table presents net sales by major category for the years ended December 31, 2014, 2013 and 2012 . Categories are based upon internal classifications. Amounts for the years ended December 31, 2013 and 2012 have been reclassified for certain changes in individual product classifications to conform to the presentation for the year ended December 31, 2014 .

	Year Ended December 31, 2014		Year Ended December 31, 2013		Year Ended December 31, 2012	
	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales	Dollars in Millions	Percentage of Total Net Sales
Notebooks/Mobile Devices	\$ 2,352.3	19.5%	\$ 1,698.4	15.8%	\$ 1,462.8	14.4%
NetComm Products	1,615.9	13.4	1,486.3	13.8	1,351.5	13.3
Enterprise and Data Storage (Including Drives)	1,024.3	8.5	999.2	9.3	981.5	9.7
Other Hardware	4,549.2	37.6	4,178.5	38.8	4,075.7	40.3
Software	2,076.7	17.2	1,993.1	18.5	1,877.7	18.5
Services	371.4	3.1	332.7	3.1	285.0	2.8
Other <sup>(1)</sup>	84.7	0.7	80.4	0.7	94.0	1.0
Total net sales	<u>\$ 12,074.5</u>	<u>100.0%</u>	<u>\$ 10,768.6</u>	<u>100.0%</u>	<u>\$ 10,128.2</u>	<u>100.0%</u>

(1) Includes items such as delivery charges to customers and certain commission revenue.

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**18. Supplemental Guarantor Information**

The 2019 Senior Notes, the 2022 Senior Notes, and the 2024 Senior Notes are, and, prior to being redeemed in full, the Senior Subordinated Notes and the Senior Secured Notes, were guaranteed by Parent and each of CDW LLC's direct and indirect, 100% owned, domestic subsidiaries (the "Guarantor Subsidiaries"). All guarantees by Parent and Guarantor Subsidiaries are and were joint and several, and full and unconditional; provided that guarantees by the Guarantor Subsidiaries (i) are subject to certain customary release provisions contained in the indentures governing the 2019 Senior Notes, the 2022 Senior Notes, and the 2024 Senior Notes, and (ii) were subject to certain customary release provisions contained in the indentures governing the Senior Subordinated Notes and the Senior Secured Notes until such indentures were satisfied and discharged in 2014. CDW LLC's Canada subsidiary (the "Non-Guarantor Subsidiary") does not guarantee the debt obligations. CDW LLC and CDW Finance Corporation, as co-issuers, are 100% owned by Parent, and each of the Guarantor Subsidiaries and the Non-Guarantor Subsidiary is 100% owned by CDW LLC.

On May 9, 2014, all of the remaining \$42.5 million aggregate principal amount of Senior Subordinated Notes was redeemed in full and the indenture governing the Senior Subordinated Notes was satisfied and discharged. See Note 7 for more information.

On August 5, 2014, CDW LLC and CDW Finance Corporation, as co-issuers, completed the issuance of \$600.0 million aggregate principal amount of 2022 Senior Notes, which is guaranteed by Parent and the Guarantor Subsidiaries. The proceeds from this issuance, along with cash on hand, were used to redeem all of the remaining \$325.0 million aggregate principal amount of the Senior Secured Notes and to redeem \$234.7 million aggregate principal amount of the 2019 Senior Notes. The indenture governing the Senior Secured Notes was concurrently satisfied and discharged. See Note 7 for more information.

On December 1, 2014, CDW LLC and CDW Finance Corporation, as co-issuers, completed the issuance of \$575.0 million aggregate principal amount of 2024 Senior Notes, which is guaranteed by Parent and the Guarantor Subsidiaries. The proceeds from this issuance, along with cash on hand, were used to redeem \$541.4 million aggregate principal amount of the 8.5% Senior Notes. See Note 7 for more information.

The following tables set forth condensed consolidating balance sheets as of December 31, 2014 and 2013, consolidating statements of operations for the years ended December 31, 2014, 2013 and 2012, condensed consolidating statements of comprehensive income for the years ended December 31, 2014, 2013 and 2012, and condensed consolidating statements of cash flows for the years ended December 31, 2014, 2013 and 2012, in accordance with Rule 3-10 of Regulation S-X. The consolidating financial information includes the accounts of CDW Corporation (the "Parent Guarantor"), which has no independent assets or operations, the accounts of CDW LLC (the "Subsidiary Issuer"), the combined accounts of the Guarantor Subsidiaries, the accounts of the Non-Guarantor Subsidiary, and the accounts of CDW Finance Corporation (the "Co-Issuer") for the periods indicated. The information was prepared on the same basis as the Company's consolidated financial statements.

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**Condensed Consolidating Balance Sheet**

December 31, 2014

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
<b>Assets</b>							
Current assets:							
Cash and cash equivalents	\$ —	\$ 346.4	\$ —	\$ 24.6	\$ —	\$ (26.5)	\$ 344.5
Accounts receivable, net	—	—	1,479.1	82.0	—	—	1,561.1
Merchandise inventory	—	—	333.9	3.6	—	—	337.5
Miscellaneous receivables	—	56.1	93.3	6.2	—	—	155.6
Prepaid expenses and other	—	11.0	46.0	1.5	—	(3.8)	54.7
Total current assets	—	413.5	1,952.3	117.9	—	(30.3)	2,453.4
Property and equipment, net	—	80.5	55.5	1.2	—	—	137.2
Equity investments	—	86.7	—	—	—	—	86.7
Goodwill	—	751.8	1,439.0	26.8	—	—	2,217.6
Other intangible assets, net	—	320.0	843.6	5.2	—	—	1,168.8
Deferred financing costs, net	—	33.0	—	—	—	—	33.0
Other assets	4.3	3.2	0.4	1.4	—	(6.1)	3.2
Investment in and advances to subsidiaries	932.2	2,784.5	—	—	—	(3,716.7)	—
<b>Total assets</b>	<b>\$ 936.5</b>	<b>\$ 4,473.2</b>	<b>\$ 4,290.8</b>	<b>\$ 152.5</b>	<b>\$ —</b>	<b>\$ (3,753.1)</b>	<b>\$ 6,099.9</b>
<b>Liabilities and Shareholders' Equity</b>							
Current liabilities:							
Accounts payable-trade	\$ —	\$ 23.9	\$ 671.9	\$ 34.7	\$ —	\$ (26.5)	\$ 704.0
Accounts payable-inventory financing	—	—	332.1	—	—	—	332.1
Current maturities of long-term debt	—	15.4	—	—	—	—	15.4
Deferred revenue	—	—	79.9	1.4	—	—	81.3
Accrued expenses	—	137.8	193.6	7.9	—	(4.1)	335.2
Total current liabilities	—	177.1	1,277.5	44.0	—	(30.6)	1,468.0
Long-term liabilities:							
Debt	—	3,174.6	—	—	—	—	3,174.6
Deferred income taxes	—	146.7	331.3	1.3	—	(4.3)	475.0
Other liabilities	—	42.6	3.7	1.0	—	(1.5)	45.8
Total long-term liabilities	—	3,363.9	335.0	2.3	—	(5.8)	3,695.4
Total shareholders' equity	936.5	932.2	2,678.3	106.2	—	(3,716.7)	936.5
<b>Total liabilities and shareholders' equity</b>	<b>\$ 936.5</b>	<b>\$ 4,473.2</b>	<b>\$ 4,290.8</b>	<b>\$ 152.5</b>	<b>\$ —</b>	<b>\$ (3,753.1)</b>	<b>\$ 6,099.9</b>

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Balance Sheet**

December 31, 2013

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
<b>Assets</b>							
Current assets:							
Cash and cash equivalents	\$ —	\$ 196.5	\$ —	\$ 14.0	\$ —	\$ (22.4)	\$ 188.1
Accounts receivable, net	—	—	1,375.9	75.1	—	—	1,451.0
Merchandise inventory	—	—	378.9	3.1	—	—	382.0
Miscellaneous receivables	—	49.9	91.0	5.4	—	—	146.3
Prepaid expenses and other	—	10.7	33.4	5.1	—	(3.1)	46.1
Total current assets	—	257.1	1,879.2	102.7	—	(25.5)	2,213.5
Property and equipment, net	—	69.7	59.6	1.8	—	—	131.1
Goodwill	—	751.9	1,439.0	29.4	—	—	2,220.3
Other intangible assets, net	—	338.5	982.8	6.7	—	—	1,328.0
Deferred financing costs, net	—	30.1	—	—	—	—	30.1
Other assets	4.9	1.4	0.1	0.9	—	(5.7)	1.6
Investment in and advances to subsidiaries	706.8	2,909.4	—	—	—	(3,616.2)	—
<b>Total assets</b>	<b>\$ 711.7</b>	<b>\$ 4,358.1</b>	<b>\$ 4,360.7</b>	<b>\$ 141.5</b>	<b>\$ —</b>	<b>\$ (3,647.4)</b>	<b>\$ 5,924.6</b>
<b>Liabilities and Shareholders' Equity</b>							
Current liabilities:							
Accounts payable-trade	\$ —	\$ 21.4	\$ 637.3	\$ 26.5	\$ —	\$ (22.4)	\$ 662.8
Accounts payable-inventory financing	—	—	256.6	—	—	—	256.6
Current maturities of long-term debt	—	45.4	—	—	—	—	45.4
Deferred revenue	—	—	89.9	4.9	—	—	94.8
Accrued expenses	—	163.5	175.1	7.5	—	(3.1)	343.0
Total current liabilities	—	230.3	1,158.9	38.9	—	(25.5)	1,402.6
Long-term liabilities:							
Debt	—	3,205.8	—	—	—	—	3,205.8
Deferred income taxes	—	178.3	388.4	1.6	—	(4.8)	563.5
Other liabilities	—	36.9	3.6	1.4	—	(0.9)	41.0
Total long-term liabilities	—	3,421.0	392.0	3.0	—	(5.7)	3,810.3
Total shareholders' equity	711.7	706.8	2,809.8	99.6	—	(3,616.2)	711.7
<b>Total liabilities and shareholders' equity</b>	<b>\$ 711.7</b>	<b>\$ 4,358.1</b>	<b>\$ 4,360.7</b>	<b>\$ 141.5</b>	<b>\$ —</b>	<b>\$ (3,647.4)</b>	<b>\$ 5,924.6</b>

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Consolidating Statement of Operations**

(in millions)	Year Ended December 31, 2014						
	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net sales	\$ —	\$ —	\$ 11,542.3	\$ 532.2	\$ —	\$ —	\$ 12,074.5
Cost of sales	—	—	9,684.9	468.3	—	—	10,153.2
Gross profit	—	—	1,857.4	63.9	—	—	1,921.3
Selling and administrative expenses	—	112.8	962.3	35.2	—	—	1,110.3
Advertising expense	—	—	134.0	4.0	—	—	138.0
(Loss) income from operations	—	(112.8)	761.1	24.7	—	—	673.0
Interest (expense) income, net	—	(197.7)	0.1	0.3	—	—	(197.3)
Net loss on extinguishments of long-term debt	—	(90.7)	—	—	—	—	(90.7)
Management fee	—	3.9	—	(3.9)	—	—	—
Other income, net	—	1.2	1.5	—	—	—	2.7
(Loss) income before income taxes	—	(396.1)	762.7	21.1	—	—	387.7
Income tax benefit (expense)	—	141.0	(278.1)	(5.7)	—	—	(142.8)
(Loss) income before equity in earnings of subsidiaries	—	(255.1)	484.6	15.4	—	—	244.9
Equity in earnings of subsidiaries	244.9	500.0	—	—	—	(744.9)	—
Net income	<u>\$ 244.9</u>	<u>\$ 244.9</u>	<u>\$ 484.6</u>	<u>\$ 15.4</u>	<u>\$ —</u>	<u>\$ (744.9)</u>	<u>\$ 244.9</u>

**CDW CORPORATION AND SUBSIDIARIES**  
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**Consolidating Statement of Operations**

(in millions)	Year Ended December 31, 2013						
	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net sales	\$ —	\$ —	\$ 10,293.3	\$ 475.3	\$ —	\$ —	\$ 10,768.6
Cost of sales	—	—	8,592.1	416.2	—	—	9,008.3
Gross profit	—	—	1,701.2	59.1	—	—	1,760.3
Selling and administrative expenses	24.4	103.9	957.3	35.3	—	—	1,120.9
Advertising expense	—	—	126.8	4.0	—	—	130.8
(Loss) income from operations	(24.4)	(103.9)	617.1	19.8	—	—	508.6
Interest (expense) income, net	—	(250.6)	0.2	0.3	—	—	(250.1)
Net loss on extinguishments of long-term debt	—	(64.0)	—	—	—	—	(64.0)
Management fee	—	4.3	—	(4.3)	—	—	—
Other (expense) income, net	—	(0.5)	1.2	0.3	—	—	1.0
(Loss) income before income taxes	(24.4)	(414.7)	618.5	16.1	—	—	195.5
Income tax benefit (expense)	9.2	142.2	(209.5)	(4.6)	—	—	(62.7)
(Loss) income before equity in earnings of subsidiaries	(15.2)	(272.5)	409.0	11.5	—	—	132.8
Equity in earnings of subsidiaries	148.0	420.5	—	—	—	(568.5)	—
Net income	<u>\$ 132.8</u>	<u>\$ 148.0</u>	<u>\$ 409.0</u>	<u>\$ 11.5</u>	<u>\$ —</u>	<u>\$ (568.5)</u>	<u>\$ 132.8</u>

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**Consolidating Statement of Operations**

(in millions)	Year Ended December 31, 2012						
	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net sales	\$ —	\$ —	\$ 9,683.0	\$ 445.2	\$ —	\$ —	\$ 10,128.2
Cost of sales	—	—	8,071.5	387.1	—	—	8,458.6
Gross profit	—	—	1,611.5	58.1	—	—	1,669.6
Selling and administrative expenses	—	103.7	891.6	34.2	—	—	1,029.5
Advertising expense	—	—	125.1	4.4	—	—	129.5
(Loss) income from operations	—	(103.7)	594.8	19.5	—	—	510.6
Interest (expense) income, net	—	(308.0)	0.4	0.2	—	—	(307.4)
Net loss on extinguishments of long-term debt	—	(17.2)	—	—	—	—	(17.2)
Management fee	—	3.8	—	(3.8)	—	—	—
Other income (expense), net	—	—	0.2	(0.1)	—	—	0.1
(Loss) income before income taxes	—	(425.1)	595.4	15.8	—	—	186.1
Income tax benefit (expense)	—	210.6	(272.6)	(5.1)	—	—	(67.1)
(Loss) income before equity in earnings of subsidiaries	—	(214.5)	322.8	10.7	—	—	119.0
Equity in earnings of subsidiaries	119.0	333.5	—	—	—	(452.5)	—
Net income	<u>\$ 119.0</u>	<u>\$ 119.0</u>	<u>\$ 322.8</u>	<u>\$ 10.7</u>	<u>\$ —</u>	<u>\$ (452.5)</u>	<u>\$ 119.0</u>





**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Comprehensive Income**

	Year Ended December 31, 2014						
(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Comprehensive income	\$ 234.6	\$ 234.6	\$ 484.6	\$ 5.1	\$ —	\$ (724.3)	\$ 234.6



**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Comprehensive Income**

	Year Ended December 31, 2013						
(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Comprehensive income	\$ 126.1	\$ 141.3	\$ 409.0	\$ 4.8	\$ —	\$ (555.1)	\$ 126.1



**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Comprehensive Income**

(in millions)	Year Ended December 31, 2012						
	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Comprehensive income	\$ 121.5	\$ 121.5	\$ 322.8	\$ 13.2	\$ —	\$ (457.5)	\$ 121.5



**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Cash Flows**

(in millions)	Year Ended December 31, 2014						
	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net cash (used in) provided by operating activities	\$ —	\$ (120.4)	\$ 547.7	\$ 11.8	\$ —	\$ (4.1)	\$ 435.0
Cash flows from investing activities:							
Capital expenditures	—	(47.9)	(7.1)	—	—	—	(55.0)
Payment for equity investments	—	(86.8)	—	—	—	—	(86.8)
Payment of accrued charitable contribution related to the MPK Coworker Incentive Plan II	—	(20.9)	—	—	—	—	(20.9)
Premium payments on interest rate cap agreements	—	(2.1)	—	—	—	—	(2.1)
Net cash used in investing activities	—	(157.7)	(7.1)	—	—	—	(164.8)
Cash flows from financing activities:							
Repayments of long-term debt	—	(15.4)	—	—	—	—	(15.4)
Proceeds from issuance of long-term debt	—	1,175.0	—	—	—	—	1,175.0
Payments to extinguish long-term debt	—	(1,299.0)	—	—	—	—	(1,299.0)
Payment of debt financing costs	—	(21.9)	—	—	—	—	(21.9)
Net change in accounts payable-inventory financing	—	—	75.5	—	—	—	75.5
Proceeds from stock option exercises	—	1.3	—	—	—	—	1.3
Proceeds from Coworker stock purchase plan	—	5.8	—	—	—	—	5.8
Dividends paid	(33.6)	—	—	—	—	—	(33.6)
Excess tax benefits from equity-based compensation	—	0.3	—	—	—	—	0.3
Advances to/from affiliates	33.6	581.9	(616.1)	0.6	—	—	—
Net cash provided by (used in) financing activities	—	428.0	(540.6)	0.6	—	—	(112.0)
Effect of exchange rate changes on cash and cash equivalents	—	—	—	(1.8)	—	—	(1.8)
Net increase in cash and cash equivalents	—	149.9	—	10.6	—	(4.1)	156.4
Cash and cash equivalents – beginning of period	—	196.5	—	14.0	—	(22.4)	188.1
Cash and cash equivalents – end of period	\$ —	\$ 346.4	\$ —	\$ 24.6	\$ —	\$ (26.5)	\$ 344.5

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Cash Flows**

Year Ended December 31, 2013

(in millions)	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net cash (used in) provided by operating activities	\$ (15.2)	\$ (130.3)	\$ 508.8	\$ 5.5	\$ —	\$ (2.5)	\$ 366.3
Cash flows from investing activities:							
Capital expenditures	—	(40.8)	(6.2)	(0.1)	—	—	(47.1)
Net cash used in investing activities	—	(40.8)	(6.2)	(0.1)	—	—	(47.1)
Cash flows from financing activities:							
Proceeds from borrowings under revolving credit facility	—	63.0	—	—	—	—	63.0
Repayments of borrowings under revolving credit facility	—	(63.0)	—	—	—	—	(63.0)
Repayments of long-term debt	—	(51.1)	—	—	—	—	(51.1)
Proceeds from issuance of long-term debt	—	1,535.2	—	—	—	—	1,535.2
Payments to extinguish long-term debt	—	(2,047.4)	—	—	—	—	(2,047.4)
Payment of debt financing costs	—	(6.1)	—	—	—	—	(6.1)
Net change in accounts payable-inventory financing	—	—	7.4	—	—	—	7.4
Payment of incentive compensation plan withholding taxes	—	(4.0)	(19.6)	(0.5)	—	—	(24.1)
Net proceeds from issuance of common shares	424.7	—	—	—	—	—	424.7
Dividends paid	(7.3)	—	—	—	—	—	(7.3)
Advances to/from affiliates	(402.2)	892.6	(490.4)	—	—	—	—
Other financing activities	—	0.4	—	—	—	—	0.4
Net cash provided by (used in) financing activities	15.2	319.6	(502.6)	(0.5)	—	—	(168.3)
Effect of exchange rate changes on cash and cash equivalents	—	—	—	(0.7)	—	—	(0.7)
Net increase in cash and cash equivalents	—	148.5	—	4.2	—	(2.5)	150.2
Cash and cash equivalents – beginning of period	—	48.0	—	9.8	—	(19.9)	37.9
Cash and cash equivalents – end of period	\$ —	\$ 196.5	\$ —	\$ 14.0	\$ —	\$ (22.4)	\$ 188.1



**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Condensed Consolidating Statement of Cash Flows**

(in millions)	Year Ended December 31, 2012						
	Parent Guarantor	Subsidiary Issuer	Guarantor Subsidiaries	Non-Guarantor Subsidiary	Co-Issuer	Consolidating Adjustments	Consolidated
Net cash (used in) provided by operating activities	\$ —	\$ (204.3)	\$ 514.2	\$ 1.3	\$ —	\$ 6.2	\$ 317.4
Cash flows from investing activities:							
Capital expenditures	—	(27.0)	(14.0)	(0.4)	—	—	(41.4)
Premium payments on interest rate cap agreements	—	(0.3)	—	—	—	—	(0.3)
Net cash used in investing activities	—	(27.3)	(14.0)	(0.4)	—	—	(41.7)
Cash flows from financing activities:							
Proceeds from borrowings under revolving credit facility	—	289.0	—	—	—	—	289.0
Repayments of borrowings under revolving credit facility	—	(289.0)	—	—	—	—	(289.0)
Repayments of long-term debt	—	(201.0)	—	—	—	—	(201.0)
Proceeds from issuance of long-term debt	—	135.7	—	—	—	—	135.7
Payments to extinguish long-term debt	—	(243.2)	—	—	—	—	(243.2)
Payment of debt financing costs	—	(2.1)	—	—	—	—	(2.1)
Net change in accounts payable-inventory financing	—	—	(29.5)	—	—	—	(29.5)
Advances to/from affiliates	—	486.0	(486.5)	0.5	—	—	—
Other financing activities	—	2.1	—	—	—	—	2.1
Net cash provided by (used in) financing activities	—	177.5	(516.0)	0.5	—	—	(338.0)
Effect of exchange rate changes on cash and cash equivalents	—	—	—	0.3	—	—	0.3
Net (decrease) increase in cash and cash equivalents	—	(54.1)	(15.8)	1.7	—	6.2	(62.0)
Cash and cash equivalents – beginning of period	—	102.1	15.8	8.1	—	(26.1)	99.9
Cash and cash equivalents – end of period	\$ —	\$ 48.0	\$ —	\$ 9.8	\$ —	\$ (19.9)	\$ 37.9

**CDW CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**19. Selected Quarterly Financial Results (unaudited)**

(in millions, except per-share amounts)

	<b>2014</b>			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Net Sales Detail:</b>				
<b>Corporate:</b>				
Medium/Large	\$ 1,274.8	\$ 1,395.4	\$ 1,374.8	\$ 1,440.3
Small Business	230.8	260.8	247.9	250.7
<b>Total Corporate</b>	<b>1,505.6</b>	<b>1,656.2</b>	<b>1,622.7</b>	<b>1,691.0</b>
<b>Public:</b>				
Government	254.2	313.1	441.3	440.8
Education	321.6	527.0	632.8	342.6
Healthcare	394.1	431.5	394.7	385.7
<b>Total Public</b>	<b>969.9</b>	<b>1,271.6</b>	<b>1,468.8</b>	<b>1,169.1</b>
Other	176.8	178.2	174.6	190.0
<b>Net sales</b>	<b>\$ 2,652.3</b>	<b>\$ 3,106.0</b>	<b>\$ 3,266.1</b>	<b>\$ 3,050.1</b>
<b>Gross profit</b>	<b>\$ 425.2</b>	<b>\$ 496.9</b>	<b>\$ 507.3</b>	<b>\$ 491.9</b>
<b>Income from operations</b>	<b>135.8</b>	<b>188.2</b>	<b>184.7</b>	<b>164.3</b>
<b>Net income</b>	<b>50.9</b>	<b>86.6</b>	<b>55.6</b>	<b>51.8</b>
<b>Net income per common share <sup>(1)</sup>:</b>				
Basic	0.30	0.51	0.33	\$ 0.30
Diluted	0.30	0.50	0.32	\$ 0.30

(in millions, except per-share amounts)

	<b>2013</b>			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Net Sales Detail:</b>				
<b>Corporate:</b>				
Medium/Large <sup>(2)</sup>	\$ 1,180.5	\$ 1,308.5	\$ 1,241.3	\$ 1,322.3
Small Business <sup>(2)</sup>	223.4	228.9	224.5	230.7
<b>Total Corporate</b>	<b>1,403.9</b>	<b>1,537.4</b>	<b>1,465.8</b>	<b>1,553.0</b>
<b>Public:</b>				
Government	252.3	295.7	375.3	327.3
Education	232.2	420.6	513.4	282.8
Healthcare	362.3	366.3	355.9	380.4
<b>Total Public</b>	<b>846.8</b>	<b>1,082.6</b>	<b>1,244.6</b>	<b>990.5</b>
Other	161.0	159.3	153.9	169.8
<b>Net sales</b>	<b>\$ 2,411.7</b>	<b>\$ 2,779.3</b>	<b>\$ 2,864.3</b>	<b>\$ 2,713.3</b>
<b>Gross profit</b>	<b>\$ 402.0</b>	<b>\$ 451.6</b>	<b>\$ 458.4</b>	<b>\$ 448.3</b>
<b>Income from operations <sup>(3)</sup></b>	<b>120.1</b>	<b>153.6</b>	<b>92.9</b>	<b>142.0</b>
<b>Net income (loss) <sup>(3)</sup></b>	<b>28.3</b>	<b>46.7</b>	<b>(2.2)</b>	<b>60.0</b>
<b>Net income (loss) per common share <sup>(1)(3)</sup>:</b>				
Basic	0.19	0.32	(0.01)	0.35
Diluted	0.19	0.32	(0.01)	0.35

- (1) Basic and diluted net income (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of quarterly basic and diluted net share information may not equal annual basic and diluted net income (loss) per share.

**CDW CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

- (2) Net sales for the corporate channels (medium/large and small business) have been restated for all periods presented above to conform with the new corporate hierarchy presented for first quarter of 2014.
- (3) The third quarter of 2013 included pre-tax IPO-related charges of \$74.1 million . See Note 9 for additional discussion of the IPO.

**20. Subsequent Events**

During the first quarter of 2015, the Company entered into six interest rate cap agreements with a combined notional amount of \$400.0 million . Under the agreements, the Company made premium payments totaling \$0.5 million to the counterparties in exchange for the right to receive payments equal to the amount, if any, by which three-month LIBOR exceeds 2.0% during the agreement period. The interest rate cap agreements are effective from January 14, 2015 through January 14, 2017.

On February 10, 2015, the Company announced that its board of directors declared a cash dividend on the Company's common stock of \$0.0675 per share. The dividend will be paid on March 10, 2015 to all stockholders of record as of the close of business on February 25, 2015. Future dividends will be subject to the approval of the Company's board of directors.

**SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS**  
**Years ended December 31, 2014, 2013 and 2012**

(in millions)	Balance at Beginning of Period	Charged to Costs and Expenses	Deductions	Balance at End of Period
Allowance for doubtful accounts:				
Year Ended December 31, 2014	\$ 5.4	\$ 5.4	\$ (5.1)	\$ 5.7
Year Ended December 31, 2013	5.4	2.8	(2.8)	5.4
Year Ended December 31, 2012	5.4	3.9	(3.9)	5.4
Reserve for sales returns:				
Year Ended December 31, 2014	\$ 5.1	\$ 36.2	\$ (36.2)	\$ 5.1
Year Ended December 31, 2013	4.4	35.0	(34.3)	5.1
Year Ended December 31, 2012	4.5	33.2	(33.3)	4.4

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A. Controls and Procedures**

#### **Evaluation of Disclosure Controls and Procedures**

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rule 13a-15(e) or Rule 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, has concluded that, as of the end of such period, the Company's disclosure controls and procedures were effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act, and that information is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely discussions regarding required disclosure.

#### **Management's Annual Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2014. Management based this assessment on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in "Internal Control — Integrated Framework (2013 framework)."

Based on its assessment, management concluded that, as of December 31, 2014, the Company's internal control over financial reporting is effective.

Ernst & Young LLP, independent registered public accounting firm, has audited the consolidated financial statements of the Company and the Company's internal control over financial reporting and has included their reports herein.

#### **Changes in Internal Control over Financial Reporting**

There were no changes in the Company's internal control over financial reporting during the fiscal quarter ended December 31, 2014 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of  
CDW Corporation

We have audited CDW Corporation and subsidiaries' internal control over financial reporting as of December 31, 2014, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). CDW Corporation and subsidiaries' management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, CDW Corporation and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2014, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of CDW Corporation and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, shareholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2014 of CDW Corporation and subsidiaries and our report dated February 26, 2015 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP  
Chicago, Illinois  
February 26, 2015

**Item 9B. Other Information**

None.

## PART III

### **Item 10. Directors, Managers, Executive Officers and Corporate Governance**

We have adopted The CDW Way Code, our code of business conduct and ethics, that is applicable to all of our coworkers. Additionally, within The CDW Way Code is a Financial Integrity Code of Ethics that sets forth an even higher standard applicable to our executives, officers, members of our internal disclosure committee and all managers and above in our finance department. A copy of this code is available on our corporate website at [www.cdw.com](http://www.cdw.com). If we make any substantive amendments to this code or grant any waiver from a provision to our chief executive officer, principal financial officer or principal accounting officer, we will disclose the nature of such amendment or waiver on our website or in a report on Form 8-K.

See Part I - “Executive Officers” for information about our executive officers, which is incorporated by reference in this Item 10. Other information required under this Item 10 is incorporated herein by reference to our definitive proxy statement for our 2015 annual meeting of stockholders on May 13, 2015 (“2015 proxy statement”), which we will file with the SEC on or before 120 days after our 2014 fiscal year-end.

### **Item 11. Executive Compensation**

Information required under this Item 11 is incorporated herein by reference to the 2015 proxy statement.

### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

Information required under this Item 12 is incorporated herein by reference to the 2015 proxy statement.

### **Item 13. Certain Relationships and Related Transactions, and Director Independence**

Information required under this Item 13 is incorporated herein by reference to the 2015 proxy statement.

### **Item 14. Principal Accountant Fees and Services**

Information required under this Item 14 is incorporated herein by reference to the 2015 proxy statement.



**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a) Financial Statements and Schedules

The following documents are filed as part of this report:

(1) Consolidated Financial Statements:

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Report of Independent Registered Public Accounting Firm	59
Consolidated Balance Sheets as of December 31, 2014 and 2013	60
Consolidated Statements of Operations for the years ended December 31, 2014, 2013 and 2012	61
Consolidated Statements of Comprehensive Income for the years ended December 31, 2014, 2013 and 2012	62
Consolidated Statements of Shareholders' Equity (Deficit) for the years ended December 31, 2014, 2013 and 2012	63
Consolidated Statements of Cash Flows for the years ended December 31, 2014, 2013 and 2012	64
Notes to Consolidated Financial Statements	65

(2) Financial Statement Schedules:

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Schedule II – Valuation and Qualifying Accounts	106

All other schedules are omitted since the required information is not present or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements or notes thereto.

(b) Exhibits

The information required by this Item is set forth on the exhibit index that follows the signature page of this report.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CDW CORPORATION

Date: February 26, 2015

By: /s/ Thomas E. Richards  
Thomas E. Richards  
Chairman, President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas E. Richards</u> Thomas E. Richards	Chairman, President and Chief Executive Officer (principal executive officer) and Director	February 26, 2015
<u>/s/ Ann E. Ziegler</u> Ann E. Ziegler	Senior Vice President and Chief Financial Officer (principal financial officer)	February 26, 2015
<u>/s/ Virginia L. Seggerman</u> Virginia L. Seggerman	Vice President and Controller (principal accounting officer)	February 26, 2015
<u>/s/ Steven W. Alesio</u> Steven W. Alesio	Director	February 26, 2015
<u>/s/ Barry K. Allen</u> Barry K. Allen	Director	February 26, 2015
<u>/s/ Benjamin D. Chereskin</u> Benjamin D. Chereskin	Director	February 26, 2015
<u>/s/ Glenn M. Creamer</u> Glenn M. Creamer	Director	February 26, 2015
<u>/s/ Michael J. Dominguez</u> Michael J. Dominguez	Director	February 26, 2015
<u>/s/ Paul J. Finnegan</u> Paul J. Finnegan	Director	February 26, 2015
<u>/s/ David W. Nelms</u> David W. Nelms	Director	February 26, 2015
<u>/s/ Robin P. Selati</u> Robin P. Selati	Director	February 26, 2015
<u>/s/ Donna F. Zarcone</u> Donna F. Zarcone	Director	February 26, 2015

## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
3.1	Fifth Amended and Restated Certificate of Incorporation of CDW Corporation, previously filed as Exhibit 3.1 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
3.2	Amended and Restated By-Laws of CDW Corporation, previously filed as Exhibit 3.2 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
3.3	Articles of Organization of CDW LLC, previously filed as Exhibit 3.3 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.4	Amended and Restated Limited Liability Company Agreement of CDW LLC, previously filed as Exhibit 3.4 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.5	Certificate of Incorporation of CDW Finance Corporation, previously filed as Exhibit 3.5 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.6	By-Laws of CDW Finance Corporation, previously filed as Exhibit 3.6 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.7	Amended and Restated Articles of Incorporation of CDW Technologies, Inc., previously filed as Exhibit 3.7 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.8	Amended and Restated By-Laws of CDW Technologies, Inc., previously filed as Exhibit 3.8 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.9	Articles of Organization of CDW Direct, LLC, previously filed as Exhibit 3.9 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.10	Amended and Restated Limited Liability Company Agreement of CDW Direct, LLC, previously filed as Exhibit 3.10 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.11	Articles of Organization of CDW Government LLC, previously filed as Exhibit 3.11 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
3.12	Amended and Restated Limited Liability Company Agreement of CDW Government LLC, previously filed as Exhibit 3.12

with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.

- 3.13 Articles of Incorporation of CDW Logistics, Inc., previously filed as Exhibit 3.14 with CDW Corporation's Form S-3 filed on July 31, 2014 (Reg. No. 333-197744) and incorporated herein by reference.
  
- 3.14 By-Laws of CDW Logistics, Inc., previously filed as Exhibit 3.14 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
  
- 4.1 Specimen Common Stock Certificate, previously filed as Exhibit 4.1 with CDW Corporation's Amendment No. 3 to Form S-1 filed on June 25, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
  
- 4.2 Indenture, dated as of August 5, 2014, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association, as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on August 6, 2014 and incorporated herein by reference.

Exhibit Number	Description
4.3	Form of 6% Senior Note (included as Exhibit A to Exhibit 4.1), previously filed as Exhibit 4.2 with CDW Corporation's Form 8-K filed on August 6, 2014 and incorporated herein by reference.
4.4	Senior Note Indenture, dated as of April 13, 2011, between CDW Escrow Corporation and U.S. Bank National Association as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on April 14, 2011 and incorporated herein by reference.
4.5	Senior Note Supplemental Indenture, dated as of April 13, 2011, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.2 with CDW Corporation's Form 8-K filed on April 14, 2011 and incorporated herein by reference.
4.6	Second Senior Note Supplemental Indenture, dated as of May 20, 2011, by and among CDW LLC, CDW Finance Corporation, CDW Escrow Corporation, the guarantors party thereto and U.S. Bank National Association as Trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on May 23, 2011 and incorporated herein by reference.
4.7	Third Senior Note Supplemental Indenture, dated as of February 17, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as Trustee, previously filed as Exhibit 4.5 with CDW Corporation's Form 8-K filed on February 17, 2012 and incorporated herein by reference.
4.8	Fourth Senior Note Supplemental Indenture, dated as of May 10, 2012, by and among CDW LLC, CDW Finance Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.3 with CDW Corporation's Form 8-K filed on May 11, 2012 and incorporated herein by reference.
4.9	Form of Senior Note (included as Exhibit A to Exhibit 4.5), previously filed as Exhibit 4.3 with CDW Corporation's Form 8-K filed on April 14, 2011 and incorporated herein by reference.
4.10	Base Indenture, dated as of December 1, 2014, by and among CDW LLC, CDW Finance Corporation, CDW Corporation, the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.1 with CDW Corporation's Form 8-K filed on December 1, 2014 and incorporated herein by reference.
4.11	Supplemental Indenture, dated as of December 1, 2014, by and among CDW LLC, CDW Finance Corporation, CDW Corporation the guarantors party thereto and U.S. Bank National Association as trustee, previously filed as Exhibit 4.2 with CDW Corporation's Form 8-K filed on December 1, 2014 and incorporated herein by reference.

- 4.12 Form of 5.5% Senior Note (included as Exhibit B to Exhibit 4.12), previously filed as Exhibit 4.3 with CDW Corporation's Form 8-K filed on December 1, 2014 and incorporated herein by reference.
- 10.1 Amended and Restated Revolving Loan Credit Agreement, dated as of June 6, 2014, by and among CDW LLC, the lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent, GE Commercial Distribution Finance Corporation, as floorplan funding agent, and the joint lead arrangers, joint bookrunners, co-collateral agents, co-syndication agents and co-documentation agents party thereto, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on June 9, 2014 (Reg. No. 333-197744) and incorporated herein by reference.
- 10.2 Term Loan Agreement, dated as of April 29, 2013, by and among CDW LLC, the lenders from time to time party thereto, Barclays Bank PLC, as administrative agent and collateral agent, and the joint lead arrangers, joint bookrunners, co-syndication agents and co-documentation agents party thereto, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on May 1, 2013 and incorporated herein by reference.
- 10.3 First Amendment to Term Loan Agreement, dated as of May 30, 2013, by and among CDW LLC, the lenders from time to time party thereto, and Barclays Bank PLC, as administrative agent and collateral agent, previously filed as Exhibit 10.3 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
- 10.4 Incremental Amendment, dated as of July 31, 2013, by and among CDW LLC, the lenders party thereto and Barclays Bank PLC, as administrative agent, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on August 1, 2013 and incorporated herein by reference.

Exhibit Number	Description
10.5	Third Amendment to the Term Loan Agreement, dated as of September 12, 2013, by and among CDW LLC, the lenders from time to time party thereto and Barclays Bank PLC, as administrative agent and collateral agent, previously filed as Exhibit 10.2 with CDW Corporation's Form 10-Q filed on November 7, 2013 and incorporated herein by reference.
10.6	Second Amended and Restated Guarantee and Collateral Agreement, dated April 29, 2013, by and among CDW LLC, the guarantors party thereto and Barclays Bank PLC, as collateral agent, previously filed as Exhibit 10.2 with CDW Corporation's Form 8-K filed on May 1, 2013 and incorporated herein by reference.
10.7	Management Services Agreement, dated as of October 12, 2007, by and between CDW Corporation, Madison Dearborn Partners V-B, L.P. and Providence Equity Partners L.L.C., previously filed as Exhibit 10.9 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.8	Termination Agreement, dated as of June 12, 2013, by and among CDW Corporation, Madison Dearborn Partners V-B, L.P. and Providence Equity Partners L.L.C., previously filed as Exhibit 10.6 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.9	Registration Agreement, dated as of October 12, 2007, by and among VH Holdings, Inc., CDW Holdings LLC, Madison Dearborn Capital Partners V-A, L.P., Madison Dearborn Capital Partners V-C, L.P., Madison Dearborn Partners V Executive-A, L.P., Providence Equity Partners VI L.P., Providence Equity Partners VI-A L.P., and the other securityholders party thereto, previously filed as Exhibit 10.10 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.10	Withdrawal from Registration Agreement, dated as of November 12, 2013, by and between CDW Corporation and Paul S. Shain, previously filed as Exhibit 10.10 with CDW Corporation's Form 10-K filed on March 5, 2014 and incorporated herein by reference.
10.11	Withdrawal from Registration Agreement, dated as of November 20, 2013, by and among CDW Corporation, James R. Shanks and BOS Holdings, LLC, previously filed as Exhibit 10.11 with CDW Corporation's Form 10-K filed on March 5, 2014 and incorporated herein by reference.
10.12	Withdrawal from Registration Agreement, dated as of August 27, 2014, by and between CDW Corporation, John A. Edwardson and Whispering Pines Capital LLC, previously filed as Exhibit 10.1 with CDW Corporation's Form 10-Q filed on November 12, 2014 and incorporated herein by reference.
10.13§	Amended and Restated Compensation Protection Agreement, dated as of March 24, 2014, by and among CDW Corporation, CDW LLC and Thomas E. Richards, previously filed as Exhibit 10.1 with CDW Corporation's Form 8-K filed on March 28, 2014 and incorporated herein by reference.
10.14§	Form of Compensation Protection Agreement (executive officers other than Thomas E. Richards), previously filed as Exhibit



10.2 with CDW Corporation's Form 8-K filed on March 28, 2014 and incorporated herein by reference.

- 10.15§ Form of Noncompetition Agreement under the Compensation Protection Agreement, previously filed as Exhibit 10.3 with CDW Corporation's Form 8-K filed on March 28, 2014 and incorporated herein by reference.
- 10.16§ Letter Agreement, dated as of September 13, 2011, by and between CDW Direct, LLC and Christina M. Corley, previously filed as Exhibit 10.31 with CDW Corporation's Form 10-K filed on March 9, 2012 and incorporated herein by reference.
- 10.17§ Form of Indemnification Agreement by and between CDW Corporation and its directors and officers, previously filed as Exhibit 10.32 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
- 10.18 Stockholders Agreement, dated as of June 10, 2013, by and among CDW Corporation, Madison Dearborn Capital Partners V-A, L.P., Madison Dearborn Capital Partners V-C, L.P., Madison Dearborn Capital Partners V Executive-A, L.P., Providence Equity Partners VI L.P., Providence Equity Partners VI-A L.P. and the other securityholders party thereto, previously filed as Exhibit 10.33 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.

Exhibit Number	Description
10.19§	CDW Corporation 2013 Senior Management Incentive Plan, previously filed as Exhibit 10.34 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.20§	CDW Corporation 2013 Long-Term Incentive Plan, previously filed as Exhibit 10.35 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.21§	CDW Corporation Coworker Stock Purchase Plan, previously filed as Exhibit 10.36 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.22§	Form of CDW Corporation Option Award Notice and Stock Option Agreement (executed by Thomas E. Richards), previously filed as Exhibit 10.37 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.23§	Form of CDW Corporation Option Award Notice and Stock Option Agreement (executed by Neal J. Campbell and Christina M. Corley), previously filed as Exhibit 10.38 with CDW Corporation's Amendment No. 2 to Form S-1 filed on June 14, 2013 (Reg. No. 333-187472) and incorporated herein by reference.
10.24§	Form of CDW Corporation Restricted Stock Award Notice and Restricted Stock Award Agreement (executed by Thomas E. Richards, Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.12 with CDW Corporation's Form 10-Q filed on August 12, 2013 and incorporated herein by reference.
10.25§	Form of CDW Corporation Restricted Stock Award Notice and Restricted Stock Award Agreement (executed by Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka), previously filed as Exhibit 10.13 with CDW Corporation's Form 10-Q filed on August 12, 2013 and incorporated herein by reference.
10.26§	CDW Amended and Restated Restricted Debt Unit Plan, previously filed as Exhibit 10.3 with CDW Corporation's Form 10-Q filed on November 7, 2013 and incorporated herein by reference.
10.27§	Form of CDW Restricted Debt Unit Grant Notice and Agreement (executed by Thomas E. Richards, Dennis G. Berger, Douglas E. Eckrote, Christine A. Leahy, Jonathan J. Stevens and Ann E. Ziegler), previously filed as Exhibit 10.23 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.28§	Form of CDW Restricted Debt Unit Grant Notice and Agreement (executed by Neal J. Campbell, Christina M. Corley, Christina V. Rother and Matthew A. Troka and to be used for certain future grantees), previously filed as Exhibit 10.24 with CDW Corporation's Form S-4 filed on September 7, 2010 (Reg. No. 333-169258) and incorporated herein by reference.
10.29§	Form of Stock Option Agreement (executive officers) under the CDW Corporation 2013 Long-Term Incentive Plan.

previously filed as Exhibit 10.4 with CDW Corporation's Form 10-Q filed on May 12, 2014 and incorporated herein by reference.

- 10.30§ Form of Performance Share Unit Award Agreement (executive officers) under the CDW Corporation 2013 Long-Term Incentive Plan, previously filed as Exhibit 10.5 with CDW Corporation's Form 10-Q filed on May 12, 2014 and incorporated herein by reference.
- 10.31§\* Form of Performance Share Award Agreement (executive officers) under the CDW Corporation 2013 Long-Term Incentive Plan.
- 10.32§ Form of Non-Employee Director Restricted Stock Unit Award Agreement under the CDW Corporation 2013 Long-Term Incentive Plan, previously filed as Exhibit 10.6 with CDW Corporation's Form 10-Q filed on May 12, 2014 and incorporated herein by reference.
- 12.1\* Computation of ratio of earnings to fixed charges.
- 21.1 List of subsidiaries, previously filed as Exhibit 21.1 with CDW Corporation's Form S-4 filed on April 13, 2012 (Reg. No. 333-180715) and incorporated herein by reference.

Exhibit Number	Description
23.1*	Consent of Ernst & Young LLP.
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934.
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934.
32.1**	Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350.
32.2**	Certification of Chief Financial Officer pursuant to 18 U.S.C. 1350.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

\* Filed herewith

\*\* These items are furnished and not filed.

§ A management contract or compensatory arrangement required to be filed as an exhibit pursuant to Item 601 of Regulation S-K.

**CDW CORPORATION  
2013 LONG-TERM INCENTIVE PLAN**

**PERFORMANCE SHARE AWARD AGREEMENT**

CDW Corporation, a Delaware corporation (the “Company”), hereby grants to the individual (the “Holder”) named in the award notice attached hereto (the “Award Notice”) as of the date set forth in the Award Notice (the “Grant Date”), pursuant to the provisions of the CDW Corporation 2013 Long-Term Incentive Plan (the “Plan”), a performance share award (the “Award”) with respect to the number of shares of the Company’s Common Stock, par value \$0.01 per share (“Stock”), set forth in the Award Notice, upon and subject to the restrictions, terms and conditions set forth in the Plan and this agreement (the “Agreement”). Capitalized terms not defined herein shall have the meanings specified in the Plan.

1. Award Subject to Acceptance of Agreement . The Award shall be null and void unless the Holder (a) accepts this Agreement by executing the Award Notice in the space provided therefor and returning an original execution copy of the Award Notice to the Company (or electronically accepting this Agreement within the Holder’s stock plan account with the Company’s stock plan administrator according to the procedures then in effect) and (b) if requested by the Company, executes and returns one or more irrevocable stock powers to facilitate the transfer to the Company (or its assignee or nominee) of all or a portion of the shares subject to the Award, if shares are forfeited pursuant to Section 3 hereof or if required under applicable laws or regulations. As soon as practicable after the Holder has accepted this Agreement and executed such stock power or powers and returned the same to the Company, the Company shall cause to be issued in the Holder’s name the maximum number of shares of Stock subject to the Award.

2. Rights as a Stockholder . The Holder shall have the right to vote the shares of Stock subject to the Award unless and until such shares are forfeited pursuant to Section 3 hereof. As of each date on which the Company pays a cash dividend on the shares of Stock subject to the Award (a “Dividend Date”), the dividend shall be used to purchase from the Company a number of shares equal to (i) the product of the total number of shares subject to the Award immediately prior to such Dividend Date multiplied by the dollar amount of the cash dividend paid per share of Stock by the Company on such Dividend Date, divided by (ii) the Fair Market Value of a share of Stock on such Dividend Date. Any such additional shares shall be subject to the same vesting conditions and other terms set forth herein as the shares to which they relate. The shares of Stock subject to the Award may be held by a custodian in book entry form with the restrictions on such shares duly noted or, alternatively, the Company may hold the certificate or certificates representing such shares, in either case until the Award shall have vested, in whole or in part, pursuant to Section 3 hereof. As soon as practicable after shares of Stock shall have vested pursuant to Section 3 hereof, subject to Section 4 hereof, the restrictions shall be removed from those of such shares that are held in book entry form, and the Company shall deliver to the Holder any certificate or certificates representing those of such shares that are held by the Company and destroy or return to the Holder the stock power or powers relating to such shares. Any shares of Stock that do not become vested and are forfeited pursuant to Section 3 shall be transferred to the Company (or its assignee or nominee).

3. Restriction Period and Vesting.

3.1. Performance-Based Vesting Conditions. Subject to the remainder of this Section 3, the Stock shall vest pursuant to the terms of this Agreement and the Plan based on the achievement of the performance goals set forth in the Award Notice over the performance period set forth in the Award Notice (the “Performance Period”), provided that that the Holder remains in continuous employment with the Company through the end of the Performance Period. Attainment of the performance goals shall be determined and certified by the Committee in writing prior to the vesting of the Award. Any shares of Stock subject to the portion of the Award that does not become vested due to the failure of the Company to achieve the performance goals at the maximum levels of performance shall be forfeited and transferred to the Company (or its assignee or nominee).

3.2. Termination of Employment

(a) Termination due to Retirement, Death or Disability. If the Holder’s employment with the Company terminates prior to the end of the Performance Period and prior to a Change in Control by reason of the Holder’s Retirement, death or a termination by the Company due to Disability, the Performance Period shall continue through the last day thereof and the Holder shall be entitled to a prorated Award, provided that the Holder has continuously complied with the Restrictive Covenants. Such prorated Award shall be equal to the number of shares earned at the end of the Performance Period based on the actual performance during the Performance Period multiplied by a fraction, the numerator of which shall equal the number of full months in the Performance Period during which the Holder was employed by the Company and the denominator of which shall equal 36. Attainment of the performance goals shall be determined and certified by the Committee in writing prior to the vesting of the Award. Any shares of Stock subject to the portion of the Award that does not become vested shall be forfeited and transferred to the Company (or its assignee or nominee).

(b) Termination other than due to Retirement, Death or Disability. If the Holder’s employment with the Company terminates prior to the end of the Performance Period and prior to a Change in Control by reason of (i) the Company’s termination of the Holder’s employment for any reason other than death or Disability or (ii) the Holder’s resignation for any reason other than Retirement, then the Award shall be immediately forfeited by the Holder and cancelled by the Company. The shares of Stock subject to the Award shall be forfeited and transferred to the Company (or its assignee or nominee).

3.3. Change in Control.

(a) Satisfaction of Performance Goals. If a Change in Control occurs prior to the 24-month anniversary of the first day of the Performance Period, the Performance Period shall end as of the date of the Change in Control and the performance goals set forth in Section 3.1 shall be deemed to have been satisfied at the target level. If the Change in Control occurs on or after the 24-month anniversary of the first day of the Performance Period, the Performance Period shall end as of the date of the Change in Control, and the number of shares of Stock earned pursuant to Section 3.1 shall be based on the projected level of performance through the end of the Performance Period, as determined by the Committee prior to the date of the Change in Control based on performance through the date of such determination. If the Change in Control occurs after the date on which the Participant’s employment is terminated by reason of death, Disability or Retirement, pursuant to Section 3.2(a), the number of shares earned for purposes of such section shall be determined as of the date of the Change in Control in accordance with this Section 3.3(a) and shall be vested as of the date of such Change in Control. Any shares of Stock subject to the

portion of the Award that does not become vested shall be forfeited and transferred to the Company (or its assignee or nominee).

(b) Vesting of Award Not Assumed. In the event of a Change in Control prior to the end of the Performance Period pursuant to which the Award is not effectively assumed or continued by the surviving or acquiring corporation in such Change in Control (as determined by the Board or Committee, with appropriate adjustments to the number and kind of shares, in each case, that preserve the value of the shares subject to the Award and other material terms and conditions of the outstanding Award as in effect immediately prior to the Change in Control), the Award shall vest as of the date of the Change in Control, based on the performance level determined in accordance with Section 3.3(a). Any shares of Stock subject to the portion of the Award that does not become vested shall be forfeited and transferred to the Company (or its assignee or nominee).

(c) Vesting of Award Assumed. In the event of a Change in Control prior to the end of the Performance Period pursuant to which the Award is effectively assumed or continued by the surviving or acquiring corporation in such Change in Control (as determined by the Board or Committee, with appropriate adjustments to the number and kind of shares, in each case, that preserve the value of the shares subject to the Award and other material terms and conditions of the outstanding Award as in effect immediately prior to the Change in Control) and (i) the Holder remains continuously employed through the end of the Performance Period, (ii) the Company terminates the Holder's employment without Cause or the Holder resigns for Good Reason within 24 months following such Change in Control and the Holder executes and does not revoke a waiver and release of claims in the form prescribed by the Company within 60 days after the date of such termination or (iii) the Holder's employment terminates due to death, Disability or Retirement following such Change in Control, in any such case, the Award shall vest based on the performance level determined in accordance with Section 3.3(a) hereof as of the end of the Performance Period or, if earlier, the Holder's termination of employment; provided that to the extent that any Required Tax Payments are due prior to such vesting date, the Company shall withhold whole shares of Stock from the number of shares subject to the Award having an aggregate Fair Market Value, determined as of the date on which such withholding obligation arises, equal to the Required Tax Payments, in accordance with Section 6.1. In the case of a termination pursuant to clause (ii) of this Section 3.3(c) (termination without Cause or resignation for Good Reason), the Award shall vest in full, and in the case of a termination pursuant to clause (iii) of this Section 3.3(c) (death, Disability or Retirement), the Award shall be prorated in accordance with, and subject to the terms of, Section 3.2(a). If, following a Change in Control, the Holder experiences a termination of employment other than as set forth in this Section 3.3(c), the Award shall be immediately forfeited by the Holder and cancelled by the Company. Any shares of Stock subject to the portion of the Award that does not become vested shall be forfeited and transferred to the Company (or its assignee or nominee).

#### 3.4. Definitions.

(a) Cause. For purposes of this Award, "Cause" shall mean one or more of the following: (A) Holder's refusal (after written notice and reasonable opportunity to cure) to perform duties properly assigned which are consistent with the scope and nature of Holder's position; (B) Holder's commission of an act materially and demonstrably detrimental to the financial condition and/or goodwill of the Company or any of its Subsidiaries, which act constitutes gross negligence or willful misconduct in the performance of duties to the Company or any of its Subsidiaries; (C) Holder's commission of any theft, fraud, act of dishonesty or breach of trust resulting in or intended to result in material personal gain or enrichment of Holder at the direct or indirect expense of the Company or any of its Subsidiaries; (D) Holder's conviction of, or plea of guilty or nolo contendere to, a felony; (E) Holder's material violation of

any Restrictive Covenant; or (F) Holder's material and willful violation of the Company's written policies or of Holder's statutory or common law duty of loyalty to the Company or its affiliates that in either case is materially injurious to the Company, monetarily or otherwise. No act or failure to act will be considered "willful" (x) unless it is done, or omitted to be done, by Holder in bad faith or without reasonable belief that Holder's action or omission was in the best interests of the Company or (y) if it is done, or omitted to be done, in reliance on the informed advice of the Company's outside counsel or independent accountants or at the express direction of the Board.

(b) Disability. For purposes of this Award, "Disability" shall mean the Holder's absence from the Holder's duties with the Company on a full-time basis for at least 180 consecutive days as a result of the Holder's incapacity due to physical or mental illness, or under such other circumstances as the Committee determines, in its sole discretion, constitute a Disability.

(c) Good Reason. For purposes of this Award, "Good Reason" shall mean that the Holder resigns from employment with the Company and its Subsidiaries as a result of one or more of the following reasons: (i) the Company reduces the amount of the Holder's base salary or cash bonus opportunity (it being understood that the Board shall have discretion to set the Company's and the Holder's personal performance targets to which the cash bonus will be tied), (ii) the Company adversely changes the Holder's reporting responsibilities, titles or office as in effect as of the date hereof or reduces his/her position, authority, duties, responsibilities or status materially inconsistent with the positions, authority, duties, responsibilities or status the Holder then holds, (iii) any successor to the Company in any merger, consolidation or transfer of assets does not expressly assume any material obligation of the Company to the Holder under any agreement or plan pursuant to which the Holder receives benefits or rights, or (iv) the Company changes the Holder's place of work to a location more than fifty (50) miles from the Holder's present place of work; provided, however, that the occurrence of any such condition shall not constitute Good Reason unless (A) the Holder provides written notice to the Company of the existence of such condition not later than 60 days after the Holder knows or reasonably should know of the existence of such condition, (B) the Company fails to remedy such condition within 30 days after receipt of such notice and (C) the Holder resigns due to the existence of such condition within 60 days after the expiration of the remedial period described in clause (B) hereof.

(d) Restrictive Covenant. For purposes of this Award, "Restrictive Covenant" shall mean any non-competition, non-solicitation, confidentiality or protection of trade secrets (or similar provision regarding intellectual property) covenant by which Holder is bound under any agreement between Holder and the Company and its Subsidiaries.

(e) Retirement. For purposes of this Award, "Retirement" shall mean Holder's termination of employment at a time when (i) the Holder has attained age 55 and (B) the sum of the Holder's age and years of employment with or service to the Company or its Subsidiaries equals or exceeds 65; provided that such termination occurs at least six months after the Grant Date.

#### 4. Clawback of Proceeds.

4.1. Clawback of Proceeds. This award is subject to the clawback provisions in Section 5.15 of the Plan. In addition, if the Holder materially violates any Restrictive Covenant and such violation occurs on or before the third anniversary of the date of the Holder's termination of employment: (i) the Award shall be forfeited and (ii) any and all Performance Share Proceeds (as hereinafter defined) shall be immediately due and payable by the Holder to the Company. For purposes of this Section, "Performance Share Proceeds" shall mean, with respect to any portion of the Award which becomes



vested later than 24 months prior to the date of the Holder's termination of employment or service with the Company, the Fair Market Value of a share of Common Stock on the date such portion of the Award became vested, multiplied by the number of shares of Common Stock that became vested. The remedy provided by this Section shall be in addition to and not in lieu of any rights or remedies which the Company may have against the Holder in respect of a breach by the Holder of any duty or obligation to the Company.

4.2. Right of Setoff. The Holder agrees that by accepting the Award the Holder authorizes the Company and its affiliates to deduct any amount or amounts owed by the Holder pursuant to this Section 4 from any amounts payable by or on behalf of the Company or any affiliate to the Holder, including, without limitation, any amount payable to the Holder as salary, wages, vacation pay, bonus or the vesting or settlement of the Award or any stock-based award. This right of setoff shall not be an exclusive remedy and the Company's or an affiliate's election not to exercise this right of setoff with respect to any amount payable to the Holder shall not constitute a waiver of this right of setoff with respect to any other amount payable to the Holder or any other remedy.

5. Transfer Restrictions and Investment Representation.

5.1. Nontransferability of Award. The Award may not be transferred by the Holder other than by will or the laws of descent and distribution. Except to the extent permitted by the foregoing sentence, the Award may not be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of (whether by operation of law or otherwise) or be subject to execution, attachment or similar process. Upon any attempt to so sell, transfer, assign, pledge, hypothecate, encumber or otherwise dispose of the Award, the Award and all rights hereunder shall immediately become null and void.

5.2. Investment Representation. The Holder hereby covenants that (a) any sale of any share of Stock acquired upon the vesting of the Award shall be made either pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and any applicable state securities laws, or pursuant to an exemption from registration under the Securities Act and such state securities laws and (b) the Holder shall comply with all regulations and requirements of any regulatory authority having control of or supervision over the issuance of the shares and, in connection therewith, shall execute any documents which the Committee shall in its sole discretion deem necessary or advisable.

6. Additional Terms and Conditions of Award.

6.1. Withholding Taxes. As a condition precedent to the vesting of the Award and the delivery of the Stock hereunder, at the Company's discretion either (i) the Holder shall pay to the Company such amount as the Company (or an affiliate) determines is required, under all applicable federal, state, local, foreign or other laws or regulations, to be withheld and paid over as income or other withholding taxes (the "Required Tax Payments") with respect to the Award or (ii) the Company or an affiliate may, in its discretion, deduct any Required Tax Payments from any amount then or thereafter payable by the Company or an affiliate to the Holder, which may include the withholding of whole shares of Stock which would otherwise be delivered to the Holder having an aggregate Fair Market Value, determined as of the date on which such withholding obligation arises, equal to the Required Tax Payments, in either case in accordance with such terms, conditions and procedures that may be prescribed by the Company. Shares of stock withheld may not have a Fair Market Value in excess of the Company's minimum statutory withholding requirements for the Required Tax Payments;

provided, however, that if a fraction of a share of Stock would be required to satisfy the minimum amount of the Required Tax Payments, then the number of shares of Stock to be withheld may be rounded up to the next nearest whole share of Stock. Notwithstanding the foregoing, if the Required Tax Payments are due prior to the date the Company determines the number of shares of Stock that have become vested, the amount of the Required Tax Payments, including the number of shares withheld to pay such Required Tax Payments, may be based on a reasonable estimate of the number of shares that are expected to become vested. No certificate representing a share of Stock shall be delivered until the Required Tax Payments have been satisfied in full. A determination by the Company to satisfy the Required Tax Payments by withholding shares of Stock shall be made by the Committee if the Holder is subject to Section 16 of the Exchange Act.

6.2. Compliance with Applicable Law. The Award is subject to the condition that if the listing, registration or qualification of the shares of Stock subject to the Award upon any securities exchange or under any law, or the consent or approval of any governmental body, or the taking of any other action is necessary or desirable as a condition of, or in connection with, the delivery of shares hereunder, the shares of Stock subject to the Award shall not be delivered, in whole or in part, unless such listing, registration, qualification, consent, approval or other action shall have been effected or obtained, free of any conditions not acceptable to the Company. The Company agrees to use reasonable efforts to effect or obtain any such listing, registration, qualification, consent, approval or other action.

6.3. Award Confers No Rights to Continued Employment. In no event shall the granting of the Award or its acceptance by the Holder, or any provision of the Agreement or the Plan, give or be deemed to give the Holder any right to continued employment by the Company, any Subsidiary or any affiliate of the Company or affect in any manner the right of the Company, any Subsidiary or any affiliate of the Company to terminate the employment of any person at any time.

6.4. Decisions of Board or Committee. The Board or the Committee shall have the right to resolve all questions which may arise in connection with the Award. Any interpretation, determination or other action made or taken by the Board or the Committee regarding the Plan or this Agreement shall be final, binding and conclusive.

6.5. Successors. This Agreement shall be binding upon and inure to the benefit of any successor or successors of the Company and any person or persons who shall, upon the death of the Holder, acquire any rights hereunder in accordance with this Agreement or the Plan.

6.6. Notices. All notices, requests or other communications provided for in this Agreement shall be made, if to the Company, to CDW Corporation, Attn: General Counsel, 200 N. Milwaukee Avenue, Vernon Hills, Illinois 60061, and if to the Holder, to the last known mailing address of the Holder contained in the records of the Company. All notices, requests or other communications provided for in this Agreement shall be made in writing either (a) by personal delivery, (b) by facsimile or electronic mail with confirmation of receipt, (c) by mailing in the United States mails or (d) by express courier service. The notice, request or other communication shall be deemed to be received upon personal delivery, upon confirmation of receipt of facsimile or electronic mail transmission or upon receipt by the party entitled thereto if by United States mail or express courier service; provided, however, that if a notice, request or other communication sent to the Company is not received during regular business hours, it shall be deemed to be received on the next succeeding business day of the Company.

6.7. Governing Law. This Agreement, the Award and all determinations made and actions taken pursuant hereto and thereto, to the extent not governed by the laws of the United States,

shall be governed by the laws of the State of Delaware and construed in accordance therewith without giving effect to principles of conflicts of laws.

6.8. Agreement Subject to the Plan. This Agreement is subject to the provisions of the Plan and shall be interpreted in accordance therewith. In the event that the provisions of this Agreement and the Plan conflict, the Plan shall control. The Holder hereby acknowledges receipt of a copy of the Plan.

6.9. Entire Agreement. This Agreement and the Plan constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Holder with respect to the subject matter hereof, and may not be modified adversely to the Holder's interest except by means of a writing signed by the Company and the Holder.

6.10. Partial Invalidity. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

6.11. Amendment and Waiver. The Company may amend the provisions of this Agreement at any time; provided that an amendment that would adversely affect the Holder's rights under this Agreement shall be subject to the written consent of the Holder. No course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

6.12. Compliance With Section 409A of the Code. This Award is intended to be exempt from Section 409A of the Code, and shall be interpreted and construed accordingly.

CDW CORPORATION  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES  
 (unaudited)

(dollars in millions)	Years ended December 31,				
	2010	2011	2012	2013	2014
<b>Computation of earnings:</b>					
Income (loss) before income taxes and adjustment for (income) loss from equity investees	\$ (37.1)	\$ 28.3	\$ 185.8	\$ 194.9	\$ 385.5
					1.1
Distributed income from equity investees	0.2	0.5	1.2	1.0	
Fixed charges				254.3	202.8
	420.7	324.9	312.4		
<b>Total earnings</b>	\$ 383.8	\$ 353.7	\$ 499.4	\$ 450.2	\$ 589.4
<b>Computation of fixed charges:</b>					
Interest expense	\$ 394.7	\$ 302.0	\$ 294.4	\$ 241.8	\$ 191.3
Amortization of deferred financing costs and debt premium	18.0	15.7	13.6	8.8	6.4
Portion of rent expense representative of interest <sup>(1)</sup>	8.0	7.2	4.4	3.7	5.1
<b>Total fixed charges</b>	\$ 420.7	\$ 324.9	\$ 312.4	\$ 254.3	\$ 202.8
<b>Ratio of earnings to fixed charges</b>	(2)	1.1	1.6	1.8	2.9

<sup>(1)</sup> Fixed charges include a reasonable estimation of the interest factor included in rental expense.

<sup>(2)</sup> For the year ended December 31, 2010, earnings available for fixed charges were inadequate to cover fixed charges by \$37.0 million.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-3 ASR No. 333-199425) of CDW Corporation, and
- (2) Registration Statement (Form S-8 No. 333-189622) pertaining to the 2013 Long-Term Incentive Plan and Coworker Stock Purchase Plan of CDW Corporation;

of our reports dated February 26, 2015, with respect to the consolidated financial statements and schedule of CDW Corporation and subsidiaries and the effectiveness of internal control over financial reporting of CDW Corporation and subsidiaries included in this Annual Report (Form 10-K) of CDW Corporation for the year ended December 31, 2014.

/s/ Ernst & Young LLP

Chicago, Illinois  
February 26, 2015

**CERTIFICATION PURSUANT TO RULE 13a-14(a) or 15d-14(a) UNDER  
THE SECURITIES EXCHANGE ACT OF 1934**

I, Thomas E. Richards, certify that:

1. I have reviewed this annual report on Form 10-K of CDW Corporation (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Thomas E. Richards

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Thomas E. Richards  
Chairman, President and Chief Executive Officer  
CDW Corporation  
February 26, 2015

**CERTIFICATION PURSUANT TO RULE 13a-14(a) or 15d-14(a) UNDER  
THE SECURITIES EXCHANGE ACT OF 1934**

I, Ann E. Ziegler, certify that:

1. I have reviewed this annual report on Form 10-K of CDW Corporation (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Ann E. Ziegler

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Ann E. Ziegler

Senior Vice President and Chief Financial Officer

CDW Corporation

February 26, 2015

**CERTIFICATION PURSUANT TO SECTION 1350 OF CHAPTER 63  
OF TITLE 18 OF THE UNITED STATES CODE**

I, Thomas E. Richards, the chief executive officer of CDW Corporation (“CDW”), certify that (i) the Annual Report on Form 10-K for the year ended December 31, 2014 (the “10-K”) of CDW fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the 10-K fairly presents, in all material respects, the financial condition and results of operations of CDW.

/s/ Thomas E. Richards

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Thomas E. Richards

Chairman, President and Chief Executive Officer  
CDW Corporation

February 26, 2015



**CERTIFICATION PURSUANT TO SECTION 1350 OF CHAPTER 63  
OF TITLE 18 OF THE UNITED STATES CODE**

I, Ann E. Ziegler, the chief financial officer of CDW Corporation (“CDW”), certify that (i) the Annual Report on Form 10-K for the year ended December 31, 2014 (the “10-K”) of CDW fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the 10-K fairly presents, in all material respects, the financial condition and results of operations of CDW.

/s/ Ann E. Ziegler


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Ann E. Ziegler

Senior Vice President and Chief Financial Officer

CDW Corporation

February 26, 2015



# Attachment B: Methodology

## 1. Overall Approach

### Requirement

1. Offeror shall describe its overall approach to providing solicited services. Include how Offeror plans to meet or exceed requirements of the Scope of Work and Terms and Conditions.

### Response

At CDW, our software business is the single largest category, with sales generating over \$3 billion annually. This encompasses both traditional software licensing and subscription-based Software-as-a-Service (SaaS) licensing models. We offer innovative value-added benefits (detailed further in **requirement 7**) to enhance the procurement process, lower administrative costs, and reduce the risk of noncompliance associate with volume software licensing.

To meet—and exceed—the needs of the NASPO ValuePoint contract customers, as delineated in the Scope of Work and Terms and Conditions, CDW•G presents our customizable customer website, dedicated account managers and software licensing specialists, industry-best customer service, a streamlined software-management system, and direct, timely support.

CDW•G has proposed changes to the Terms and Conditions that are detailed within **Attachment D**, per the requirements of Executive Summary. Most of the proposed changes are a direct result of our status as an authorized reseller of licensing, where terms are currently drafted as if the awardee is the publisher. We appreciate the opportunity to discuss further and anticipate a good-faith negotiation.

## 2. Website

### Requirement

2. Per Section 3.1.3, the SVAR shall Develop and Maintain Website. Describe the website to be established for a state. Address that website's functionalities or special features. You may supplement this response with illustrative screen prints (no more than 10) from one of your company's existing websites. Taking into account the requirements of Section 3.1.3, address at a minimum:

### Response

CDW has over 20 years' experience in providing customer purchasing solutions on our website. We transact over \$2.5 billion dollars in business **through our website** annually, which puts us in one of the top 10 e-commerce sites in the US. Our website, found at [www.cdwg.com](http://www.cdwg.com), is highly customizable, allowing each agency, department, and workgroup to tailor the site according to their specific needs.

Additionally, the CDW•G program manager supporting the contract will create and maintain a contract-specific website, called a Premium Page. This site possesses the same functionalities as our website, with additional links features and contract pricing listed for each available contract item.

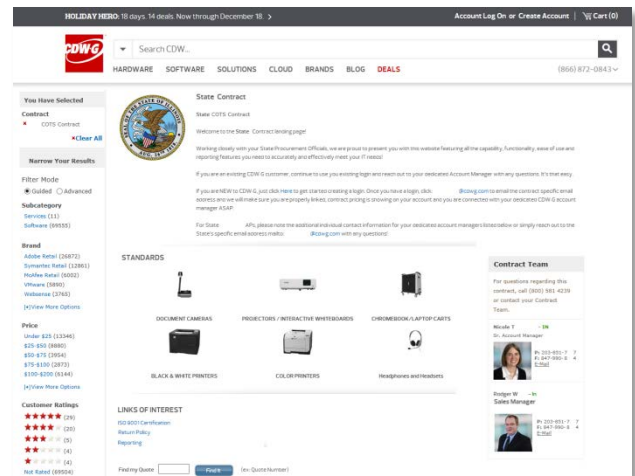
## Requirement

- 2.1 Home page appearance and information;

## Response

The contract's CDW•G Premium Page requires no login to view, so our account teams and NASPO ValuePoint can easily direct eligible agencies to the site to demonstrate the competitive pricing available. There are a number of customizable features we will tailor to your preferences. Options include links of interest, text and images, related documentation, and the highlighting of specific OEMs and/or software solutions. Items standard to the home page include a quick "Find My Quote" search option and our general sales contact information, as well as providing easy access to our site subpages (e.g., Software, Cloud, Blog, Solutions).

CDW•G will provide NASPO ValuePoint customers with access to a **free** customized Account Center site where they can view quotes, place orders, check status of orders, and track their order history. This site is available by logging into the customer account from either the Premium Page or [www.cdwg.com](http://www.cdwg.com).



## Requirement

- 2.2 On-line tutorials;

## Response

We offer online tutorials for use of our website, as well as webinars about popular technology solutions. A high-level Account Center tour and a CDW website tour are available here: [www.cdwsiteinfo.com](http://www.cdwsiteinfo.com). The site also includes website FAQs; detailed breakdowns of the Account Center functionalities, and a blog featuring new site updates. Within your Account Center, function-specific tutorials and instructions are available for major areas (e.g., catalogs, quotes, order tracking). We house solution-specific tutorials and webinars in the Media Library, with nearly 70 webinars and over 10 different video channels. This easy-to-search library includes a plethora of helpful documentation for users to research, as well.

## Requirement

- 2.3 Product catalog (include searchable fields, products to be included, how license information is provided);

## Response

The contract's Premium Page allows NASPO ValuePoint customers to perform quick product searches and to comparison shop by viewing up to 10 side-by-side product descriptions, with a number of helpful filtering options. Additionally, customers can export the comparison information into a CSV file for reporting needs.

Our site includes license information on each product page. This information appears on the comparison tool when selecting the "Technical Specs" option. Licensing details include, but are not limited to, agreement term, category, level, type, licensing program, pricing level, subscription details (when applicable), quantity, and service support (where included).

Specific to NASPO ValuePoint, users can also view descriptions of the most popular vendor partners' licensing programs from the software licensing center, eliminating the hassle of downloading data from multiple manufacturer websites and providing a full library of helpful resources to educate on software licensing.

To continue with a purchase, users must enter a unique ID and password, at which point eligible entities can quickly track orders and quotes. A key element in expanding contract reach, the website is a trustworthy means of easily choosing and ordering new licenses and products on the contract. Contract pricing continues to be displayed for all items. When authenticated, entities can add additional products from any of their available contracts, all on one order. If a customer does not currently have a CDW•G Account Center and would like to utilize this tool, the registration process is simple, selecting their own login ID and password for their customized site.

Site functionality includes the following:

- Track orders and shipments
- Connect with your account team
- Manage applicable purchases and payments
- Review consistent, contract-compliant pricing
- Promote IT standards
- Set shipping preferences and manage contact information
- Control access to features and information through customer organization

The Account Center improves efficacy and efficiency when working with CDW•G, as compared to our competitors. Starting with comparing products, finding compatible accessories, creating custom catalogs, setting authorization levels, and selecting from a number of shipping options, your CDW•G Account Center expands to track agency spending history, manage assets, and create customized reports. Support and assistance is available via the site, through contacting the account manager and/or a customer service rep, as well as placing and reviewing RMA requests.

### **Software Management**

NASPO ValuePoint users can take advantage of features that make it easy to find, download, activate, and manage software licenses.

- Discover and analyze
- Audit software applications running on network
- Instantly run inventory of software assets
- Analyze software usage
- Automatically find all IT assets
- Monitor network vulnerabilities
- View comprehensive asset reporting
- Software filters
- Quickly narrow purchase options based on current software contract
- Some publishers available for automatic/web-based features
- Use Software Keycodes to store keycodes from software licensing purchases

### **Additional Features**

- Track licenses purchased from CDW and other vendor purchases
- Robust standardized and custom reporting options

- Option to upload license information so you can consolidate software license reports and information

**Requirement**

- 2.4 Links

**Response**

As stated in **requirement 2.1**, links of interest (e.g., the NASPO ValuePoint primary website, CDW Media Library, etc.) can be tailored to customer preference on the Account Center site. This customization is available at **no cost** to the user.



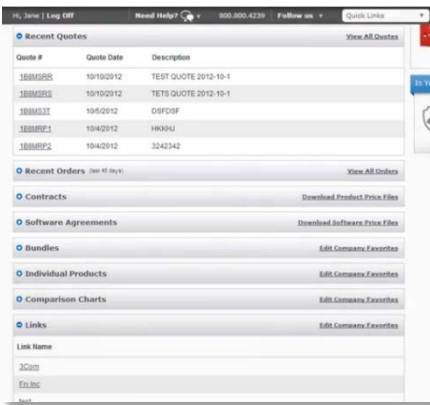
**Requirement**

- 2.5 Downloadable standard reports. Include:
  - 2.5.1 How information is controlled and sorted (e.g. what information LSCA can access);

**Response**

Information can be captured and reported via the Account Center and include (but are not limited to) the following sortable fields:

- |                                  |                          |   |
|----------------------------------|--------------------------|---|
| ▪ ABB Billing ID                 | ▪ Cost Center            | ▪ Release Number                              |
| ▪ Accounting Code                | ▪ Corporation Code       | ▪ SAP Company                                 |
| ▪ Apple Education Account Number | ▪ Department Code        | ▪ Shipping Account Number                     |
| ▪ Invoice Approval ID            | ▪ Employee Email Address | ▪ Selling Division                            |
| ▪ Business Area                  | ▪ Employee First Initial | ▪ Buying Unit #                               |
| ▪ Buyers ID for Billing          | ▪ Employee ID Number     | ▪ Staples Internal Customer Number            |
| ▪ Buyers ID for Seller           | ▪ Employee Last Name     | ▪ Staples Merchandise Type Code               |
| ▪ Buyers ID for Vendor           | ▪ Employee Phone Number  | ▪ Tax Cost Center                             |
| ▪ Capital Budget Number          | ▪ Freight Cost Center    | ▪ Tax GL Account                              |
|                                  | ▪ Freight GL Account     | ▪ Ticket Number                               |
|                                  | ▪ Inventory Cost Center  | ▪ Vendor ID                                   |
|                                  | ▪ Inventory GL Account   | ▪ 3 <sup>rd</sup> Party Assigned Order Number |
|                                  | ▪ Account                | ▪ Work Request                                |
|                                  | ▪ Unit                   | ▪ Original Order Price                        |
|                                  | ▪ MW Customer Number     | ▪ Original Order Quantity                     |



The Account Center is set up by customer number, meaning that the LSCA will need to work with the program manager to receive contract-wide reports (see **requirement 2.5.2**).

**Requirement**

- o 2.5.2 How state Procurement Officer can obtain purchasing profile for Users and volume in State;

**Response**

Standard reports are available for download via the Account Center and your account manager, utilizing sortable data fields which can be accessed and viewed by the customer, managed as [Preferences](#). Each site will only show the individual agency, with “roll up” reports for the LSCA performed by the program manager. Each customer (**requirement 2.5.3**), if set as a subordinate to the main central agency, can roll up to the Procurement Officer (**2.5.2**). Use easy drag and drop options to customize reports or download data for offline analysis. More information about the types of reporting available to NASPO ValuePoint customers is featured in **requirement 5**. Through the Account Center, customers will have the ability to coordinate to the individual state’s electronic purchasing system, utilizing our Purchase Authorization System (PAS), streamlining and controlling IT purchases with automated, rules-based approvals and workflows.

Product Description	CDW#	MFG#	Availability	Extranet Price
+ Microsoft SQL Server 2014 - license License - 1 device CAL - NGVL - Win	3883351	AAA-03339-CCE	In Stock	\$155.60
+ Microsoft SQL Server Standard Edition - software assurance Software assurance - 1 server - NGVL - Win	3886858	AAA-03703-CF6-3-1	In Stock	\$167.57

**Requirement**

- o 2.5.3 How an individual User can obtain only their information.

**Response**

Our Account Centers are set up by each customer’s CDW•G account number. Agencies access and generate reports that include only the information relevant to their account. The authorized user(s) designated to manage the entity’s account act as administrator and can customize the site to restrict the information available to individual purchases, if desired.

**Requirement**

- 2.6 How website is monitored, kept current and accurate.

**Response**

Once your program manager puts the contract structure into the system, the system updates the contract pricing automatically, as we receive it from our OEM and distributor partners. Our major partners send daily EDI downloads or real-time information directly to our ordering and inventory system. For all quote requests, our AMs use one system to manage the process (from quote to order placement). This system allows us to centrally manage many key functions, including purchasing, inventory management, accounts receivable, sales, and distribution.

For general site maintenance, we have an in-house team of over 200 IT personnel to keep our website refreshed quickly, cutting edge, and accurate. Much customer feedback goes into site updates, ensuring our site continues to offer the best features for easing customer procurement needs. For example, our team redesigned the site’s segment-specific homepages in early 2015. The winning designs were a result of a 12-hour hackathon, a 10-day customer beta test, and additional customer feedback.

We schedule updates during times with the lowest traffic and always notify customer of updates in advance via a site banner and our website's blog. Our success is reflected in the less-than-six minutes of unplanned downtime in 2014—an uptime exceeding 99.997%.

## 3. Software Tracking

### Requirement

3. Describe your Company's method for tracking software licenses and ensuring that Participating States receive timely notifications of renewals or are advised of volume agreement opportunities or vulnerabilities, etc.

### Response

Software tracking differs from state to state, agency to agency, dependent upon the structuring of procurement practices and information required. For example, if the LSCA is the contract administrator, then the licensing team will provide all necessary information (including licensing cost analysis reports, software entitlements reports, and license history review reporting). If a state is leading the purchasing of licenses, or other agencies are listed as child accounts within our system, then our internal system will generate a license report applicable to each account. For procurement that is more decentralized, reports will be provided directly to the agencies holding the agreement. States can be kept informed of licensing details such as OEM and license name.

- 3.1 The standard sortable data fields established for these records.

### Response

CDW•G will provide NASPO ValuePoint customers with access to a customized Account Center site where they can view quotes, place orders, check status of orders, and track their order history, **where all fields are sortable**. The CDW•G Account Center site, customized specifically for each agency, also provides access to each customer's software purchases and licenses. The Account Center is a proprietary tool made available to CDW•G customers **at no cost**. Additionally, AMs can handle requests for scheduled or ad hoc reporting.

### Requirement

- 3.2 The information tracked on behalf of Participating States.

### Response

CDW•G eases the burden of tracking renewal dates and solution comparisons through the methodical management processes followed by our AMs and licensing specialists, ensuring accuracy of purchased licenses and true up dates (**requirement 3.3**). Our personalized approach means we know our customers' systems and offer recommendations tailored to best fit your needs. Your AM assists with understanding the advantages and vulnerabilities of specific solutions and helps negotiate Volume Licensing Agreements (VLAs) with software partners, resulting in substantial time and money saved. See **requirement 4.3** for detail on our true up workbook report, available for EA customers.

As detailed in **requirement 2.3**, the Account Center offers multiple tracking options for relevant information and features software management consolidating license information, application audits, and various reporting capabilities. Additionally, knowledgeable licensing experts monitor contract customers' significant dates and volume plateaus (**requirement 3.3**), as well as assisting in navigation through software partner customer portals. Reports are details further in **requirement 5**.

**Requirement**

- 3.3 How reminders of significant dates or volume plateaus are triggered. Include how your Company, as a partner with the Participating State, communicates with the State to ensure no deadlines are missed or opportunities are unexplored.

**Response**

Our licensing specialists track the anniversary and expiration dates for each enrollment. CDW•G requires our AMs to send monthly notifications of upcoming annual payments for the three months prior to anniversary date. Account managers and licensing specialists have also made it a best practice to initiate volume license renewal discussions six months prior to expiration. During this process, the CDW•G licensing specialist reviews the licenses on the current agreement and explain any license changes that may impact how they are renewed on the next agreement.

Each NASPO ValuePoint member’s dedicated licensing specialist is a customer advocate, focusing on the customer’s existing environment and future plans. This allows them to make licensing recommendations for renewal and work with the AM to create an initial renewal proposal. The customer can review the proposal, make changes, ask questions, and ultimately approve. Once approved, CDW•G prepares the renewal paperwork and provides instructions for completion.

Our ability to manage thousands of concurrent publisher contracts has been built on this system and a partnership with us will give NASPO ValuePoint customers the peace of mind that agency renewals will not be missed. CDW•G updates our systems immediately when we receive notifications on products and pricing from publishers. Your software licensing specialist tracks licensing purchases and ensures that NASPO ValuePoint customers have the following: new software version (as appropriate), access to technical support, ongoing audits, reduced risk through compliance, and timely contract renewal.

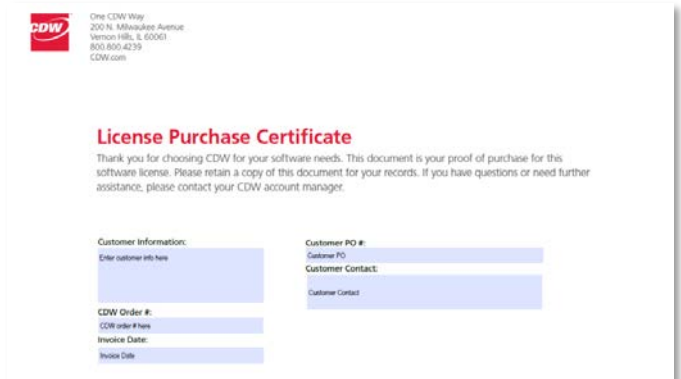
**4. Proof of License**

**Requirement**

4. Describe your Company’s method of ensuring a Participating State receives documentation of Proof of License that can be provided to requestors (e.g. auditors, in response to FOIA requests, etc.)
  - 4.1 Describe process for providing Proof of License to a buyer. Provide a sample Proof of License.

**Response**

All Proof of License certificates are available electronically or in hard copy after purchase. Proof of license methods differ from publisher to publisher. Usually, purchasers can pull the proof of license directly from the OEM invoice. These serve as proof of ownership in the event of an audit. CDW•G can also provide a proof of license certificate (see the sample) or the OEM purchase automatically or when requested, such as an auditor response to FOIA, etc.



**Requirement**

- 4.2 Explain method of retaining back-up copies of Proof of License. State how quickly a duplicate copy can be provided.



### Response

Our invoices and proof of licenses are available via request to your AM at any point, as they serve as part of our day-to-day business and operational processes. Further, CDW•G has the highest ranking partner status available with our top-tier software manufacturers (and most of the publishers listed as part of this RFP). We also have CDW•G-badged partner specialists and partner-badged resources with permanent desks at our offices. Further, we can leverage our software partner resources—and our own CDW•G resources—to quickly obtain any necessary back-up/duplication documentation a customer may need.

### Requirement

4.3 Describe how your Company partners with a State to demonstrate accuracy of licensing information to a publisher (aka a "True Up").

### Response

With CDW•G, the conversation does not end at purchase. As described in **requirement 3**, Software Tracking, our account managers and licensing specialists are trained to proactively support our customers throughout the life of their software contract. It would be simpler for us to use a completely automated process for the management and renewal of software licenses, as many companies do, but using an automated approach alone results in mistakes and unhappy customers. We prefer to bolster automated elements with consultative touch points. Our licensing specialists are subject matter experts and work proactively with the account managers to manage these contracts.

Our methodology described in **requirement 3** shows that we start the true-up discussion/process three months prior to a customer's anniversary date, or earlier (upon request). The true-up process includes a review of what is on the current license agreement. The licensing specialist spends time explaining to the customer what each license means and how it ties back to their environment. Through this discussion, the license specialist gains an understanding of what the current customer's environment is and is able to compare that to the licensing shown on the current agreement. If a true-up is needed as a result of this discussion, the licensing specialist makes a recommendation on license to purchase.

Additionally, if the licensing specialist determines there is a more cost-effective means to license the current environment, they recommend changes to the agreement in order to reflect any potential cost savings. If a customer is anticipating a future project that may result in a true-up and needs to plan further out in advance (for budgetary reasons), the licensing specialist is available to have that discussion and provide budgetary numbers at any time.

Lastly, upon request, CDW•G has a true up workbook available for EA customers. The workbook includes reporting around current licensed products and allows the customer to populate their current install quantity. Since the workbook includes true up pricing, the customer immediately sees their exact true-up cost. This information is extremely valuable for budgeting, forecasting, and project planning. With more than 180,000 software renewals processed yearly, CDW•G offers the expertise necessary for NASPO ValuePoint members, having proven our ability to execute timely renewals with reduced customer stress.

## 5. Reports

### Requirement

5.1 Describe standard reports which can be generated for a State (other than downloadable reports addressed earlier). Provide sample reports.

### Response

CDW•G has a slew of reporting options available to NASPO ValuePoint customers. Agency-specific reports are accessible through the Account Center or their AM. State-wide reports are available through the state’s dedicated program manager, reporting flexibility a key benefit to partnering with CDW•G; procurement-structure specific reporting is detailed in **requirement 3**.

Agreement Detail									
Agreement Summary									
Agreement Number	123456	Program	Enterprise 6						
Master Agreement Number	01A12345	Updated EA	No						
Agreement Type	Standard Enrollment	Business Agreement #	U123456						
License Agreement Type	Government	Primary Customer Name	Customer Name						
Agreement Status	Active	Agreement Start Date	04/01/2011						
Price List Country	United States	Agreement End Date	03/31/2014						
Price List Currency	US Dollar	Renewal End Date	03/31/2017						
MS Account Manager	Jane Doe								

Licenses (94 rows)									
Item Name	Pool	Product Family	Version	Language	Auto-Renew Default	Product Type	Usage Country	QTY	PO Type
AzureCompute ShrdSvr ALNG Fee MVL 100hrs Ovrgr A1VM(Non-Win)	Servers	Windows Azure Compute	Non-specific	All Languages		Fee	US	32	New Order
VisioPrem ALNG LicSAPK MVL	Applications	Visio Premium	Non-specific	All Languages		License/Software Assurance Pack	US	409	True Up
VisioPrem ALNG SA MVL	Applications	Visio Premium	Non-specific	All Languages		Software Assurance	US	5	Basic Enterprise Commitment
VisioPro ALNG LicSAPK MVL	Applications	Visio Professional	Non-specific	All Languages		License/Software Assurance Pack	US	90	True Up

### Requirement

5.2 Describe on-line, real time, reporting capabilities using established state website reports:

- 5.2.1 Standard Reports. Provide sample reports.

### Response

Agencies have access to invoice reporting through the Account Center Payment Reporting section (note: requires finance user permission). We also offer the following invoice/invoice reporting methods: P-Cards (compliant to level/tier 3) and electronic invoicing (ANSIX12 4010 EDI, XML, cXML, mapped flat file formats).

Detailed Sales Report Template																												
Master Agreement #: _____																												
Contractor Name: _____																												
Reporting Period: <Enter Reporting Period=Month Year>																												
Agent Name: <Enter Company Name>																												
Vendor Name	Vendor Contract Number	State	Customer Type	Bill to Name	Bill to Address	Bill to City	Bill to Zipcode	Ship to Name	Ship to Address	Ship to City	Ship to Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Ship Date	Invoice Date	Invoice Number	Brand Number	Category Code	Product Number	Product Description	List \$ /MSRP	Discount Applied	Unit Price	Quantity	Total Price

### Requirement

- 5.2.2 Reports that can be generated by the LSCA.

**Response**

Your program manager can provide contract-wide reports to the LSCA, including but not limited to standard reports, licensing reports, and ad hoc reports. Please refer to the sample report included in **requirement 5.2.1**.

**Requirement**

- 5.2.3 Reports that can be generated by the Participating State. Provide sample reports.

**Response**

CDW•G’s dynamic, ad hoc reporting capabilities on the Account Center, including our pivot table feature, enable purchasers to better manage data and to make more cost-effective decisions. The Account Center provides access to real-time information in a way that is convenient and easy to use. Authorized users have the ability to generate a variety of reports, such as those listed below, as well as others at their request. Customers can view standard reports, and create and save custom reports. Reports can also be generated for a variety of timeframes, differentiated by site, division, department, buyer, city, product, etc. In order to generate reports at the state level, Account Centers need to be linked for all applicable state agencies. Please also refer to the sample report included for **requirement 5.2.1**.

**License Order Report**

Purchase Order #	License Date	EDC	License #	Licensee	Authorization #	Copies	License Name	Licensee Zip Code	Sales Order #
123456	09/27/2000	215962	12345678	PHIL DAVIS	1234ZZXC	6	CUST NAME	60611	ABC4566
234567	01/08/2001	239857	12145678	JANE DOE	1234ZZXC	5	CUST NAME	60611	C2G1235
345678	07/25/2001	216026	12245678	BOB WALLACE	1234ZZXC	20	CUST NAME	60611	EDH3304
456789	08/01/2001	215844	12445678	JOE DIRT	1234ZZXC	5	CUST NAME	60611	LON5867
567891	08/09/2001	253733	12545678	JILL E BEAN	1234ZZXC	5	CUST NAME	60208	TKB2201

**Requirement**

- 5.2.4 Reports that can be generated by the User agency. Provide sample reports.

**Response**

In addition to the reporting capabilities at the state level (detailed in **requirement 5.2.3**), within the Account Center, customers can also generate reports for various assets with a variety of fields. As part of any hardware sale that goes through our configuration center, customers can view serial numbers, MAC Addresses (where applicable), BIOS configurations, software installations, and much more.

**Software Renewal Report**

Coverage Date From 1/1/2014 to 12/31/2019

Customer Code	Customer Description	Quote #	Order #	Invoice #	Invoice Line #	Invoice Date	PO #	Invoice Qty	Invoice Dollars	Month	Item Code	Item Description	Item Type	Brand	Coverage Length (Months)	Coverage Expiration Date
1223456	TOWN OF VALLEY HO	H270530	H270533	W124567	1	01/18/2013	1243	1	\$599.00	Jan 2013	2616420	SYG BE 2012 AGT APPS&DBSSVR C/U ESS	Software (S)	VERITAS	12	01/2014
1043567	CITY OF POMPOM	H352550	1BB46HX	Y402849	1	01/28/2013	1234	150	\$2,841.00	Jan 2013	2424591	RNW SPS EE 4 ESS 1Y H	Software (S)	SYMANTEC	12	01/2014

Using CDW•G’s Software License Tracker (SLT), offered to customers via the Account Center site at no additional charge, users can access this tool that simplifies license management, especially software license agreements. The SLT is accessible to all authorized users via the Account Center 24/7 and enables authorized users to manage license agreements by tracking expiration dates and generating standard or customized reports for delivery via email.

Users can run reports in SLT to show what license agreements are about to expire and to set up email alerts to be sent out at a specified time in advance of expiration. Our EA workbook (detailed in **requirement 4.3**) also lends a significant amount of customization at the agency level.



**Requirement**

5.3 Address whether your Company is able to provide “Custom Reports” as an optional service to Participating States, should State determine to utilize this service? (See Section 3: Scope of Work, 3.7.3 Custom Reports)

**Response**

Yes; should the state need to see reporting into areas of the contract that fall outside of the ad hoc and standard capabilities listed above, we will work with you to create the custom report. Our reporting tools are incredibly flexible, and we employ database administrators to combine the power of data feeds we have from our partners with our own data sets to automate custom reports. Upon award, CDW•G commits to having a discovery meeting with the state to determine additional reporting requirements that are necessary for the success of this contract.

## 6. Maximizing Value for the State

**Requirement**

6. Describe how your Company works with a State and publisher to maximize the State's value in obtaining products and services under this contract. Description is to address, but is not limited to, the following:

- 6.1 Working with a State and a publisher to assist the State in managing their volume or enterprise license agreements.

**Response**

True to our customer-centric approach, CDW•G aims to be more than a fulfillment provider to NASPO ValuePoint members, committing to provide the resources to navigate the increasingly complex world of software. Maximizing value for NASPO ValuePoint customers starts with the CDW•G field presence in each of the participating states. It is our best practice to work closely with a manufacturer’s account manager within a specific state to build the necessary relationship and customer trust.

Our field and inside reps have many existing relationships with the publisher rep for each state named in this contract. Streamlining license agreements, providing install-based reports from a given publisher, and working with each agency to manage all software—including software purchased from other vendors—is the heart of the CDW•G advantage. As mentioned in **requirement 4.3**, our AMs and licensing specialists use a very methodical approach in managing agreements. This process is in place to ensure accuracy of licensing purchased, true updates, and renewals.

Even after a software contract is signed, our dedicated account teams and software licensing specialists maintain regular contact with customers to ensure that all licensing program benefits are maximized and that contracts are renewed on time. CDW•G provides contract management for all our software licensing partners' programs; our team of 22 software licensing renewal specialists will offer fast processing of renewal orders.

Sample Contract Lifecycle Management		
Year 1	Year 2	Year 3
<ul style="list-style-type: none"> <li>▪ Welcome letter</li> <li>▪ Kickoff meeting</li> <li>▪ Software review</li> <li>▪ Cloud planning</li> <li>▪ Software profile</li> <li>▪ CDW solutions</li> <li>▪ Software deployment check</li> <li>▪ True Up 1 due</li> <li>▪ Annual business review</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cloud planning</li> <li>▪ Software profile</li> <li>▪ CDW solutions</li> <li>▪ Software deployment check</li> <li>▪ True Up 2 due</li> <li>▪ Annual business review</li> </ul>	<ul style="list-style-type: none"> <li>▪ Renewal intro</li> <li>▪ Cloud planning</li> <li>▪ Software profile</li> <li>▪ Software deployment check</li> <li>▪ Contract review</li> <li>▪ True Up 3 due</li> <li>▪ Annual business review</li> </ul>

**Requirement**

- 6.2 Working with a State and publisher to maximize the leverage created by the total sales volume from a State and its cooperative partners to ensure best value to all State's.

**Response**

Prior to software purchase and any renewals, our LAEs evaluate total spend, assets, usage, and purchase history. Their recommendations include potential options that would optimize investment through vendor and contract consolidation, including volume transactional purchasing options or contractual volume agreements. Additionally, our teams will inform the customer of any volume purchase opportunities specific to the contract available for entities to leverage.

For example, CDW•G is the University of Southern California's (USC's) primary software provider, managing their Microsoft EES agreement. We recognized an opportunity for savings by aggregating USC's departmental Microsoft purchases under one master EES agreement, to leverage the volume the university was purchasing as a whole. Even though the master agreement is leveraged campus-wide, each department still has their own portal, ability to manage their own licenses, and pay for usage out of their department's budget. Consolidating departments' purchases under one EES agreement—as opposed to Microsoft's Open-Value option—provided USC with approximately three percent (3%) savings on the majority of their desktop product purchases.

**Requirement**

- 6.3 Working with a publisher to maximize the leverage created by the total sales volume overall resulting from this contract.

**Response**

We work in partnership with contract holders to act as an advocate in the contract environment, utilizing our experience with similar contracts to negotiate prices prior to final agreement and compare volume discounts occurring elsewhere. Regular reporting measures, monitored by our program manager and reviewed by sales leadership at various intervals, allow us to provide NASPO ValuePoint and its customers the most competitive offers on the market today.

With broad-scope contracts, we often see emerging trends in demand for certain publishers. If sales volumes indicate high spend in a specific solution, we collaborate with the software publisher to determine if additional savings or value can be incorporated for purchasers. If reports indicate a high volume of purchases with a software publisher with which we do not have a direct relationship established, a CDW•G coworker will initiate our New Vendor Addition Process, structure for evaluating both risk and reward when considering potential new vendors. This process protects contract users' best interests by considering the unique capabilities and products each vendor offers alongside potential areas of risk. Part of this methodology includes negotiating a partner agreement and competitive pricing with the new vendor, so that we can bolster support around the solutions being purchased and pass on additional savings.

Requirement

- 6.4 Working with State and publisher to obtain the best quote on a high volume purchase.

**Response**

While our online ordering capabilities are far superior to other resellers, we always encourage customers to reach out to their CDW•G AM before making a large purchase. This is because we train our AMs to view the contract pricing as a “ceiling” price. They will negotiate with the publisher on the customer’s behalf, often securing additional savings.

Requirement

- 6.5 If, and how, your Company uses historical purchase information to provide targeted assistance to State.

**Response**

The team described in our response to **requirement 6.1** leverages historical data in supporting software license purchasing and management. However, leveraging historical data requires a different approach when you are not a contract incumbent. When awarded, CDW•G is committed to expend the extra effort to effectively collaborate with the customer and applicable software publishers.

The number of publishers purchased and the willingness of the customer to share information dictates the method in which CDW•G collects historical information. Most often, our licensing team will recommend our Software License Review, to ensure we gather all relevant information available. The CDW Software License Review provides our team and our customers an easy-to-read overview of all software assets and license purchased across all departments and units. Instead of customers having to contact each publisher individually, we take that task on for them.

While other resellers offer similar solutions, **CDW•G returns this review and accompanying timeline within 10 days**, not four to eight weeks. Instead of uploading the information to a web portal for customers to navigate alone, our software experts consult customers, providing recommendations for cost savings, license consolidation, and renewal strategy. These steps simplify and streamline the licensing review process. As our software and account teams learn the customer’s systems and processes, they proactively guide the customer to licensing programs and products that best fit the customers’ requirements and technology goals.

Requirement

- 6.6 How maintenance support is to be made available.

### Response

CDW•G partners closely with each software publisher's supporting resources to provide easy access for phone-in incidents, software upgrades, and technical support. Within our sales offices, we have dedicated vendor desks, where qualified manufacturer personnel respond to customer inquiries and provide support to AMs.

Additionally, software-specific newsletters are available to customers, keeping you up-to-date on popular and new-release products. Part of our industry-best pre-sales consulting methodology is maintaining communication with customers to ensure awareness of release dates and the maximization of our **no-cost roadmapping** offer.

Please note that CDW•G account managers will never include maintenance or any additional purchasing options on a quote without first discussing with the customer to ensure they understand the different maintenance levels that are available and what is included in the maintenance offer selected.

### Requirement

- 6.7 Describe how training regarding the installation of products and use of products will be made available and how to obtain best value from it.

### Response

CDW•G's software practice includes resources such as pre-sales technical specialists, licensing specialists, product specialists, and post-sales engineers. These resources play a valuable role for our customers as it relates to product-pertinent questions, technical questions, and installation/use rights. Our team of experts offers guidance and directs customers to the correct location on a manufacturer website to obtain installation training, instructions, and industry best practice. Our ability to quickly provide this guidance is a value to getting the most out of the software once purchased.

### **Online Training**

The current webinars/trainings offered by CDW•G are listed in the **Media Library** located by clicking on the Solutions tab on [www.cdwg.com](http://www.cdwg.com). The Media Library is dynamic, with new content updated monthly. In addition to webinars and video channels, there are helpful documents, including white papers, reference guides, data sheets, and reports.

CDW•G also offers website showcases for many of our software manufacturing partners, such as Microsoft. For example, the Microsoft Showcase is located at [www.cdwg.com/Microsoft](http://www.cdwg.com/Microsoft). The site provides customers with Microsoft-specific material, updated at minimum on a monthly basis.

Additional resources for segment-specific material include our State Tech magazines ([www.statetechmagazine.com](http://www.statetechmagazine.com)) and Ed Tech Magazine ([www.edtechmagazing.com/k12/](http://www.edtechmagazing.com/k12/)), both to which interested agencies and schools can subscribe.

## 7. Value-Added Services

### Requirement

7. A significant aspect of this service is to be Value-Added Services.

- 7.1 Describe how your company handles the complexities related to enterprise license agreements (e.g. Microsoft EA, Adobe CLP, etc.). Include how you assist customers (especially first time customers) through this process to ensure they are comfortable moving forward, and are knowledgeable about the agreements once they are complete?

### Response

CDW•G understands that Enterprise Agreements (EAs) are often one of the most expensive IT costs a customer will incur during a year. It is our goal to ensure our customers are knowledgeable about the agreement and receive the most out of their investment as possible. Because of this, we have created the following EA contract management process, which has become a proven methodology in helping manage state software contracts over the years.

### Requirement

- 7.2 Describe how your company handles transitioning a group of customers from an account manager with whom they have built a relationship to an account manager who is new to them?
  - 7.2.1 How do you ensure that all of the customers' needs are met?
  - 7.2.2 How do you ensure the new account manager is given the resources necessary to be successful in the new role?

### Response

CDW•G subscribes to a practice of **warm transfers** in regard to customer transition. The existing account manager will reach out to the customer and introduce the incoming account manager; behind the scenes, the incoming account manager will receive a full debrief from the existing, utilizing our internal tracking and monitoring system which manages individual account history. Customer accounts transfer to tenured, experienced dedicated account resources, often already possessing familiarity with the customer and who have completed approximately six months of in-depth sales training. Nearly a quarter of our AMs have been with CDW for more than 10 years.

### Requirement

- 7.3 Describe the training available regarding the use of this contract and how to obtain best value from it, other than on-line tutorials.

### Response

CDW•G provides a variety of value-added training options. Many times, we offer these options in tandem with our publisher partners. For example, CDW•G works closely with Microsoft to directly engage and educate customers via phone, online, and in-person seminars and educational events. Microsoft and CDW•G work together to present information to customers and respond to their questions. CDW•G is open to all options, both remote and onsite, as well as at CDW•G facilities to meet NASPO ValuePoint customer needs. We also offer the unique Microsoft Education Center, which presents a hands-on experience to our customers who want to test out new Microsoft products and software.



For all other solutions, CDW•G offers our Technology Experience Center, which allows customers to try out a demo of the software outside of their own environment, make software comparisons, and explore the latest innovations to see if that product will help achieve the customer’s business goals.

**Requirement**

- 7.4 Explain what unique Value-Added services your Company will make available under a resultant contract. State whether they are to be provided at no cost. If there are costs, identify these costs on the applicable Pricing Sheet in the Cost Section.

**Response**

CDW•G does not compete on price alone. As a vendor-agnostic solution provider, pre-sales recommendation support from our knowledgeable account teams and software specialists will always be an unparalleled differentiator when compared against our major competitors. We are the leading reseller to multiple named publishers in this RFP, including key itemized Microsoft, VMware, and Adobe. Our close partnerships mean we receive competitive price offers and early notifications regarding product changes, allowing the account managers serving NASPO ValuePoint members to keep their customers apprised of new product releases, version and price changes, and more in a timely manner.

Our ability to serve NASPO ValuePoint customers participating in this contract is exponentially heightened by the myriad value-added benefits we provide **at no cost**. These benefits include, but are not limited to, the following:

<b>NO COST Value-Added Benefits for NASPO ValuePoint</b>		
<b>Benefit</b>	<b>Cost</b>	<b>Description</b>
Solution Consultation Services	<b>FREE</b>	<i>Savings: over \$250/hour</i> Inside Solution Architects (ISAs)—technology and product experts—vet complex solutions, arrange product demos, webinars, and information documentation
Solution Design Services	<b>FREE</b>	<i>Savings: over \$300/hour</i> Field and inside engineers available for onsite access to customer environments, conduct assessment, provide technology-needs analysis
Threat Check	<b>FREE</b>	<i>Savings: \$3,000-5,000 per assessment</i> Passively monitors networks for unknown malware, alerts customers to active and installed malware, provide customized plan for remediation
Partner Assisted Grant Help	<b>FREE</b>	AMs assist with learning about available resources for segment-specific grant-finding processes
eProcurement Integration Services	<b>FREE</b>	Dedicated team integrating customer ePro systems for punch-out, PO delivery, eInvoicing, quote retrieval, order, and more
K–12 Consulting	<b>FREE</b>	<i>Savings: over \$250/hour</i> Former educators and educational technologists work as strategists to guide schools through high-access implementation and develop long-term adoption success plans
Digital Age Teaching and Learning Webinars	<b>FREE</b>	<i>Savings: over \$125 per attendee</i> CDW•G’s Education Strategy Team conducts series of three one-hour webinars on latest technology trends in education

NO COST Value-Added Benefits for NASPO ValuePoint		
Benefit	Cost	Description
Track and Communicate CDW•G Software Webinars	<b>FREE</b>	CDW•G advertises to all contract holders and end users for webinars pertinent to COTS software on NASPO ValuePoint contract
Technical Trainings	<b>FREE</b>	<i>Includes two (2) trainings per calendar year</i> WebEx trainings specific to this contract, scheduled 60 days in advance on pertinent software (approx.. 30+ hours of CDW•G backend planning/work for each session0
CDW•G Blog	<b>FREE</b>	All interested parties under the contract will receive our Solutions Blog: <a href="http://blog.cdw.com">blog.cdw.com</a> ; internal engineers and SMEs write to relevant IT topics
Partner-Funded Programs	<b>FREE</b>	Leverage CDW•G relationship with key OEMs to get business development funds for projects users are potentially unable to fund independently
Marketing & Social Media	<b>FREE</b>	CDW•G collaboratively creates marketing materials and events with each participating state to promote adoption of contract
Technology Roadmapping Sessions	<b>FREE</b>	<i>Valued at \$1,000, one per year</i> Held by request with key software publishers and state customers, proctored by CDW•G sales teams

Other **free** benefits include access to CDW-badged product specialists, dedicate contract expert resources, Media Library access, and *free eligibility for state customers* interested in the Microsoft Rapid Deployment and Technology Adopter programs.

Each participating state’s specific account team offers additional value-added benefits, in terms of personnel and expertise, at no cost to the customer. These personnel include software licensing specialists, licensing account executives, pre-sale system engineers, software manufacturer representatives, and dedicated renewals specialists, program managers, account managers, and account executives.

### Snow License Management

There are more comprehensive options for software license management outside of the Account Center website and your CDW•G account team. Automated tools such as Snow Software’s License Manager can identify every piece of software in a NASPO ValuePoint member’s IT systems and match them to licenses, reducing risk, cost, and complexity often found in typical software management. At this time, there are **282,800 software applications automatically recognized by Snow** through its Software Recognition Service (part of the License Manager solution). For NASPO ValuePoint members, CDW•G will provide a Snow Software Proof of Concept software assessment in order to understand and agency’s current environment **at no cost**. The Proof of Concept includes the following:

- Detailed inventory collection via Snow or using existing inventory tools (e.g., SCCM)
- Software metering via Snow to understand usage
- In-depth analysis of up to five Windows-based applications
- Business-case documentation illustrating compliance, usage, risk areas

## 8. Customer Support

### Requirement

8. Explain how your Company will:
- 8.1 Retain publisher certification levels and improve on them.

### Response

CDW•G holds the top certification levels with most major software publishers. Each of these publishers has a stringent set of criteria that must be met in order to hold this certification. Often included in this set of criteria are certification requirements for individual employees, such as sales teams, engineers, and licensing specialists. Moreover, a reseller is only as reliable as the coworkers directly serving their customers. Therefore, we have described our process for both CDW•G as a company, and the process we follow to ensure our coworkers acquire and maintain the necessary certifications to support our customer base.

### **CDW•G Company Certifications**

CDW's Product and Partner Management team manages all aspects of our partner relationships. One of the group's primary goals is to optimize partner relationships. Included in the duties supporting this goal is the management, tracking, and administration of partner certifications across CDW•G. They work with our publisher partners to ensure we continue to meet the requirements for our certifications. If we have not reached the top certification level, they are actively engaged in monitoring and engaging the teams needed to help meet those additional requirements to reach the next certification level.

### **Coworker Certifications**

We require our sales coworkers to acquire and maintain specific partner certifications. When an account manager wants to move up in their role, say from an account manager to a senior account manager, there are additional certifications we require them to obtain. This methodology ensures our coworkers continue to be experts in the solutions they are selling. To give insight into the depth of our bench of certified coworkers, we include a few examples of CDW's total certifications for some of our publisher partners:

- **VMware:** 1,300+ VMware Sales Professional Accreditations (VSPs)
- **Microsoft:** 740+ coworker certifications
- **Adobe:** 800+ sales-specific Adobe certifications
- **Symantec:** 2,590 total coworker certifications

Additionally, CDW•G compliments some of our partner certifications with CDW-designed training for our partners, such as Microsoft, which provides more in-depth knowledge than the partner created training.

### Requirement

- 8.2 Work to reduce costs to obtain publisher products?

### Response

Two major differentiators to the CDW•G business model are tools that streamline processes and the vast number of resources we dedicate to supporting our customers.

Conventional thinking might disagree considering high-touch service and investments in cutting-edge methods as cost saving attributes. However, we have repeatedly demonstrated on agreements similar to the NASPO ValuePoint software contract that our differentiators are true drivers to reducing costs; all while adding value that our competitors fail to replicate.

Holding a high certification level with a publisher partner provides resellers access to favorable pricing, tools and resources, including vendor incentive programs, which resellers use to provide additional value to their customers. Because of our unique industry position and business model, CDW•G is often able to negotiate beyond these incentives because our partners see the value we offer: a cost-effective way to get their solutions to their customers.

Other resellers may offer a streamlined purchasing process or a long list of personnel, but very few offer both, and even fewer in the capacity that CDW•G offers. Our systems support the coordination and synchronization demands that are required to keep costs under control for customers, supplier/OEM partners, and CDW•G. When coupling partner savings with the sheer volume of products CDW•G procures for our customer base, it is easy to understand how we can negotiate additional savings and value adds to pass on to our customers.

We provide a unified customer experience, routing every customer-initiated interaction to a named account manager. Our tools and support are designed around this central concept. Our customer-facing technologies, supply chain tools, and ordering processing system are one in the same.

This innovative system provides the customer transparency to the purchase process, reduces order errors, and allows us to manage the complexities of our large distribution channel.

Simply put, we provide logistical capabilities typically attributed to distributors, while also providing support staff that greatly reduces the customer issues escalated to the partner. In turn, partners pass savings on to our customers with more aggressive discounts.

Our software services team further drives software cost reductions. Instead of pointing our customers to a web tool to manage their licenses or a blog post to understand a software solution, we support them with a software services team. These individuals are helping customers in leveraging software benefits, ensuring customers are using the appropriate level of licensing, and helping to understand if cloud solution really is cost-effective for customers' specific needs.

#### Requirement

- 8.3 How does your Company respond to customer complaints and service issues?
- 8.4 What is your Company's escalation process?

#### Response

We always direct customers first to their AM to assist with complaints and service issues. CDW•G also provides NASPO ValuePoint customers access to our US-based customer relations department as a value-added service. This support is available 7am-9pm CST, Monday through Friday. For sales-specific issues, our government and education sales support team is available Monday through Friday, 7am-6pm CST.

The four **no-cost** general levels of support available to NASPO ValuePoint customers are the following:

- **Customer Relations.** 866.782.4239 (M-F, 7am-9pm CST); online chat (M-F, 7am-6pm CST); [customersupport@cdw.com](mailto:customersupport@cdw.com)
- **Government and Education Sales.** 800.808.4239 (M-F, 7am-6pm CST); [cdwgsales@cdwg.com](mailto:cdwgsales@cdwg.com)
- **E-Support.** For website questions only: 888.239.7270 (M-Th, 7am-7pm CST; F, 7am-6pm CST); online chat (M-F, 7am-6pm CST); [support@cdw.com](mailto:support@cdw.com)
- **Technical Support.** 800.383.4239 (M-F, 7am-7pm CST); online chat (M-F, 7am-6pm CST); [support@cdw.com](mailto:support@cdw.com)

Additionally, for customers who have purchased Microsoft Office 365 through the CSP program, CDW•G offers 24/7/365 support at [ManS-O365@cdw.com](mailto:ManS-O365@cdw.com) or 888.793.2480 (option #5). The above departments all work together to help resolve any issues which may arise. CDW•G aims to resolve all cases within 24 hours.

### Escalation Process

If a NASPO ValuePoint member feels a request is not receiving proper attention, they can reach out directly to a sales manager to resolve the issue. For non-critical incidents, sales managers typically respond within four business hours; critical issues will be escalated as appropriate to the severity of the incident.

NASPO ValuePoint members should be confident this contract has the appropriate level of executive sponsorship within CDW•G. **David Hutchins** (VP, State & Local Sales) and **Tony Sivore** (Director, State & Local Sales) are both high-level points of contact focused on the success of this agreement. Both have extensive knowledge of our government agreements and current NASPO ValuePoint reseller agreements. If an incident requires further escalation, our sales managers will quickly engage either Mr. Hutchins or Mr. Sivore, dependent on the subject of the incident. Mr. Sivore typically responds within one business day for non-critical issues; two business days for those escalated to Mr. Hutchins. If an issue arises with a manufacturer or distribution partner, both gentlemen have the best points of contact committed to quickly resolve these issues, as well.

## 9. Problem Resolution

### Requirement

9.1 Problem Resolution: Scenario 1: Describe at least one recent situation where your Company made a major error that resulted in dire consequences for a customer. Detail the error and what changes your Company has made to avoid repeating the error in the future. In this situation, the problem is not solved in time to take care of the customer, and the customer is likely lost.

### Response

One of our longtime customers, a Washington school district, worked with CDW•G to design their new networking system. After implementing the system, the school tasked us with implementing a policy platform for the network. Due to our solution architect's design error, the products purchased were not compatible with the network endpoints previously installed, and we could not properly implement the solution. The situation was a major error and could have resulted in the customer going elsewhere.

However, the CDW•G account team quickly reacted to remedy the error. We brought on additional engineers to redesign and implement the solution on-site, while the account team handled expediting the replacement product orders. We absorbed the resource and material costs required to meet all the originally agreed upon requirements. This major error also threatened to delay the project but our quick reaction allowed us to meet the initial deadline that we had committed.

The error also shook the customer's confidence in CDW•G's ability to fulfill the project. While the customer wavered in its decision to continue with us, they recognized our monumental effort to fix the mistake and offered a second chance. We made sure that they did not regret it and met their original implementation deadline without cutting any corners. Today, this customer is elated with their networking system and they continue to work with us for project design, to product fulfillment, to implementation and follow-up needs.

### **Lessons Learned**

To mitigate future errors, CDW•G has our solution architects assigned to specific account teams. This ensures the same solution architects are designing all of the same customers' solutions, providing them intimate knowledge of the customers' systems. Additionally, this structure builds the solution architect/account team relationship, resulting in regular communication of important customer background information. This change in communication methodology allows the account teams and the solution architects to better anticipate customer needs and provide a greater level of customer service.

### **Requirement**

9.2 Scenario 2: Describe at least one recent situation where your Company made a major error that had potential dire consequences for a customer. Detail the error and what was done to correct the situation. To what lengths did your Company go to take care of the customer? What changes (if any) did your Company make to avoid repeating the error in the future? In this situation, the problem is solved in time to take care of the customer, and the customer is likely not lost.

### **Response**

Six years ago, the County Commissioners of Pennsylvania (CCAP) awarded CDW•G its Microsoft contract. Prior to CDW•G's award, CCAP had had been engaged with another provider. Due to CCAP's familiarity with the incumbent, CDW•G had to work closely with Microsoft and CCAP to ensure the success of the transition from the other vendor's services. This was a single award contract, and the contract implementation took place during the busiest month of the contract year.

The issue in this scenario was that it was not yet a part of our process for us to begin working with Microsoft immediately after the award of the contract to understand upcoming renewals and annual payments. We previously waited until Microsoft's Change of Reseller process was complete, and we were able to run reporting on our own. This resulted in many CCAP customers becoming nervous that their Microsoft Agreements would expire before we could renew them.

Fortunately, due to our Microsoft relationships and experience in managing Microsoft contracts, the detailed instructions we provided for completion of the contract implementation resulted in no lapsed agreements. Our ability to stay in close contact with Microsoft and CCAP proved to be critical to the overall success of the transition.

After going through a formal RFP process at the end of the original contract term, CCAP awarded their next Microsoft contract to CDW•G again.

This award was due to the successful implementation of our contract management methodologies and our contract implementation plan execution. In the past three years, CDW•G has maintained a 100 percent on-time renewal rate for expiring agreements on this contract. We continue to be successful because of our proactive touch points with the customer during the license management process, our understanding of their procurement processes, and our operational excellence.

### **Lesson Learned**

From this transition, we learned that it is important to begin working with our partners immediately after the award of the contract to understand past, current, and future projects. We previously waited until the Change of Reseller process was complete and were able to run reporting on our own. Now, we start immediately and proactively communicate the plan to all constituents so that no one becomes concerned that their agreement may lapse.

Although this is an example that deals with Microsoft, the lessons learned are applicable to contracting as a whole. We learned that it is necessary to take preliminary steps before a contract goes into effect. This approach will be adopted as part of our methodology to ensure that any transition to NASPO ValuePoint contract is seamless to customers. This will be the tactic from the date of an award to CDW•G as a primary vendor for the NASPO ValuePoint contract.

## **10. Product Return Process**

### **Requirement**

Describe the proposed product return process in the following situations:

- 10.1 Scenario 1: Product was ordered. The order was filled and shipped correctly. After the order was accepted, AP discovered it ordered the wrong product and wants to return the product.

### **Response**

In the context of this first scenario, a customer can submit an RMA request in a variety of methods: online via the website, via email or a call to their AM, or via the customer service team. The standard return period for all products purchased from CDW•G is 30 days from date of invoice.

Once the RMA request is processed, the customer receives an automated email with return instructions. Following receipt of the instructions, the customer ships the products back to our distribution centers with the shipping label they receive automatically.

### **Requirement**

- 10.2 Scenario 2: Product was ordered. The order was filled and shipped. After the order was accepted, AP discovered the product delivered did not match the product that was ordered. AP would like to return the product.

### **Response**

As in the previous scenario, the customer can submit an RMA request online, contacting their account manager, or reaching out to our customer service team. They receive product return instructions for processed RMAs via email. Following the instructions, the customer ships the products back to our distribution centers with the shipping label they receive automatically. The key exception is that in this situation, there are no restocking fees issued since the error was committed by CDW•G. The return period for all products purchased from CDW•G is 30 days from date of invoice.

As an option during either scenario, customers can take advantage of the Advanced Order Replacement (AOR) program. This is most often used when the customer receives a defective or DOA product and cannot wait for CDW•G to receive the defective one back before the replacement is sent out. This process ensures that the customer **receives the products they need as soon as a product is found to be DOA, incorrectly purchased, or incorrectly shipped.**

## 11. SVAR Performance

### Requirement

Describe the process to be used to track and document the SVAR's performance, to include "Cost Savings" achieved, under this Contract. See Section 3: Scope of work, Items 3.5.3 and 3.5.4.

### Response

Our systems record key information about order fulfillment time, quote, and order activity that can be aggregated by OEM or function, and pricing benchmarks. CDW•G contract support teams hold regular quarterly business reviews (QBRs) with many of our top customers to review activity, customer service levels, and savings under various program structures. NASPO ValuePoint customers and the LSCA will receive the same attention to detail.

CDW•G will establish a regular cadence for our contract professionals and key sales leaders to meet with purchasing operations, contract administration and other representatives of the Lead State, to review spend reports and actions implemented during the previous quarter, and to discuss possible improvements to be implemented during the coming quarter. Any known issues or escalations will be addressed, as well as the review of performance surveys.

Options to reduce costs, improve service, and enhance operability and future-proofing can also be determined during these QBRs. In our current contract reviews, we typically review the following: spend analysis, spend by product category (e.g., Security Software/Dbase Software/Network Management, Virtualization), spend by publisher, purchase method, and savings analysis, future forecasting, and new and emerging technologies.

Our goal is to maximize a customer's investments by giving our recommendations towards the best use of volume or enterprise license agreements, in addition to seeking ways that NASPO ValuePoint members can take advantage of publishers' promotions and incentives.





# Attachment C: Cost Proposal

## Requirement

Any narrative explanation of the Pricing Sheet forms is to be submitted as part of Attachment C—COST PROPOSAL. Offeror shall provide pricing that includes all costs associated with the responsibilities and related services, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.

## Response

To confirm, CDW•G's offer **does not include** any "incidentals." There are no additional charges as described in the above requirement (e.g., freight and delivery, cost of materials and product, travel expenses). Presenting our pricing rationale, or "cost reasonableness," illustrates the transparency with which we will approach the negotiation of establishing a Master Agreement with NASPO ValuePoint.

CDW•G has the ability to provide thousands of software titles to NASPO ValuePoint members. Outside of the named Key Itemized publishers, many software OEMs only publish current Manufacturer's Suggested Retail Price lists (MSRPs) irregularly or infrequently, despite titles going end-of-life and new titles being listed.

Additionally, once an MSRP is published, the price points rarely change and are often not indicative of market pricing that is commonly available. This means a large discount off MSRP that may seem to be an ideal offer today can over time become non-competitive given normal product lifecycle and cyclical pricing declines common to the IT marketplace. In other words, the cost of IT products—including software—typically trend downward.

For this reason, our presented offer to your members is a cost-plus model over CDW•G Sim Cost, which is *the standard acquisition cost associated with the inventory of product, but also including the management costs with procuring, warehousing, and distributing the inventory*. This model enables members to achieve the greatest long-term cost savings. The advantage of this dynamic pricing model is that **as our acquisition cost is reduced, the price to the customer is reduced accordingly**. Once loaded into our contract management system, price changes trigger automatically to the customer's CDW•G website (described in **Attachment B**) and EDI pricing without manual intervention.

Aligning with the primary objective of this RFP—to obtain best value and more favorable pricing for participating members than can be achieved independently—CDW•G strives to simplify the complexities of technology procurement across selection, integration, and management for customers large and small, acting as an extension of their IT staff. Upon award, CDW•G will continually seek out savings to offer NASPO ValuePoint members, as well as providing unmatched stewardship and service to this contract.

# ATTACHMENT C1 - PRICING SUBMISSION SHEET

## NASPO VALUEPOINT

### SOFTWARE VALUE-ADDED RESELLER (SVAR)

#### PUBLISHERS

#### MARKUP/DOWN

Proposer must be certified as a direct reseller for all Key Itemized publishers. Direct reseller certification is preferred for Other Itemized publishers

The price to Authorized Purchaser (AP) is calculated using the following formula: "Reseller Cost" + ("Reseller Cost" x "Markup/down")

KEY ITEMIZED	PUBLISHERS	MARKUP/DOWN
KEY ITEMIZED	ADOBE	0.97%
	CITRIX	0.97%
	MICROSOFT	-1.26%
	NOVELL	0.97%
	SYMANTEC	0.97%
	VMWARE	0.88%
OTHER ITEMIZED	AI SQUARED	2.20%
	AIRWATCH MOBILE DEVICE MANAGEMENT VMWARE	1.13%
	ALLIANCE ENTERPRISES	2.20%
	APPLE	2.20%
	ATTACHMATE – MICROFOCUS	1.25%
	AUTODESK	2.20%
	AUTONOMY – HP	2.20%
	BAKBONE – DELL	1.13%
	BARRACUDA	2.20%
	BOMGAR REMOTE SOFTWARE	0.75%
	CA TECHNOLOGIES	2.20%
	CISCO	2.20%
	COMPUTRONIX USA	1.13%
	COMPUWARE	2.20%
	COREL	2.20%
	DOUBLETAKE	2.20%
	EMC	2.20%
	ENCHOICE	2.20%
	ESET	2.20%
	ESRI	2.20%
	FREEDOM SCIENTIFIC	2.20%
	GUARDIAN EDGE – SYMANTEC	2.20%
	GW MICRO	2.20%
	IBM	2.20%
	ICM CONVERSIONS	2.20%
	INFOR	2.20%
	INTERMEDIX EMSYSTEMS	2.20%
	HP	2.20%
	HUMANWARE	2.20%
	INFORMATION BUILDERS	2.20%
	KRONOS SOFTWARE	2.20%
	LANDESK	2.20%
	LASERFISCHE	2.20%
	LIQUIDWARE STATUSPHERE	2.20%
MICROFOCUS INC	2.20%	
MINJET	2.20%	
MPS	2.20%	

#### PROPOSER INSTRUCTIONS:

Enter a percentage markup or markdown for each line in column D. This is the markup/down at which proposer is offering to provide the stated publishers' titles. Percentages may be listed to two decimal points.

ATTACHMENT C1 - PRICING SUBMISSION SHEET

NASPO VALUEPOINT

SOFTWARE VALUE-ADDED RESELLER (SVAR)

MQSOFTWARE – BMC SOFTWARE	2.20%
NCIRCLE	0.00%
NETOP	1.25%
NUANCE	2.20%
ORACLE	2.20%
OSAM	2.20%
PASSPORT	1.25%
PATCHLINK	1.25%
PROOFPOINT	2.20%
RSA SECURITY	2.20%
REFERENCIA SYSTEMS	2.20%
SAP AMERICA	2.20%
SAS	1.25%
SOLUTIONS SOFTWARE	1.13%
SOPHOS	2.20%
SPLUNK SOFTWARE	2.20%
STASEEKER NETWORK INFRASTRUCTURE MONITORING	2.20%
STELLENT – ORACLE	1.25%
SUNGUARD	1.13%
SYBASE	1.25%
TECHSMITH	1.25%
TREND MICRO	1.25%
TRUSTWARE	0.25%
ULTRABAC	1.13%
VORMETRIC	1.13%
WEBSense	0.88%
any other non-listed publisher	2.20%



# Executive Summary

## Requirement

Attachment D-Executive Summary should highlight the major features of the Offer. Briefly describe the Offer in no more than two (2) pages. The reader should be able to determine the essence of the Offer by reading the Executive Summary. Any requirements that cannot be met by the Offeror must be included.

## Response

The NASPO ValuePoint Cooperation Purchasing Program is the standard of excellence by which public cooperative contracting is measured in the United States. With 3,901 participating addenda, NASPO ValuePoint encourages competitive vendors to offer **the most innovative technologies at the best value**. CDW Government LLC (CDW-G), as the nation's leading IT solution provider, is ideally positioned to serve as a primary software value-added reseller (SVAR) for all participating states.

## Qualifications

Our capabilities extend beyond those of the typical SVAR, with dedicated public sector account managers, knowledgeable field executives, experienced program managers, and qualified engineers providing targeted, streamlined assistance to individual customers. These personnel are here to serve, in person, on the ground, and from the warehouse.

Specifically, our Software Licensing Support Team ensures that purchases are scalable and complementary to existing customer systems. This team includes over 85 licensing specialists, 250 systems engineers, and 45 account executives—all experienced in helping agencies choose and use the best possible software solution available.

CDW-G is built upon **a foundation of strategic partnerships**, including the listed key and secondary software publishers named in the RFP. Microsoft®, Adobe®, VMware®, Citrix®, and Symantec™ are only a few of the brands we offer. Our extensive catalog gives participating entities the luxury of choosing the best commercial-off-the-shelf software products tailored to their needs, be it state and local government, K-12, or higher education.

## Methodology

License management is an integral component of our methodology. Through our account teams, licensing specialists, **free** customized websites, timely reporting, and quarterly reviews, CDW-G eases the burden of managing software licenses and maintains frequent communication to alert users of updates, renewals, and new products without prompting.

A good solution begins with good people. CDW-G software engineers provide NASPO ValuePoint customers with design and consultative services at no additional charge. Other no-cost services offered to participating state agencies include threat checks, roadmapping, integration services, grant assistance, and software webinars.

## NASPO ValuePoint | Software Value-Added Reseller Services

### Exceptions to Contract Requirements

CDW Government LLC ("Contractor" or "Reseller") proposes the following changes to the terms and conditions. Insertions are underlined and deletions are stricken through. All other proposals are indicated in **bold**. Explanations are in *comments*. These proposals are for the State's review and input. Notwithstanding what is stated in the RFP, Reseller shall not be bound to any terms and conditions of the RFP or to any contract related to the RFP until or unless: (i) the State confirms in writing its acceptance of these deviations as fully incorporated therein; or (ii) authorized representatives of both parties execute a written contract that is separate from the RFP.

#### Section 3: Scope of Work

3.2.1.6.1 The Reseller must agree that there are no software publishers with whom absent just cause, they will refuse to do business...*[remainder as written]*

**3.2.1.8.3 Notwithstanding what is stated in this section, Reseller proposes all returns are subject to the manufacturer's then-current return policy.**

3.4.1 Training, if offered by manufacturer, shall be available in the form of tutorials for basic installation and web-based training for software operation, basic phone support.

3.4.2 If offered by manufacturer, ~~P~~provision of information on how to access a Software Publisher's "Help Desk" (either telecom or web-based) for basic use questions.

3.4.5.1 Upon written request from the State, Reseller ~~is expected to will~~ conduct quarterly reviews of all sales volumes and report sales figures and savings from Publisher's list price, by Publisher and by PA, as well as observed trends or purchasing patterns, and to present the information to the LSCA.

#### Section 4: NASPO ValuePoint Master Agreement Terms and Conditions

1. Notwithstanding what is stated in this section, Contractor proposes that its response to the Solicitation take precedence over all other documents forming the Master Agreement to ensure the exceptions contained herein have binding effect.

14.b.(2) The Indemnified Party shall notify the Contractor within a reasonable time ... *[language as written]* ... in the pursuit of the Intellectual Property Claim. ~~Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.~~

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES. IN THE EVENT OF ANY LIABILITY INCURRED BY CONTRACTOR OR ANY OF ITS AFFILIATES HEREUNDER, THE ENTIRE LIABILITY OF CONTRACTOR AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE GREATER OF: (A) THE DOLLAR AMOUNT PAID BY THE LEAD STATE, PARTICIPATING ENTITIES, OR PURCHASING ENTITIES FOR EITHER THE SPECIFIC PURCHASED ITEM(S) GIVING RISE TO THE CLAIM; OR (B) \$2,000,000.00.**

17.b.1 Policy shall include bodily injury, property damage, and ~~broader form~~ contractual liability coverage.

17.d Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names includes the Participating States identified in the Request for Proposal as additional insureds, (2) provides that the General Liability policy shall by blanket endorsement by contract give a thirty (30) days prior written notice of cancellation if any of the additional described policies are cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (3) ... *[remainder left intact as written]*

23. Payment for completion of a contract order is normally made within 30 days following the date ~~the entire-any partial~~ order is delivered or the date a correct invoice is received, whichever is later. *[remainder as written]*

31. Notwithstanding the foregoing, title to third party software, the licenses to which are resold by Contractor, will remain with the third party. Purchasing Entity's rights in such software are specified in the license agreement between such third party and Purchasing Entity. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to Product consisting of tangible media free and clear of all liens, encumbrances, or other security interests.

#### Section 5: Lead State (State of Arizona) Terms and Conditions, 5.1 State of Arizona Special Terms and Conditions

O. The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

~~Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on Users or prevent the Materials from performing as required under the terms and conditions of this Contract.~~

X. 1.5. Applicable to all General Liability insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. If any of the additional described policies are cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

BB. Contractor access to State facilities and resources ...with an unlawful breach or harmful access committed by Contractor shall be paid by the Contractor.

#### 5.2 State of Arizona Uniform Terms and Conditions

2. Notwithstanding what is stated in this section, Contractor proposes that its response to the Solicitation or Proposal take precedence over all other contract documents to ensure the exceptions contained herein have binding effect.

3.7. Subject to third party licensing limitations, ~~A~~any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State. The Contractor shall maintain ownership of its pre-existing work.

3.8. Subject to third party licensing limitations, ~~A~~a and all intellectual property, including but not limited to copyright, *[language as written]* ... of the State of Arizona requesting the issuance of this contract. The Contractor shall maintain ownership of its pre-existing work.

**Comment [TB1]:** Before services are to be performed, Reseller will create a Statement of Work ("SOW") detailing the exact scoping and pricing of the services to be provided, which will be executed by both parties prior to the start of services. The SOW will reflect the terms and conditions as negotiated between the parties during the bidding and contracting process.

**Comment [TB2]:** *Explanation - Reseller takes pride in screening its suppliers for liquidity and longevity and therefore proposes the following clarification:*

**Comment [TB3]:** *Explanations - Reseller, acting as a reseller and not the manufacturer of any proposed products and software, proposes the following clarifications, which apply to the remaining sections:*

**Comment [TB4]:** *Explanations - Reseller, acting as a reseller and not the manufacturer of any proposed products and software, proposes the following clarifications, which apply to the remaining sections:*

**Comment [TB5]:** *Explanations - Reseller, acting as a reseller and not the manufacturer of any proposed products and software, proposes the following clarifications, which apply to the remaining sections:*

**Comment [TB6]:** *Explanations - Reseller, acting as a reseller and not the manufacturer of any proposed products and software, proposes the following clarifications, which apply to the remaining sections:*

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CDW GOVERNMENT, LLC**

**EXHIBIT B  
Scope of Work**

**PROJECT**

City will purchase software, and professional services on an as needed basis. This may include, but is not limited to, the annual software renewals listed below. As well as individual licenses or new software licenses as needed by the City.

Description	Approximate Amount
PeopleSoft (Oracle)	\$ 390,000.00
IT Software Maintenance	\$ 14,700.00
Microsoft EA Agreement	\$ 542,207.00
Oracle Database Maintenance	\$ 105,500.00
Red Hat Linux Maintenance	\$ 6,500.00
VEEM Back-up for VM	\$ 18,000.00
VMWare	\$ 40,000.00
Websphere	\$ 6,000.00
Ironport Email Security	\$ 71,435.00
Entrust	\$ 8,400.00
Secure Link	\$ 14,400.00
ManageEngine - AD Manager	\$ 3,219.00
ManageEngine - SDP	\$ 12,483.00
ManageEngine - Password Reset	\$ 243.00
ManageEngine - Desktop Central	\$ 6,916.00
Tivoli	\$ 5,000.00
IPAM	\$ 5,000.00
Adobe Glen 11	\$ 3,500.00
PD Body Cams System	\$ 171,600.00
Business Intelligence	\$ 85,000.00
PD Warrant Entry	\$ 12,000.00
Password Manager	\$ 5,500.00

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CDW GOVERNMENT, LLC**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

A quote must be provided with each order.

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$4,250,000 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

The discount for software and professional services is listed at a minimum discount in the SVAR MPA. The vendor may provide additional discounts for products and services. The City will work with the vendor to retain the lowest pricing available for software and professional services.



## Legislation Description

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**File #: 16-647, Version: 1**

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### **AUTHORIZATION TO ELIMINATE A POSITION IN THE COMMUNITY SERVICES DEPARTMENT AND CREATE A POSITION IN THE INNOVATION AND TECHNOLOGY DEPARTMENT**

Staff Contact: Chuck Murphy, Director, Innovation and Technology

#### **Purpose and Recommended Action**

This is a request for City Council to eliminate one position currently authorized in Community Services, Community Housing and create one position in the Innovation and Technology Department. This position will be funded by the Water Services Department, and will serve to provide administrative and technical support to Water Service's process control, engineering and support staff.

#### **Background**

Production operations such as Glendale's Water Services processing facilities use specialized equipment to ensure that water processing occurs in a safe manner while providing a consistently high quality product. These operations are highly reliant upon process control technology utilizing pressure, temperature, and flow measurement devices to control the water processes. These process measurement devices are monitored and controlled by specialized computers (PLCs) that collect, evaluate, and make changes to the process based on predefined programs. The information collected by these PLCs is then automatically sent to the supervisory control and data acquisition (SCADA) system where the information is converted to a user-friendly format for analysis and reporting.

Maintaining this equipment requires a combination of electrical, mechanical and computer knowledge. Plant floor technicians are responsible for maintaining the defined operation of these devices, while the SCADA support staff ensures that all expected measurements are being received and those measurements are within specified operational ranges necessary for regulatory compliance.

Water plant operations is a highly technical environment relying on process control technology to ensure a safe and secure environment that produces a quality product. The position being requested is an Information Technology Manager that will have oversight for the water plant process control architecture, and will work in close collaboration with water plant operations staff. The position will provide administrative and technical support to the plant process control maintenance staff in addition to the SCADA engineering staff in support of water operations.

#### **Analysis**

As an Information Technology Manager is not a current authorized position, and the safety and reliability of the water processing facilities are critical to the City, staff is requesting authorization to create and fill this position within the current fiscal year.



Staff is requesting the elimination of the following Community Services, Community Housing position. This position is currently vacant and was identified as being funded through federal grants. As staff does not anticipate the federal funding for this position will actually occur, it has been identified for elimination.

- Administrative Support Assistant (Position Number 00002007)

Staff is requesting the creation of the following Innovation & Technology Division position. Although the position will be within the Innovation & Technology Department, the position will serve the Water Services Department and therefore be funded from the Water Services Enterprise Fund. If this request is approved, a position number will then be assigned to the new position.

- Information Technology Manager

The additional staff will provide administrative and technical support to water plant process control technicians in addition to the SCADA support staff. This position will:

- Develop and maintain standards for plant wide process control specifications to ensure ongoing safety and consistency of operations in providing a quality product.
- Closely collaborate with plant operations management to ensure the technical architecture meets ongoing operational needs.
- Ensure that proper security protections are maintained and updated related to the SCADA network and computing environment.
- Lead the change control process for plant support and SCADA operations which ensures that standards are being maintained and that communication to all necessary parties occurs.
- Develop standard methods and equipment lists for maintaining the process control infrastructure.
- Participate in the preventative maintenance program as it relates to process control equipment.
- Be a liaison with contractors and vendors to ensure plant standards are maintained
- Ensure appropriate process data is properly collected in support of regulatory compliance reporting requirements.

Overall, total authorized FTE's will not change if this item is approved. While positions are typically identified through the annual budget process, staff is requesting Council approve a transfer of positions immediately to ensure the safety and reliability of the water supply system which is critical to the City.

### **Previous Related Council Action**

On December 6, 2016, Council approved the elimination of two positions authorized within Community Services Department and the creation of two positions within the Public Works Department.

On June 14, 2016, the final FY 2016-17 budget was adopted.

On May 24, 2016, the tentative budget was adopted.

On March 15, 2016, the proposed ten-year Capital Improvement Plan was presented at Council Budget Workshop.

**Community Benefit/Public Involvement**

Creation of this position ensures proper security and reliability of the City's water delivery. As stated earlier, water operations are highly reliant on technology to maintain a safe and secure environment that provides a quality product to the public.

**Budget and Financial Impacts**

FY16-17 Funding for this position will be absorbed within the current Water Services adopted budget. Funding for this position beyond FY16-17, is contingent upon Council approval of future Water Services operating budgets.

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?



## Legislation Description

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**File #: 16-632, Version: 1**

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**AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH DICK AND FRITSCHÉ DESIGN GROUP, INC., TO PROVIDE ARCHITECTURAL AND DESIGN SERVICES FOR THE PROPOSED HEROES PARK BRANCH LIBRARY**

Staff Contact: Elaine Adamczyk, Interim Director, Community Services

### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Professional Services Agreement with Dick and Fritsche Design Group, Inc. (DFDG) to provide design and architectural drawings for the potential Heroes Branch Library, within Heroes Regional Park located at West Bethany Home Road and North 83<sup>rd</sup> Avenue, in an amount not to exceed \$410,090. This is also a request for CIP Contingency transfer from Fund 1500, CIP Contingency to Fund 1500, Western Area Library for \$81,476 which will increase the current project appropriation amount from \$328,614 to \$410,090. The general project scope is for the final design of a branch library. The initial branch library plan will encompass approximately 7,500-8,000 square feet and will be planned to accommodate future expansion. The term of the Agreement is for three years.

### **Background**

At the March 17, 2015 City Council Workshop, staff was asked to analyze the feasibility of potentially using a portion of the existing Glendale Media Center (KGLN Channel 11), within which a Western Area Branch Library could be located. Subsequently, as a part of this analysis, the current scope of existing public library services was reviewed with the Library Advisory Board (Board) at its August 8 and September 9, 2015 meetings. At these meetings, the Board also reviewed and discussed several other possible options for location, service and programs.

The Board unanimously (6-0) voted at its September 9, 2015 meeting in favor of a modular building at the Heroes Regional Park. Shortly thereafter, staff presented the item to the City Council on October 20, 2015, and received direction to explore the pre-fabricated, modular Heroes Regional Park concept, in addition to further consideration of using the third floor of the Channel 11 Media Center as a library.

To assist with this endeavor, the architectural firm of Dick and Fritsche Design Group was hired in January 2016 to develop Site Feasibility Studies for both concepts, including assistance with a public participation process and the development of more comprehensive construction cost estimates. Upon completion of this conceptual phase, staff, the Board chairperson, and representatives from the architectural firm made a presentation to the City Council at the April 5, 2016 City Council workshop session.

At this workshop, staff received Council consensus to continue and commence design work for a new branch library in Heroes Regional Park.

## Analysis

Currently, no bond funding or General Funds have been identified for the construction of a Western Area Branch Library and Development Impact Fees (DIF) have been identified for construction funding. The current CIP estimated project total is \$3,130,192 with \$328,614 currently appropriated in FY16-17 and an additional \$2,801,578 estimated in FY17-18. If the \$81,476 transfer is approved, the total FY16-17 appropriation totals \$410,090.

In addition to the Western Area Branch Library project, the current Library DIF funded CIP includes approximately \$772,000 for new books and materials purchases related to population growth. It is important to note that DIF funding for library books and materials can also be used for construction-related expenses, should a decision be made to move forward with a Western Area Branch Library and the additional funding is needed. However, using funds earmarked for new books and materials could result in a reduction to the amount available for new book and materials purchases. By law, these funds have to be expended or obligated for eligible growth-related library expenses by January 1, 2019. If not, the DIF funds must be refunded.

### A. Facility Assumptions

The park site is approximately 88 acres, located on the northeast corner of North 83rd Avenue and West Bethany Home Road.

The new library design will be a constructed single-story building approximately 7,500-8,000 square feet in size and located on approximately two acres within the park site. The site will include approximately 56 parking spaces and landscape improvements as required by the City. Additional parking capacity (up to 83 additional parking spaces, for a total of approximately 136) and associated landscape areas may be included as a bid-alternate. The new library will be designed with future considerations for expansion, including any site improvements as required.

The park site includes several park amenities and will also include possible future development, including a multi-generational center that could be located adjacent to the new library. The library parking must be configured so that both facilities may be able to share the same ingress and egress. The library design must be closely coordinated with the design and construction of future phases of the Heroes Regional Park. The park site is scheduled to be constructed in several phases, as funding becomes available.

As for the hours of operation, a standard and consistent service model base was developed and based on a 40-hour-per-week operation that would result in the new Western Area Branch Library being open six days a week: Monday (12 p.m.-8 p.m.), Tuesday (10 a.m.-6 p.m.), Wednesday (12 p.m.-8 p.m.), Thursday (10 a.m.-6 p.m.), Friday (1 p.m.-5 p.m.), and Saturday (1 p.m.-5 p.m.). The library would be closed on Sunday.

### B. Program and Service Assumptions

Once constructed, the new branch library will initially host a 25,000-volume collection based on consumer demand; provide dedicated areas for technology and technological access; develop early literacy programs;

support small business/entrepreneurial literacy; establish green screen/digital media programming and equipment; provide a multi-purpose room for library programs; and materials could be ordered and delivered to patrons within 24-48 hours. These service areas are reflective of the three major themes that stress Glendale libraries should: a) provide programs and materials for children; b) provide a balanced blend of books, materials and technology; and c) embrace the importance of being a community gathering place.

C. Estimated Schedule Milestones

The following tentative project schedule has been developed with regard to this project:

Notice to Proceed	1/2/17
Program Verification - Site Analysis	1/2/17-1/13/17 (2 weeks)
Schematic Design	1/16/17-2/24/17 (6 weeks)
Design Development	2/27/17-4/21/17 (8 weeks)
Construction Documents	3/1/17-3/31/17, 4/24/17-6/16/17 (8 wks.)
Plan Review and Permit / Prepare Bid Docs.	6/19/17-8/11/17 (8 weeks)
Bid	8/14/17-9/8/17 (4 weeks)
Notice to Proceed	9/11/17-10/20/17 (6 weeks)
Council Award	10/12/17
Construction	10/23/17-7/27/18 (40 weeks)
Close out - Occupy	7/30/18-8/24/18 (4 weeks)
Final Acceptance	8/27/18

D. Recommendation

On May 26, 2016, the City began publicly advertising an RFP for architectural and design work for the potential Heroes Branch Library. A pre-submittal conference was held on Thursday, June 9, 2016, to discuss the scope of work, general contract issues and respond to questions from the attendees. Three qualified firms submitted proposals and were invited to present to a diverse internal/external panel consisting of library, engineering and facility staff, contractors and interior designers. The presentations were held on July 19, 2016, resulting in Dick and Fritsche Design Group, Inc. (DFDG) being the highest scoring and recommended firm.

**Community Benefit/Public Involvement**

This item has been extensively discussed in public. It was first raised as a Council item of interest at the Council meeting of March 17, 2015. Regular public updates were made at the April, May, and June 2015 Library Advisory Board meetings. A detailed discussion of the item was conducted at a special public meeting of the Library Advisory Board on August 8, 2015. At the September 9, 2015 Board meeting, the Board voted in favor of a modular building at the Heroes Regional Park, which passed with a vote of 6 to 0. At the October 20, 2015 City Council workshop, staff presented the library location options, and received direction to focus on the conceptual options at Heroes Regional Park and the Media Center. Subsequent public meetings were conducted with the Library Advisory Board on February 10, 2016 and March 9, 2016; to the Parks and Recreation Advisory Commission on March 14, 2016; and at a final joint meeting of both commissions on March 26, 2016. As a result, both the Library Advisory Board and The Parks and Recreation Advisory

Commission unanimously recommended approval to the Heroes Regional Park option to Council for formal consideration. Council provided direction to move forward with this concept in April 2016. Funding for this item was also approved by City Council in the FY 16-17 City budget.

**Budget and Financial Impacts**

Development Impact Fee funding is available for the DFDG Professional Services Agreement in the Fiscal Year 2016-17 Capital Improvement Plan Budget. Expenditures with DFDG shall not exceed \$410,090 for the entire term of the Agreement. This design contract was reviewed and approved in concept by the Library Advisory Board at its November 9, 2016 meeting.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$410,090</b>	<b>1500-74755-318200, CIP, Professional and Contractual</b>

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? Yes, transfer required using contingency funds in 1500 to make contract whole.

If yes, where will the transfer be taken from? \$81,476 from 1500-12023-510200

**PROFESSIONAL SERVICES AGREEMENT**  
**HEROES PARK REGIONAL LIBRARY**  
**PROJECT NUMBER 151633**

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Dick and Fritsche Design Group, a corporation, authorized to do business in the State of Arizona, ("Consultant") as of the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date").

**RECITALS**

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

**AGREEMENT**

The parties hereby agree as follows:

**1. Key Personnel; Other Consultants and Subcontractors.**

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
  - a. Project Manager.
    - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
    - (2) The City must approve the designated Project Manager.
  - b. Project Team.
    - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
    - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
  - c. Discharge, Reassign, Replacement.
    - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
    - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
  - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 Compliance.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with



any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

### 3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

## 4. **Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$410,090.00 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
  - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
  - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
  - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
  - d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.
- 4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
  - b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
  - c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

**5. Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
  - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

**6. Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of \$2,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).

8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 **Subcontractors.** Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.8 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. **Notices.**

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.

- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Michael Schmitt, AIA  
4545 E. McKinley St.  
Phoenix, AZ 85008

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
c/o Michael A. Johnson, Engineering Project Manager  
City of Glendale Engineering Department  
5850 West Glendale Avenue, Suite 315  
Glendale, Arizona 85301

With required copy to:

City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

**12. Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

**13. Entire Agreement; Survival; Counterparts; Signatures.**

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. **Term.** The term of this Agreement commences upon the Effective Date and continues for a three (3) year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional one year, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. The final determination will be made by the City.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

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By: Kevin R. Phelps  
Its: City Manager

ATTEST:

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Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

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Michael D. Bailey  
City Attorney

Dick & Fritsche Design Group, Inc.,  
an Arizona corporation



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By: Michael Schmitt, AIA  
Its: President



**EXHIBIT A**  
**Professional Services Agreement**

**PROJECT**

The new library will be located on the Glendale Heroes Regional Park site. The park site is approximately 88 acres, located on the northeast corner of 83rd Avenue and Bethany Home Road.

The new library will be a single-story building approximately 7,500-8,000 square feet in size and located on approximately 2 acres within the park site. The site will include approximately 56 parking spaces and landscape improvements as required by the City. Additional parking capacity, (up to 83 additional parking spaces, for a total of approximately 136) and associated landscape areas may be included as a bid-alternate. The new library must also have the ability to be expanded in the future, including any site improvements as required.

The park site includes several park amenities and will also include possible future development including a multi-generational center that could be located adjacent to the new library. The library parking must be configured so that both facilities may be able to share the same ingress and egress. The library design must be closely coordinated with the design and construction of future phases of the Heroes Regional Park. The park site is scheduled to be constructed in several phases, as funding becomes available. The Heroes Regional Park Master Plan will be available to the selected consulting firm.

The new library's minimum programming needs are as follows:

- 7,500 square foot (approx.), one story branch library
- Minimum 53 (or as required by ordinance) parking spaces, with bid alternate to expand to approx. 136 spaces.
- Separate public and staff entrances
- Meeting rooms
- A youth services area with adjacent story-time area
- An adult services area with adjacent distinct new book and media areas
- A teen services area
- A materials circulation area with adjacent work room,, indoor book return
- A drive-up window and book return system feeding into the building in the circulation workroom area
- On-grade shipping/receiving area, with ability to accommodate tractor-trailer deliveries
- Group study rooms for approximately eight people
- Public restrooms
- Employee breakroom
- Lobby area adjacent to the circulation area
- Secured youth patio area
- Distinct book sale area
- Low maintenance, xeriscape landscaping
- Custodial area
- Secured equipment rooms for all building systems including telecommunications and electronic equipment
- Associated storage
- Handicapped accessibility
- Zone controlled HVAC system
- Acoustically designed to absorb sound
- Energy efficient design
- Designed to require minimal interior and exterior maintenance
- Design must support advanced electronic information and telecommunications equipment
- Designed with patrons and staff security in mind including maximum staff visibility of public areas
- Artwork that is incorporated in conjunction with the city Arts Commission

END EXHIBIT A

**EXHIBIT B**  
**Professional Services Agreement**

SCOPE OF WORK

**I. GENERAL PROJECT ASSUMPTIONS & CRITERIA**

1. The general project scope is for the final design of a branch library. This initial branch library will contain approximately 7,500 – 8,000 g.s.f. and will be planned to accommodate future expansion of approximately 14,000 g.s.f.
2. The City intends to utilize the Design-Bid-Build project delivery method.
3. The City's total budget for this project, and the basis of this proposal is \$2.7M. DFDG has estimated the construction cost for the library building to be approximately \$2.5M (including FF&E), which serves as the basis for this proposal.
4. The City's desired delivery date for the project is mid to late 2017. Exhibit C schedule outlines milestones for reaching the target date range.
5. The site area is approximately two (2) acres located within the Heroes Regional Park. Primary park infrastructure is in place and the site appears reasonably level.
6. It is assumed that the necessary infrastructure for the library project is near the site or is available in the adjacent W. Berridge Lane. There are existing electrical cabinets located on the site, however their intended use or capacity have not yet been determined.
7. The City of Glendale has a designated project manager representing the interests of the City. DFDG assumes the City's project manager will be empowered to make or seek decisions on behalf of the City, as necessary for the timely progress of the design and construction phases.
8. We assume that zoning currently vested on this site will allow for the proposed branch library, and that no re-zoning, zoning variance, special use permit or general plan amendment will be required.
9. We assume that requirements (if any) for environmental studies and/or remediation, and archaeological investigations for this site have been performed previously.
10. We assume adequate utilities are available near the site or in a public right-of-way adjacent to the site.
11. We assume the City will provide all "front-end" Specifications, bidding documents and related documents for inclusion in the Project Manual. We will review for coordination purposes, and will integrate with the final Project Manual.
12. The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. THE CITY OF GLENDALE acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. Dick and Fritsche Design Group (DFDG), therefore, will use our reasonable professional efforts to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.

## II. BASIC DESIGN SERVICES - PROJECT SCOPE

The following information is a general description of the scope of work that may be expected to be performed by the architect for this project. The services listed in this scope of work include the following:

### A. General Project Management / Administration Services include:

1. Coordinating with the City Project Team and Contractor, throughout the project.
2. Attending project meetings as necessary to maintain the project budget and schedule; chairing periodic project meetings; setting agendas and preparing and distributing meeting minutes. Meetings under basic services include:
  - a. Weekly project team meetings, which may include the design team, specialty consultants and City staff, as appropriate. A standard weekly meeting time will be reserved by the team. In the interest of efficiency and best use of time, meetings will be held on an as-needed basis, and when appropriate be organized as digital meetings, through Web-X or GoToMeeting protocols.
  - b. Meetings with City regulators as required to obtain agency approvals and a building permit.
  - c. DFDG has included attendance at up to 5 meetings with oversight committees (i.e. Library Advisory Board, Parks & Recreation Commission, City Council, Planning Commission, etc.), and 3 public outreach meetings.
3. Coordinating with private, public and City utilities (i.e., Information Technology Department, Water Services Department) regarding standard technology and utility issues and incorporating pertinent information in the plans.
4. Submitting and retrieving all required contract documents to the various required reviewing agencies.
5. Preparing and maintaining a project schedule after meeting with the designated City project manager (referred to as "Project Manager") to determine appropriate submittal deadlines and to coordinate project submissions.
6. Support the City in obtaining federal, state, county, local and utility permits and approvals required for the Project (including NPDES, Dust Control, and other permits). As the Project progresses DFDG shall timely furnish to the City copies of all communications between the Architect and the respective agency or department and all approvals and permits for the Project.
7. Submitting a written monthly Design and Progress Report to the City during the entire period of design.
8. Review the bids received, and prepare and submit a recommendation to the City.

### B. Pre-design Services include:

1. Consulting with City staff to ascertain information needed to meet the requirements of the Project and gathering of available existing data relating to Heroes Park development, adjacent infrastructure, utilities, encumbrances, etc.
2. Meeting with a City Planner, to compile a summary of planning and zoning documents related to the underlying zoning of the Library site. Review of available zoning case files, to document any existing variances, stipulations, etc. that apply to the Library development. Review of any CC&R's or other known constraints.
3. Gather topographic survey data of the selected site area. This will not result in an official "Results of Survey" document, however will provide information sufficient for the design of this project.
4. Perform geotechnical testing, and prepare a geotechnical report that will guide the design of foundations and pavement sections required by the project.

5. Program verification. DFDG will facilitate a workshop with City of Glendale Library user-groups, to confirm validity of the initial program of spaces for the new Library.

a. We will ascertain the proper distribution of the afforded building area is proportioned to the Library operational model.

b. For each space, make a preliminary determination of capacity, furnishings, finishes, equipment, special design features and the aesthetic nature of the space.

C. Schematic design phase services include:

1. Conducting up to two design workshops. These may be scheduled in conjunction with weekly team meetings, however will generally require several hours, and must include representatives from the client user groups.

2. Based on the outcome of programming and design workshops, preparing schematic design studies leading to a recommended solution together with a general description of the Project. The Architect shall present these studies and estimates to the City for review, comments and approval. DFDG will prepare first-draft perspective renderings, as prescribed in Supplemental Services. DFDG will attend a public outreach/input meeting to receive community input prior to the formal DR process.

3. During the schematic design phase, we will submit plans to the City's Design Review process, first for a pre-application meeting, then for review, comment and a formal public hearing for approval of the design. We will attend the DR meeting to discuss this project.

4. Submitting sets of drawings or plans to the City for review and approval. Schematic Design documents will represent approximately the 30% level of design completion.

5. Prepare a schedule for City approval of all required submittals for Planning and Building Safety Departments' (and any other City, County or State agencies) review based upon information from the pre-design meetings and current Planning and Building Safety Department published review schedules.

6. Prepare an architect's estimate of probably construction cost, based on the Schematic Design.

7. After completion of the schematic design studies and construction cost estimates, the Architect shall present these studies and estimates to the City for review, comments and approval.

8. The schematic design phase will be considered completed when the City has approved the schematic design plans and the construction cost estimate for the submitted plans is within the Project construction budget.

9. If requested by the City, DFDG will attend a public outreach/input meeting to receive input on the Schematic Design.

D. Design development phase may include:

1. Prepare the design development documents, after the City approves the schematic design studies and construction cost estimate in writing. These documents will consist of preliminary plans, elevations, other drawings, and specifications to fix and illustrate the size and character of the entire Project including the kinds of materials; type of structure; mechanical, electrical, computer and telecommunications systems; and such other work as may be appropriate. Design Development documents will represent approximately the 60% level of design completion.

2. Design the Project so that the construction shall conform to applicable statutes and regulations.

3. Prepare and furnish the City the perspective renderings of the completed Project, as referenced in Additional Services. The Architect shall select and obtain approval of the view for best depiction. The renderings shall be delivered to the City with the design development drawings and become the property of the City.
  4. In conjunction with the Project Manager, the Architect shall hold a plan coordination meeting with the sub consultants to review and address coordination and integration of the plans provided by the various disciplines.
  5. Conducting up to two design workshops. These may be scheduled in conjunction with weekly team meetings, however will generally require several hours, and must include representatives from the client user groups
  6. After completion of the design development phase, the Architect shall deliver a required amount of sets of the design development drawings and plans, and the specifications. The Architect shall also provide this information in an electronic format. The Architect shall present all documents to the City for review, comment, and approval. If requested by the City, the Architect shall present a design development summary to the City Council.
  7. The design development phase will be considered complete once the City has approved the submitted design development plans, agrees that the construction cost estimate is within the established Project budget, and agrees that the Architect is meeting the submittal dates for required city documents as identified in the Schematic Design Phase schedule.
  8. DFDG will attend a public outreach meeting, if one is necessary at this stage, to present the refined design.
- E. Construction document phase may include:
1. After the City has approved the design development documents and construction cost estimate in writing, the Architect shall prepare final, permit-ready construction drawings, plans, and specifications.
  2. Preparing drawings using computer programs and formats as dictated by the City of Glendale Engineering Department. The Architect shall make no changes, deletions, or additions to the City's standard specifications and contract documents without approval by the City before inclusion in the final specifications. Final bid specifications shall be prepared as dictated by the City of Glendale Engineering Department.
  3. During the preparation of construction documents, the Architect shall inform the City in writing of any adjustments to previous construction cost estimates indicated by changes in scope, requirements, or market conditions.
  4. Complying with all applicable federal, state, and local laws and codes in effect at the time the drawings, plans and specifications are approved by the City. The Architect shall notify the City of any code changes that will impact this Project.
  5. In conjunction with the Project Manager, the Architect shall hold a plan coordination meeting with the sub consultants to review and address coordination and integration of the plans provided by the various disciplines.
  6. Upon completion of construction plans, specifications and contract documents, the Architect shall provide a specified amount of sets of all design calculations, including structural, mechanical, electrical and plumbing, and a specified amount of complete sets each of construction drawings, plans specifications and contract documents for review and approval by the appropriate City agencies. These documents must be sealed and signed by the appropriate responsible party.
  7. Coordinating the building permit process and assist in filing the required documents to secure approval of all governmental authorities having jurisdiction over the design of the Project. All original filing and approval fees shall be paid by the City or reimbursed to the Architect if paid by the Architect. The Architect shall ensure that the plans prepared by the utility companies have been incorporated into the final plans set.

8. Incorporating all corrections received from the reviewing entities into the final bid set of contract documents. If required, the Architect shall resubmit the revised plans to the City's Develop Services Department for approval.

9. After completion of the proposed construction documents and review by City staff, the Architect shall, if requested by the City, present the project to the City Council for comment and approval.

10. Upon approval by the Council and/or the City of complete drawings, plans, and specifications, the Architect shall deliver to the City the final drawings (in PDF format) and the specifications in MicroSoft electronic format. These documents shall be sealed and signed by the appropriate responsible party.

11. The Architect will prepare a final Construction Document phase cost estimate.

12. The Construction Documents Phase will be considered complete when the City has approved the final submitted plans and specifications, agrees that the cost estimate is within the established Project budget, and agrees that the plans are permit-ready.

F. Fixtures, Furnishings and Equipment (FF&E) services include:

1. An overall FF&E budget has not been identified. This scope will address only the furniture that DFDG will design and specify. We assume approximately 6,000 SF (excludes circulation, toilets, etc.) that will require furniture, with a budget in the range of \$42 per SF for procurement and installation, or a preliminary furniture budget of \$250,000. We will use this figure for the basis of our FF&E design fee.

2. All built-in fixtures and casework, will be part of the architectural drawings and included in the general contractor's scope of work.

3. The City of Glendale will purchase all loose furnishings and workstations, either off the City or State contract, or through a selected vendor. DFDG will provide layout and selection of furniture and workstations, including types and styles of furnishings as well as selection of fabrics and materials. Whether through bidding or negotiation, the successful vendor will provide all detailed drawings and specifications of workstations and other systems furniture, including parts lists and installation details.

4. Other equipment for library and office areas (computers, copiers, printers, sorting equipment, etc.) will be purchased by the City and installed in locations indicated on the drawings. Where a specific piece of equipment is designated for a specific location, the City shall provide cut sheets showing size and dimensions, clear space requirements, electrical and data connections, and other information required to ensure proper space, clearances and utility provisions.

5. AV, data, telecom, and other special systems will be specified and selected by the City. DFDG and our consultants will coordinate locations and provide necessary conduit and electrical outlets.

6. DFDG will assist in selection of equipment to be installed in break rooms, coffee bars, etc. These items will be furnished and installed by the City.

G. Bid phase services include:

1. Attend and prepare meeting minutes for the pre-bid conference and any other related meetings, and prepare all necessary addenda related to documents originated by the Architect.

2. Respond to questions regarding the plans and specifications. Architect shall receive, review and make recommendations regarding requests for substitutions, and incorporate these substitution requests into the addenda as required.

3. If requested by the City, review and evaluate the bids and bidders' qualifications and prepare a written recommendation for contract award.

4. The Bid Phase will be considered complete when the City has accepted the Project construction bid.

H. Construction Administration Services includes:

1. Preconstruction Conference: Conduct a preconstruction conference with the Contractor, the City and other interested parties prior to issuance of the Notice to Proceed. The Architect will be required to notify all interested parties and affected utilities of the date and time of the preconstruction conference to be held at City Hall. In addition to conducting the meeting, the Architect will take minutes and issue them to all attendees.

2. Quality Acceptance: The Architect shall provide quality acceptance services to perform inspection and acceptance testing of all items of work required by the contract documents. The Architect shall monitor construction for compliance with the project plans and specifications.

a. The Architect shall provide an on-site representative to provide weekly review of off-site and on-site activities.

b. The Architect shall bring observed deficiencies in the work or materials to the attention of the City and Contractor. Reports of these deficiencies shall be forwarded to the City for review. The Architect will resolve any construction-related problems, conflicts or discrepancies, and will recommend remedial actions, but shall take no action without the City being notified and/or City approval, if required.

c. The Architect's Construction Administrator shall be a full-time employee, shall have a minimum of five years-experience in the architectural, engineering and/or construction profession, and shall have had prior quality acceptance experience on a project of comparable size and scope.

d. The qualifications of the on-site representative shall include at least one of the following requirements:

- Professional architect/engineer licensed by the State of Arizona, with two years of building construction experience acceptable to the City Engineer.
- An individual with five years of building construction experience acceptable to the City Engineer, with a Bachelor of Science Degree in Architecture, Engineering or Construction.
- An individual with seven years of building construction management experience acceptable to the City Engineer.

e. The Architect shall review the Contractor's Quality Control Program to ensure conformance to applicable specifications and plans with respect to materials, workmanship, construction, finish, and functional performance. The Quality Control Program shall be effective for control of all construction work performed under the Contract and shall establish an effective level of quality control.

f. The Architect shall identify and coordinate with the Contractor all required acceptance material tests required by the City, project specifications and consistent with MAG, and other applicable building codes. The Contractor shall schedule and coordinate all required tests and provide all necessary source sampling and factory acceptance tests, results and inspection information to the Architect for review and comment.

3. Construction Schedule Review and Monthly Progress Pay Requests: The Architect shall review the construction schedule with particular emphasis on verifying that reasonable time allowances have been made for the work required. The Architect shall observe construction progress, and maintain and issue a monthly construction

observation report based upon information observed. Review construction progress with the Contractor and compare that progress with known activities on the site to the monthly progress pay request issued by the Contractor. Review the monthly progress pay request and submit comments and/or recommendations to the Contractor and the City for their action. The final monthly pay requests will be approved and processed by the City. The approved monthly pay requests will be signed by the Architect, Contractor and City Project Manager. The Architect will prepare a "Contractor Schedule Review" statement. The "Contractor Schedule Review" statement must be signed by the Architect and submitted to the City for approval. All updated schedules must be reviewed and approved prior to issuance of monthly progress payments to the Contractor. The Architect shall initiate any required correspondence necessary to verify the Contractor remains on schedule.

4. **Schedule Review and Utility Coordination:** The Architect shall review the Contractor schedule with particular emphasis on insuring that reasonable time allowances have been made for work required by the various utility companies, prior to approval. The Architect will assist in the resolution of any utility conflicts discovered. The Architect shall initiate any required correspondence to verify that the Contractor remains on schedule.
5. **Coordination of Submittal Reviews:** The Architect shall review the contract documents, prepare a list of all required submittals, and provide the schedule to the Contractor. The Architect shall maintain a submittal log and coordinate all reviews and any necessary resubmittals.
6. **Show Drawing Review:** The Architect shall review all shop drawings to verify Contractor's compliance with the project plans and specifications.
7. **Conduct Weekly Project Meetings:** The Architect shall conduct weekly construction project meetings, prepare an agenda and minutes of the meeting, and distribute to all attendees. The Architect will provide weekly update reports to the city's Library Director and City Engineer. The weekly updated reports can be in the form of weekly construction meeting minutes.
8. **Off-Site Civil Inspections:** A Professional Civil Engineer, licensed by the State of Arizona and with two years minimum construction inspection experience or a Construction Inspector, with five years minimum civil construction inspection experience, shall observe the installation of off-site work performed within the city right-of-way.
9. **Special Inspections:** The Architect shall coordinate with the Contractor as required for provision and execution of all special installation inspections. In addition to the special inspections required by the City's Building Safety Department, the special inspections shall include roofing and structural inspections. Special inspections shall be performed during installation by a qualified professional, certified or registered by the State of Arizona.
10. **Landscape Inspections:** A qualified Landscape Architect shall inspect and approve plant material at the source, inspect the soil preparation and planting, inspect and test the irrigation and sprinkler system, and monitor the landscape during the plant establishment and guarantee period. The Landscape Architect will coordinate the activities required.
11. **Value Engineering:** The Architect shall review and make recommendations on any value engineering proposals, which the Contractor may submit during the project. No value engineering proposal shall be implemented without the prior approval of the City.
12. **Change Order Requests:** The Architect shall review and make recommendations on all change order requests from the Contractor. No change order shall be implemented without the prior approval of the City. The Architect shall prepare all necessary documents and submittals to the City for Council approval.
13. **Final Inspection and Payment:** The Architect will maintain a running deficiency list during the course of the project and keep the Contractor informed as to its current status. The Architect will conduct, with the assistance of the City, a final inspection and prepare a final punch list, including all items remaining on the deficiency list, as well



as any additional items discovered during the final inspection. Subsequent inspections should be anticipated in order to insure completion of all identified deficient items.

14. Project Closeout: The Architect will compile a list of required final submittals, including, but not necessarily limited to: record drawings, warranty and guarantee documents, lien waivers, product manuals, maintenance and operation manuals, and any spare parts and training required to be provided by the Contractor. The Architect shall review the project closeout documents for final approval. At project's conclusion, a complete log of all furnishings, equipment and finishes with manufacturer's information is required.

a. As-Built Drawings: The Architect shall prepare record as-built drawings of the completed work based upon markups from the Contractor's record drawings and deliver the drawings to the City upon completion of the work. All design changes during construction should be clouded. The Architect will provide one set of record drawings on a computer disk (CD) in the appropriate format of ACAD approved by the City. The Architect will provide a second set of record drawings on a CD in PDF format. Each drawing sheet shall be presented as a separate PDF file and shall include the seal and signature of the engineer of record. The seal and signature of the engineer of record is not required on the ACAD files.

The RECORD DRAWING signature block on the cover sheet must be filled out and signed by the Architect.

15. Warranty Corrections and One Year Warranty Inspection: The Architect will work closely with the City and Contractor through the one-year warranty period on all warranty work. The Architect will prepare and submit all warranty requests and follow-up with the City and the Contractor to insure all warranty corrections have been completed in a timely manner. The Architect will attend and conduct, with the assistance of the City, a one-year warranty inspection. The Architect will prepare a punch list of deficient items discovered during the one-year inspection. The Architect should anticipate subsequent inspections in order to insure completion of any identified deficient items discovered during the one-year inspection.

### III. ADDITIONAL DESIGN SERVICES

The following are services that are not included in this Contract. Most of these services can be provided by Dick & Fritsche Design Group (DFDG) for an additional fee to be negotiated at the time requested.

1. A change or increase in the project scope, or making changes to the documents that are inconsistent with previously furnished information or approvals.
2. This is not considered to be a "fast-track" project, requiring phased Permit packages. Additional fees would apply should the City request an accelerated process utilizing phased permit packages.
3. DFDG will provide two exterior and two interior color renderings (medium detail) as a by-product of our basic services design process. Additional renderings, imagery, digital animations, etc. requested may be provided for an additional fee.
4. Design for future building expansion, campus master planning, or detailed design or engineering for site improvements beyond the project site boundaries (except for preliminary study of site integration with a future Multi-gen Recreation Center). The design will accommodate for the future planned building expansion.
5. Design of offsite improvements or offsite utilities not identified in the Basic Services above.
6. Providing floodplain, upstream water drainage discharge, archeological or environmental studies or reports.
7. Special studies or reports involving traffic studies, acoustic studies, vibration analysis, or other special studies requiring special expertise.
8. Detailed design of modular workstations or furnishings (this is provided by the furniture vendor).

9. Detailed design or drawings of special systems (such as those noted below) that will be provided by the City or contractor. We will, however, provide design for necessary power and conduit infrastructure to support special systems.
  - a. IT, data or telecommunications, Security Systems, AV systems.
  - b. Detailed calculations and drawings for fire sprinkler and alarm systems.
  - c. AV systems.
10. Special EIFS inspection (if applicable), or special electrical inspection if required.
11. Preparation of scale models or fly-through computer models.
12. Services following completion of construction, except for record drawings.
13. Additional meetings or presentations beyond those indicated in Section B above.
14. Design of water features or public art (if applicable).
15. Design or detailing of demountable partition systems (if applicable).
16. Special interior design services related to FF&E, including;
  - a. Inventory of existing FF&E items that are to be relocated into this project from another site.
  - b. FF&E bid services or procurement.
  - c. Move coordination.
  - d. Custom furniture design.
  - e. Installation drawings.

END EXHIBIT B

**EXHIBIT C**  
**Professional Services Agreement**

SCHEDULE

The schedule presented below represents approximate time frames for completion of the tasks described in Exhibit B, Scope of Work. Our team will work closely with the City of Glendale to refine the schedule as we commence work.

ESTIMATED SCHEDULE MILESTONES – FINAL DESIGN & CONSTRUCTION PHASE SERVICES

NTP	1/2/17	
Program Verification - Site Analysis	1/2/17 - 1/13/17	(2 wk.)
Schematic Design	1/16/17 – 2/24/17	(6 wk.)
Design Development	2/27/17 – 4/21/17	(8 wk.)
Construction Documents	4/24/17 – 6/16/17	(8 wk.)
Plan Review & Permit / Prepare Bid Docs.	6/19/17 – 8/11/17	(8 wk.)
Bid	8/14/17 – 9/8/17	(4 wk.)
Council Award / NTP	9/11/17 – 10/20/17	(6 wk.)
Construction	10/23/17 – 7/27/18	(40 wk.)
Close out - Occupy	7/30/18 – 8/24/18	(4 wk.)
Final Acceptance	8/27/18	

**EXHIBIT D**  
**Professional Services Agreement**

COMPENSATION

**METHOD AND AMOUNT OF COMPENSATION**

The Dick & Fritsche Design Group, Inc. compensation shall be hourly rates plus allowable reimbursable expenses.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$410,090.00.

**DETAILED PROJECT COMPENSATION**

METHOD AND AMOUNT OF COMPENSATION

DETAILED PROJECT COMPENSATION

BASIC DESIGN PHASE SERVICES

A.	General Project management / Administration	\$ 14,320
B.	Pre-design Services:	\$ 11,275
C.	Schematic Design:	\$ 45,221
D.	Design Development:	\$ 73,169
E.	Construction Documents	\$110,605
F.	Furnishings, Fixtures & Equipment (FF&E)	\$ 10,150
G.	Bid Phase:	\$ 6,480
H.	Construction Administration	\$103,870

FINAL DESIGN - PROFESSIONAL SERVICES TOTAL:      Not to Exceed      \$375,090

I.	Reimbursable Expense Allowance	\$ 10,000
J.	Owner Allowance	\$ 20,000
K.	Warranty Corrections & 1 Year Warranty Walk-Thru	\$ 5,000

TOTAL PROJECT SERVICES AND ALLOWANCES      Not to Exceed      \$410,090.

**EXHIBIT E**  
**Professional Services Agreement**

DISPUTE RESOLUTION

**1. Disputes.**

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
  - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
  - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

**2. Arbitration.**

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
  - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



## Legislation Description

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**File #:** 16-587, **Version:** 1

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**AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH SUMMIT ELECTRIC SUPPLY CO., INC., A SOLE SOURCE PROVIDER, FOR SUPPORT SERVICES FOR SCHNEIDER ELECTRIC MODICON PLC SOFTWARE**

Staff Contact: Craig Johnson, P.E., Director, Water Services

### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with Summit Electric Supply Co., Inc., (Summit) for priority support services for Schneider Electric Modicon PLC software in an amount not to exceed \$75,000 for the three-year term.

### **Background**

The City's water treatment, water distribution, wastewater collection and wastewater treatment systems include an array of five large treatment plants, groundwater wells, booster stations, lift stations, and numerous other critical appurtenances. Each of these sites use programmable logic controllers (PLCs) to monitor and control the thousands of pieces of equipment used to ensure continuous service delivery throughout the City's service area. Periodically, the PLCs need to be serviced to safeguard functionality of the equipment they control. This contract is to provide application support for Modicon PLCs used throughout the Water Services Department. Labor to maintain the PLCs is provided by department staff and parts and product support are purchased as needed. Currently, the City has multiple agreements for electrical parts and support, and intends to contract with additional firms as needed.

### **Analysis**

The Materials Manager may procure and contract for supplies and services without competition when there has been a written determination that competition is not available and there is only one known source for the supply or service.

Summit is the sole provider of software support services for Schneider Modicon and meets the criteria of a sole source procurement. Summit ensures that issues are addressed with the technical expertise and any required repairs are made quickly. The maintenance term is through December 9, 2019.

### **Previous Related Council Action**

On June 14, 2016, Council authorized City Manager to enter into a linking agreement with Summit for the purchase of electrical parts for various water and wastewater treatment facilities.

### **Community Benefit/Public Involvement**

Having a contracted vendor provides for immediate access to service to minimize down time, meet the water and wastewater treatment needs of our community, and continue to remain in compliance with state and federal regulatory requirements.

**Budget and Financial Impacts**

Funding is available in the Water Services FY2016-17 operating budget.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$75,000</b>	<b>2360-17160-523400, Arrowhead Reclamation Facility</b>
	<b>2360-17170-523400, West Area Reclamation Facility</b>
	<b>2400-17250-523400, Pyramid Peak Water Treatment Plant</b>
	<b>2400-17260-523400, Cholla Water Treatment Plant</b>
	<b>2400-17310-523400, Oasis Water Treatment Plant</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?



**PROFESSIONAL SERVICES AGREEMENT  
PRIORITY SUPPORT PROGRAM**

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Summit Electric Supply Co. Inc, a New Mexico corporation, authorized to do business in the State of Arizona, ("Consultant") as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date").

**RECITALS**

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

**AGREEMENT**

The parties hereby agree as follows:

**1. Key Personnel; Other Consultants and Subcontractors.**

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
  - a. Project Manager.
    - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
    - (2) The City must approve the designated Project Manager.
  - b. Project Team.
    - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
    - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
  - c. Discharge, Reassign, Replacement.
    - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
    - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

(3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 **Standard.** Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
  - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.**

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 **Coordination; Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with

any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

### 3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

## 4. **Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$75,000 for entire three (3) year term as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
  - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
  - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
  - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
  - d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.
- 4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
  - b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
  - c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

**5. Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
  - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

**6. Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).

8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 **Subcontractors.** Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.8 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a PCI-DSS attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

12. **Notices.**

12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.

- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Summit Electric Supply Co., Inc.  
 c/o Jack Escobar  
 205 S. 29th St  
 Phoenix, AZ 85034

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
 c/o Anthony Weathersby  
 7070 W Northern Ave  
 Glendale, Arizona 85301

With required copy to:

City Manager  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

City Attorney  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

- c. Concurrent Notices.
  - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
  - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
  - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.
- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

**13. Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

**14. Entire Agreement; Survival; Counterparts; Signatures.**

14.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.



- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

14.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

14.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

14.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

14.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

14.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

14.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

15. **Term.** The term of this Agreement commences upon the Effective Date and continues for a one (1) year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional two (2) years, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

16. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

17. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

By: Kevin R. Phelps  
Its: City Manager

ATTEST:

\_\_\_\_\_  
Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

Summit Electric Supply Co., Inc,  
a New Mexico corporation

\_\_\_\_\_  
*Craig D. Dixon*  
By:  
Its: ACCOUNT MANAGER

**EXHIBIT A**  
**Professional Services Agreement**

**PROJECT**

Summit Electric Supply Co. Inc. is the only vendor who is authorized to provide technical support for Schneider Electric Modicon PLC software.



September 3rd, 2015

Mr. Rocco Pontrelli  
City of Glendale  
Water Services Supervisor Central Systems  
7070 W Northern Ave.  
Glendale, AZ 85303  
rpontrelli@glendaleaz.com

Dear Mr. Pontrelli,

Thank you for your interest in Schneider Electric's products and services. Summit Electric Supply is the sole source Schneider ACE Solutions distributor for Schneider Electric Modicon, SquareD Automation and Electrical components in the Arizona area. ACE distributors have unparalleled technical capability as well as a wider array of local stock and overall, full technical support from Schneider Electric. They are the fastest, most qualified and best source for Schneider Electric products to meet any of your Automation and Control needs regardless of the complexity. Furthermore, Summit Electric Supply is the only distributor in the Western United States to reach the certification for ACE Solutions, the highest level of ACE Distributors and truly the only ones to technically support our products in front of customers besides ourselves. As you can imagine, we definitely only allow this kind of support level to the very best of the best. They offer decades of experience working with leading-edge automation and control solutions.

As a member of the ACE program, they receive access to advanced technical training and equipment, and have the competitive advantage to get unique special pricing deals from us to guarantee their customers to receive the lowest possible price, sometimes even better than buying directly from us, but with the advantage of having a dedicated local support team. To get most of these advantages, Summit is required to keep experts on staff in your local market who can serve as your invaluable resource for in-depth product and application knowledge in Modicon PLC's, the related Proworx32, Concept, and Unity Pro XL programming software, Motion control as well as many other advanced control products we offer. They are considered true experts in our complete automation and control product lines and we stand right beside them to make sure they have everything they may need to be successful every single time.

Schneider Electric, along with Summit Electric Supply sincerely looks forward to continue providing the best automation and control products and also the best local technical support. Should you have any questions at all regarding our range of PLC and Automation products, please contact Jeff Norris or Brian Curtis at Summit Electric Supply or me at any time.

Sincerely,

Miguel A. Martinez  
Automation Services Sr. Account Manager

3500 Pelco Way  
Clovis, California 93612-5699 United States  
Tel. +1 559-259-2517  
miguel.a.martinez@schneider-electric.com

A handwritten signature in black ink, appearing to read "Miguel A. Martinez", written over a horizontal line.

**EXHIBIT B**  
**Professional Services Agreement**

**SCOPE OF WORK**

Advanced Priority Support Program to cover service and support for Schneider Electric Modicon PLC software. Summit Electric Supply Co. Inc, is the sole source provider of this service.

# Priority Support Programs Overview

The Automation Technical Support Center offers multilevel support services to our customers. This formalized structure of support is designed to help you optimize your investment in automation technology by providing the right level of technical expertise for your mission-critical applications. Hardware, software, and support agreements are available to purchase based on the type of programming you have in your facility.

Service	Basic	Advanced	Premier
8 am – 5 pm Mon – Fri Local Time* FIFO Call Back Support (max 48 Hour Response Time**)	✓		
8 am – 5 pm Mon – Fri Local Time* Priority Support (1 Hour Response Time**)		✓	
24/7/365 Phone Support* (30-minute Response Time**)			✓
Direct Access Support – L1 support	✓	✓	✓
Direct Access Support – L2 support		✓	✓
Basic Web/Email/Chat Support	✓	✓	✓
Enhanced Web/Email/Chat Support		✓	✓
Software Version Updates (if available)		✓	✓
Holiday Assistance			✓
Discounts on Platform Upgrades (i.e., Unity Small to XL)		✓	✓

## Feature Details

- + **L1 Support** is our level 1 service, which provides basic troubleshooting to include product specifications, firmware upgrade assistance, and answers to questions that can be resolved in 15 minutes or less.
- + **Basic Web/Email/Chat Support** is provided by our public website and assistance will continue with L1 support. Basic includes chat, remote access tool/desktop troubleshooting, and online support requests.
- + **L2 Support** is our level 2 service that includes programming assistance, legacy product assistance, in-depth troubleshooting, bug resolution, solutions for product related issues, escalations to Expert Support, and application evaluation.
- + **Enhanced Web/Email/Chat Support** is in addition to Basic Support. Customers have access to a support portal that offers these enhancements: software downloads/updates and a self-service support portal.

\*Technical support is provided in English only.

\*\*Response times are business hours after initial call. Excludes holidays and weekends.

# What Technical Support Should Be

At Schneider Electric, we believe technical support should go beyond basic troubleshooting. We know that continued optimization and maintenance extends the life of your system and ensures it's working efficiently and effectively. Our number one priority is to help you protect your investment and get the most out of it.

## The Power of Choice

Choose from a variety of service levels based on your needs and budget, and add on optional services, such as on-site maintenance or 24/7 support when you need them. No matter what level you choose, our support services are always best in class.

### Basic

We stand behind our products. If you have the time and knowledge to do it yourself, then we're happy to assist you with basic troubleshooting and answers to frequently asked questions at no extra cost.

### Advanced

Sign up for Advanced support and benefit from the expertise of our specialized engineers. They can remotely connect to your system and resolve issues while you observe or work on other tasks. Plus, you'll also be able to benefit from L1 and L2 direct access support from 8 am – 5 pm, Monday – Friday, with a 1-hour response time, while continuing to receive software version updates and discounts on platform upgrades.

### Premier

If your facility needs access to around-the-clock support for your automation systems, you can choose Premier support and partner with specialized engineers to help drive improved system performance, increase utilization, and reduce total cost of ownership. This level is an extension to Advanced Support and also includes 24/7/365 Technical Support and Holiday Assistance with 30-minute response times.

### Add-on Optional Services

- > Enterprise agreements are available for customers with multiple sites
- > On-site preventive maintenance
- > On-site technical support



#### Add Our Automation Experts to Your Team

The right people make all the difference. Let our highly skilled automation managers and professional engineers with backgrounds in energy management, computer science, and automation systems partner with your in-house staff to conduct maintenance, address alarms, and optimize your system for results you'll see from day one.



Our support programs have you covered.

# Dedicated to Improving Your Productivity

## Cases

A state-of-the-art contract management system allows technical support engineers and field service specialists to view your up-to-the-minute support case history. The system's call handling capabilities quickly route customer calls to product specialists, reducing wait time.

Our expert support staff utilizes a fully equipped lab to replicate and solve your complex problems.

## Virtual Engineer

With the Web-based GoToAssist<sup>®</sup> tool, a support engineer can view your desktop during a service call, allowing you to experience virtual on-site support. Typically, this tool can reduce the time of troubleshooting calls by more than half, solving the problem quickly so you can get back to work.

## Priority Support Response Times

Response times and resolution times have been improved to meet our customer needs. This means your issues are dealt with in a timely manner, minimizing any disruption to your business.

Support Level	Basic	Advanced	Premier
Response Times	Max. 48 hours	1 hour	30 minutes*

## Call us, we're here to help

When the unexpected occurs, it's critical to have instant access to information and support. Having readily available assistance can save your organization time and money. Priority support programs provide quality phone support from experts specially trained on the Schneider Electric<sup>™</sup> automation products you use to run your business. Advanced and Premier support programs also provide access to an exclusive, members-only website that you can customize to put the right information at your fingertips when you need it.



\*Premier customers receive additional priority in scheduling.



# Online Support and Customer Communication



## New! Live Chat

Customers can access the new Live Chat feature through the website ([eclipse.modicon.com](http://eclipse.modicon.com)). Advanced and Premier accounts are required to log in to gain level 2 support access.

Live Chat enables our customers to connect and chat online with Automation Support Engineers for quick answers to technical questions, troubleshooting, and issue resolution.

## Support Portal

This online case management tool allows customers to submit, track, and access companywide case histories in one place.

## eService Offerings

- > Email Support
- > Live Chat
- > Online Help
- > Support Portal
- > Online Library
- > Product Updates and Announcements

## Customer Satisfaction

Customer service is our Advanced Technical Support Center's primary function. In order to provide you with the best services, the Advanced Technical Support Center performs regular surveys to gain valuable customer feedback on our support services.

### [www.schneider-electric.com/us](http://www.schneider-electric.com/us)

Good support keeps systems working. Great support makes your business better and your life easier. The continuing support program from Schneider Electric does just that. We've taken the guesswork out of who to contact, tracking renewal dates, and managing product part numbers, while reducing your overall cost.

### What our customers are saying:

"The tech that I was talking to was very knowledgeable, and he knew exactly what I was looking for, really before I even described my problem."

- Town of Gilbert

"Every time I call, the person that I am dealing with is very experienced, and they typically answer my question in that one response. I don't have to call back, I don't have to continue on with it."

- City of Phoenix



### Contact Us!

Contact your local Schneider Electric distributor or sales office to place an order.

For more information, ordering assistance, or to renew your existing priority support contract, please call 888-266-8705, option 3.

**EXHIBIT C**  
**Professional Services Agreement**

**SCHEDULE**

Priority Support Program for automation technology in the Water Services Department on an as needed basis. This service will be provided based on the Advanced Technical support tier.

**EXHIBIT D**  
**Professional Services Agreement**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

Method of payment and amount of compensation will be provided based on three-year term quote 2001604975 for the Advanced Priority Support Program.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$75,000.

**DETAILED PROJECT COMPENSATION**

See attached Exhibit D.

# Quotation/Purchase Agreement



www.summit.com

<b>CUSTOMER</b> City of Glendale ATTN: Accounts Payable 7070 W Northern Ave GLENDALE AZ 85303  Thank you for the opportunity to earn your business! Please find the requested quotation and upon your signed approval or purchase order, we will process your order.	<b>REFERENCE</b> SOFTWARE SUPPORT RENEWAL	<b>ACCOUNT NUMBER</b> 1002925	<b>QUOTATION NUMBER</b> 2001604975
	<b>REQUESTED BY</b> ANTHONY WEATHERSBY	<b>VALID FROM</b> 10/05/2016	<b>VALID UNTIL</b> 11/04/2016
	<b>SHIP TO</b> City of Glendale ATTN: Accounts Payable 7070 W Northern Ave GLENDALE AZ 85303  Printed: 10/5/2016 1:24:33 PM	<b>SUMMIT SERVICE CENTER</b> Phoenix Service Center 205 South 29th Street PHOENIX AZ 85034 Telephone: 602-267-1000 Fax: 602-275-4273 Contact: Jack Escobar Jack.Escobar@summit.com	

LINE	QUANTITY	MANUFACTURER, PART NUMBER AND DESCRIPTION	UNIT PRICE	UOM	EXTENSION	TAX
10	1	<b>SQD 771ADVUNYXLF ADVANCE SUPPORT UNITY</b> Contract # A2AU012452 Expires on 09 Dec 2016 *****	9,336.60	E	9,336.60	Y
20	1	<b>771LEGACYS</b> SQD 771LEGACYS LEGACY SINGLE BRONZE SUPPORT Contract # A2AU012452 Expires on 09 Dec 2016 *****	2,280.00	E	2,280.00	Y
30	1	<b>771TRANF</b> SQD 771TRANF ADVANCED SUPPORT TRANSITION FACILITY Contract # A2AU012452 Expires on 09 Dec 2016 *****	9,975.00	E	9,975.00	Y
40	1	<b>PRICE FOR 2016 SOFTWARE SUPPORT</b> <b>SQD 771ADVUNYXLF ADVANCE SUPPORT UNITY</b> Contract # A2AU012452 Expires on 09 Dec 2017 *****	9,803.43	E	9,803.43	Y
50	1	<b>771LEGACYS</b> SQD 771LEGACYS LEGACY SINGLE BRONZE SUPPORT Contract # A2AU012452 Expires on 09 Dec 2017 *****	2,394.00	E	2,394.00	Y
60	1	<b>771TRANF</b> SQD 771TRANF ADVANCED SUPPORT TRANSITION FACILITY Contract # A2AU012452 Expires on 09 Dec 2017 *****	10,473.75	E	10,473.75	Y
70	1	<b>PRICE FOR 2017 SOFTWARE SUPPORT</b> <b>SQD 771ADVUNYXLF ADVANCE SUPPORT UNITY</b> Contract # A2AU012452 Expires on 09 Dec 2018 *****	10,293.60	E	10,293.60	Y
80	1	<b>771LEGACYS</b> SQD 771LEGACYS LEGACY SINGLE BRONZE SUPPORT Contract # A2AU012452 Expires on 09 Dec 2018 *****	2,513.70	E	2,513.70	Y

\*\*\* CONTINUED \*\*\*

# Quotation/Purchase Agreement



www.summit.com

<b>CUSTOMER</b> City of Glendale	<b>CUSTOMER ACCOUNT</b> 1002925	<b>QUOTATION NUMBER</b> 2001604975
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LINE	QUANTITY	MANUFACTURER, PART NUMBER AND DESCRIPTION	UNIT PRICE	UOM	EXTENSION	TAX
90	1	<b>771TRANF</b> SQD 771TRANF ADVANCED SUPPORT TRANSITION FACILITY Contract # A2AU012452 Expires on 09 Dec 2018 ***** <b>PRICE FOR 2018 SOFTWARE SUPPORT</b>	10,997.44	E	10,997.44	Y

**Customer Acceptance/Order Commitment**

City of Glendale accepts your proposal to supply the above material at price(s) shown.  
 Please deliver \_\_\_ brochures to be submitted for approval.  
 Please use our Purchase Order number \_\_\_\_\_ for processing this order

AUTHORIZED BY: \_\_\_\_\_  
 PLEASE PRINT YOUR NAME

Returned goods are subject to restocking charges and approval is required for credit on all returns. Return of non-stock material may also be subject to cancellation and/or return freight charges or could be non-returnable. Non-stock material will not be taken back until all charges and contingencies are explained and accepted.

<b>SUBTOTAL</b>	<b>68,067.52</b>
<b>TAX</b>	<b>5,848.54</b>
<b>TOTAL</b>	<b>73,916.06</b>
Total May Not Include Additional Shipping and Handling Charges Quotation is subject to credit approval and our standard terms and conditions of sale. All quotes provided in US dollars. Prices are valid until the date noted except for conduit, wire, and cable products which are valid for the day of quote only unless noted otherwise.	
<b>PAGE 2 OF 2</b>	



## Legislation Description

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**File #: 16-624, Version: 1**

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**AUTHORIZATION TO ENTER INTO A SERVICES AGREEMENT WITH ALTEC INDUSTRIES, INC., A SOLE SOURCE PROVIDER, FOR REPAIR OF HEAVY DUTY VEHICLES**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Services Agreement with Altec Industries, Inc., for repair of heavy duty vehicles, in a total amount not to exceed \$375,000 for the entire term of the five-year Agreement.

**Background**

Public Works maintains a diverse fleet of vehicles and associated equipment used to support key city operations. The purchase of parts, service, and accessories for the repair of heavy duty vehicles and equipment from outside vendors is required to keep vehicles and machinery functioning properly. The cost for this service is charged back to the responsible departments.

**Analysis**

The Materials Manager may procure and contract for supplies and services without competition when there has been a written determination that competition is not available and there is only one known source for the supply or service.

Altec Industries is a manufacturer of aerial (bucket) lifts for a variety of heavy duty vehicles in the city's fleet. Altec Industries is the sole authorized repair center in Arizona for aerial (bucket) lifts for heavy duty vehicles in the city's fleet, including vehicles for Right of Way, Traffic, and Facilities Management. Materials Management has reviewed and approved the sole source procurement request from Altec Industries, Inc., as a five-year Agreement.

This Agreement will allow Fleet Management to maintain heavy duty vehicles on an as-needed basis.

**Community Benefit/Public Involvement**

The use of outside vendors for repair of heavy duty vehicles and equipment supplements internal service capacity and allows for the most expeditious return of vehicles and equipment to city operations for smooth and uninterrupted delivery of service to the public.

**Budget and Financial Impacts**

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**File #: 16-624, Version: 1**

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Funding is available in the Fiscal Year 2016-17 Fleet Management operating budget. Expenditures with Altec Industries are not to exceed \$375,000 for the entire term of the five-year Agreement, contingent upon Council Budget approval.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$375,000</b>	<b>2590-18300-516200, Fleet Management</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**SERVICES AGREEMENT  
(Not Construction Related)  
ALTEC INDUSTRIES, INC.**

This Services Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City") and Altec Industries, Inc., an Alabama corporation, authorized to do business in Arizona ("Consultant") as of the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date").

**RECITALS**

- A. City intends to undertake a project for the benefit of the public and with public funds (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with services ("Services") consistent with industry-best practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

**AGREEMENT**

The parties hereby agree as follows:

**1. Key Personnel; Other Consultants and Subcontractors.**

- 1.1 Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.

- 2. **Schedule**. The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project. Nevertheless, this Agreement terminates five years from the effective date.

**3. Consultant's Work.**

- 3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.
- 3.2 Licensing. Consultant warrants that:
  - a. Consultant currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
  - b. Neither Consultant nor any Subconsultant has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
    - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
    - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.



3.3 Compliance.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

**4. Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$375,000 for the entire term of the five-year Agreement as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
  - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts and any unused allowance at the completion of the Project will remain with City.
- b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
- c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

**5. Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Subconsultants; and
  - (2) Unconditional waivers and releases on final payment from all Subconsultants as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

**6. Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than

the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provisions of Sec. 5.

- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.3 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

- 8.4 Waiver of Subrogation. **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).
- 8.5 Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.
- Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.
- 8.6 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 8.7 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrants its compliance and that of its Subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or Subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and Subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The Consultant and Subconsultant shall cooperate with the City's random inspections, including granting the City entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

12. **Notices.**

- 12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
  - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).

- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Altec Industries, Inc.  
 c/o Douglas McDonald  
 2505 W. Durango St.  
 Phoenix, AZ 85009

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
 c/o Montana Slack  
 6210 W. Myrtle Avenue, #111  
 Glendale, Arizona 85301

With required copy to:

City Manager  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

City Attorney  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

- c. Concurrent Notices.
  - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
  - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
  - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

**13. Entire Agreement; Survival; Counterparts; Signatures.**

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts, if any,, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. **Term.** The term of this Agreement commences upon the effective date and continues for a five-year period. There are no automatic renewals.

15. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation

[SIGNATURES ON FOLLOWING PAGE.]

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

---

By: Kevin R. Phelps  
Its: City Manager

ATTEST:

---


Julie K. Bower  
City Clerk (SEAL)

APPROVED AS TO FORM:

---

Michael D. Bailey  
City Attorney

Altec Industries, Inc.,  
an Alabama corporation



---

By: Douglas McDonald  
Its: Service Center Manager

**EXHIBIT A**  
**Services Agreement**

PROJECT

Altec Industries, Inc., is the sole authorized repair center for Altec aerial (bucket) lifts for heavy duty vehicles. See attached letter from Altec Industries, Inc.





Altec Industries, Inc.  
2505 W. Durango St  
Phoenix, AZ 85009

September 8, 2016

Dear City of Glendale,

The Arizona Service Center located at 2505 W. Durango St. Phoenix, AZ 85009 is the only approved Altec Factory authorized service center in Arizona.

If you have any questions please feel free to contact me

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug McDonald', written over a horizontal line.

*Doug McDonald*  
*Service Center Manager*  
*Altec Industries, Inc*  
*2505 W Durango St.*  
*Phoenix, Az 85009*  
*tel: (602) 252-8841*  
*cell: (480)980-4702*  
*fax: (602) 252-8843*  
*[doug.mcdonald@altec.com](mailto:doug.mcdonald@altec.com)*



**EXHIBIT B**  
**Services Agreement**

SCOPE OF WORK

Altec Industries, Inc., will provide repairs to Altec aerial (bucket) lifts for heavy duty vehicles in the City's fleet, including vehicles for Right of Way, Traffic and Facilities Management, on an as-needed basis.

**EXHIBIT C**  
**Services Agreement**

SCHEDULE

Not applicable. Services are to be provided on an as-needed basis.

**EXHIBIT D**  
**Services Agreement**

COMPENSATION

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$375,000 for the entire term of the five-year agreement.

**DETAILED PROJECT COMPENSATION**

Altec Industries, Inc., will provide repairs to Altec aerial (bucket) lifts for heavy duty vehicles in the City's fleet, including vehicles for Right of Way, Traffic and Facilities Management, on an as-needed basis.



## Legislation Description

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**File #:** 16-625, **Version:** 1

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**AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH COCHISE PETROLEUM EQUIPMENT COMPANY, INC., FOR MAINTENANCE AND REPAIR SERVICES TO BULK FUELING AND LUBRICATION SYSTEMS**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Linking Agreement with Cochise Petroleum Equipment, Inc., for maintenance and repair services to bulk fueling and lubrication systems in a not to exceed amount of \$255,000 for the entire term of the Agreement (initial term plus any renewals), and to authorize the City Manager to renew the Agreement, at the City Manager's discretion, for an additional one-year renewal. The initial term of the Agreement is effective through July 31, 2017.

**Background**

The City of Glendale owns six 12,000 gallon underground storage fuel tanks and one 4,000 gallon underground storage fuel tank for unleaded and diesel fuel, located at the Field Operations Complex, Fire Stations #153 and #155, and at the Glendale Municipal Landfill. In Fiscal Year 2015-16, the Fleet Management Division procured approximately 1.1 million gallons of fuel, which was dispensed through these underground storage fuel tanks.

Cochise Petroleum was awarded a bid by City of Scottsdale for bulk fuel - lubrication system testing - maintenance and repair services. Staff is requesting to utilize the cooperative purchase with Strategic Alliance for Volume Expenditures (SAVE). SAVE is a consortium of local municipalities, in which Glendale is a member. Contract No. 13RP030 was awarded on August 1, 2013, is effective through July 31, 2017, and includes an option to renew the term for an additional one-year renewal, allowing the contract to be extended through July 31, 2018.

Cooperative purchasing allows counties, municipalities, schools colleges and universities in Arizona to use a contract that was competitively procured by another governmental entity or purchasing cooperative. Such purchasing helps reduce the cost of procurement, allows access to a multitude of competitively bid contracts, and provides the opportunity to take advantage of volume pricing. The Glendale City Code authorizes cooperative purchases when the solicitation process utilized complies with the intent of Glendale's procurement processes. This cooperative purchase is compliant with Chapter 2, Article V, Division 2, Section 2-149 of the Glendale City Code, per review by Materials Management.

**Analysis**

Cochise Petroleum provides service and repair in all phases of the fuel industry, including tank removals, tank replacement, service, testing and tank installation in accordance with local and national codes and

Environmental Protection Agency (EPA) directives. The city's aging fuel infrastructure is requiring increased maintenance and repairs. Cochise Petroleum possesses the technical expertise and ability to provide quick response when called.

**Community Benefit/Public Involvement**

The expeditious repair that Cochise Petroleum can provide for Glendale's fuel dispensers is critical for the uninterrupted delivery of city services to the community, such as police and fire emergency response, water and wastewater operations, transportation services, and solid waste collection.

Cooperative purchasing typically produces the lowest possible volume prices and allows for the most effective use of available funding. The bids are publicly advertised and all Arizona firms have an opportunity to participate.

**Budget and Financial Impacts**

Funding is available in the Fiscal Year 2016-17 Fuel Services and the Landfill Operating Fund budgets. Expenditures with Cochise Petroleum are not to exceed \$255,000 over the entire term of the Agreement; contingent upon Council Budget approval.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$245,000</b>	<b>2590-18301-518200, Fuel Services</b>
<b>\$10,000</b>	<b>2440-17710-518200, Landfill Enterprise Fund</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
COCHISE PETROLEUM EQUIPMENT COMPANY, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Glendale, an Arizona municipal corporation (the "City"), and Cochise Petroleum Equipment Company, Inc., an Arizona corporation ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On August 1, 2013, under the S.A.V.E. Cooperative Purchasing Agreement, the City of Scottsdale entered into a contract with Contractor to purchase the goods and services described in the Bulk Fuel - Lubrication System Testing - Maintenance and Repair Services Contract, Contract No. 13RP030 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was August 1, 2013, until the date the contract expires on July 31, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond July 31, 2018. The initial period of this Agreement, therefore, is the

period from the Effective Date of this Agreement until July 31, 2017. The City Manager or designee, however, may renew the term of this Agreement for one (1) one-year renewal period until the Cooperative Purchasing Agreement expires on July 31, 2018. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed two hundred and fifty-five thousand dollars (\$255,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.



- 9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
- 10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale  
 c/o Montana Slack  
 6210 W. Myrtle Avenue, #111  
 Glendale, Arizona 85301  
 623-930-2621

and

Cochise Petroleum Equipment Company, Inc.  
 c/o Tyler Herzog  
 333 N. Black Canyon Highway  
 Phoenix, AZ 85009

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.


"City"

"Contractor"

City of Glendale, an Arizona  
 municipal corporation

Cochise Petroleum Equipment Company,  
 Inc., an Arizona corporation

By: \_\_\_\_\_  
 Kevin R. Phelps  
 City Manager

By:   
 Name: Tyler Herzog  
 Title: Service Sales Manager

ATTEST:

\_\_\_\_\_  
 Julie K. Bower (SEAL)  
 City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
 Michael D. Bailey  
 City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
COCHISE PETROLEUM EQUIPMENT COMPANY, INC.**

**EXHIBIT A  
CITY OF SCOTTSDALE, CONTRACT NO. 13RP030**

**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR  
SERVICES**



Purchasing

9191 E. San Salvador Dr.  
Scottsdale, AZ 85258

August 1, 2016

**Cochise Petroleum Equipment Company**  
ATTN: Tyler Herzog, Service Sales Rep.  
333 N. Black Canyon Highway  
Phoenix, AZ 85009-4518

Transmitted via Email: [Tyler@cochise-az.com](mailto:Tyler@cochise-az.com)  
[Jaime@cochise-az.com](mailto:Jaime@cochise-az.com)

**Re: Contract: 13RP030 – Renewal No. 3  
Bulk Fuel / Lubrication System Testing, Maintenance & Repair Services**

Dear Mr. Herzog:

Pursuant to your acknowledgement notice signed July 21, 2016 submitted via email, the City of Scottsdale hereby extends Contract 13RP030 for **Bulk Fuel / Lubrication System Testing, Maintenance & Repair Services**, for a period of one (1) year. All terms and conditions shall remain the same.

**The new term of the extension shall be from August 1, 2016, through July 31, 2017. All provisions of the contract shall remain in effect during the new contract period.**

As requested by Cochise Petroleum Equipment Company, the City is in agreement to the 1% increase to bid Items 1.7, 1.9 and 1.13. The approved increase reflects the current CPI rate increase of 1%. The rate increases will be effective the same date as this renewal period.

**Please refer to Attachment No. 1, for the revised contract pricing.**

The contract terms and conditions require current certificates of insurance for Commercial General Liability, Vehicle Liability, and Workers Compensation / Employer's Liability be on file with the City of Scottsdale. Per contract terms and conditions the following **MINIMUM** amounts of coverage are required:

Commercial General Liability:	\$1,000,000 each occurrence \$2,000,000 Products-Completed Operations Aggregate \$2,000,000 General Aggregate Current certificate on file <b><u>VALID through 10/01/16</u></b>
Vehicle Liability Insurance:	\$1,000,000 each accident Current certificate on file <b><u>VALID through 10/01/16</u></b>
Workers Compensation and Employer's Liability Insurance:	\$100,000 each accident \$100,000 Disease each employee \$500,000 Disease policy limit Current certificate on file <b><u>VALID through 10/01/16</u></b>

When necessary, updated insurance certificates can be emailed, faxed or mailed to my attention using the contact information listed below.

Please ensure the certificate(s) supplied reference **Contract Number (13RP030)**, AND state the following: **"City of Scottsdale, its agents, representatives, officers, directors, officials and employees as an additional insured and certificate holder, include a waiver of subrogation against the City of Scottsdale"**.

Please email or mail to my attention, as soon as possible a current ACORD Certificate of Liability Insurance that covers all of the insurance requirements that are indicated above as being EXPIRED OR MISSING, or when the certificate needs to be renewed. Failure to supply and keep current the required insurance certificates may render this extension void.

If you have any questions regarding this renewal, please feel free to contact me. All other questions, issues or concerns shall be directed to Teri Raymond, Contract Administrator (480) 312-5567.

Sincerely,

A handwritten signature in black ink that reads "Margie Vasquez" followed by a short horizontal line.

**Margie Vasquez, Bid & Contract Specialist  
City of Scottsdale – Purchasing Division**

Phone: (480) 312-5715

Fax: (480) 312-9135

Email: [MVasquez@scottsdaleaz.gov](mailto:MVasquez@scottsdaleaz.gov)

cc: Teri Raymond, Contract Administrator  
Fleet Department

Contract No. 13RP030 – Renewal No. 3

**CONTRACT PRICING**

(\*Re-cap Pricing – 1% Increase)

Cochise Petroleum Equipment Company

Effective: 8/1/2016 to 7/31/2017

<b>TESTING</b>		
<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>RENEWAL #3 UNIT PRICE*</b>
1.1	Annual Tank Monitor Certification (Veeder-Root)	<u>\$ 105.00</u>
1.2	Annual Stage II Preliminary Test	<u>\$350.00</u>
1.3	Annual Tank Tightness/Leak Detector/Line Test	<u>\$310.00</u>
1.4	Annual Stage II Witness Test	<u>\$110.00</u>
1.5	Compliance Leak Check	<u>\$105.00</u>
1.6	Annual Bulk Oil Tank Inspection	<u>\$95.00</u>
1.7	AST Tank Test per API Stand 653	<u>\$328.25*</u>

<b>REPAIRS AND MAINTENANCE</b>		
<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>LABOR HOURLY RATE</b>
1.9	Bulk Fueling System Repairs	<u>\$58.00*</u>

<b>REPAIRS AND MAINTENANCE</b>		
<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE OR PERCENT MARKUP</b>
1.11	Parts Mark-Up For Bulk Fueling System Repairs	<u>15 %</u>
1.12	Sublet Repair Mark-Up For Bulk Fueling System Repairs	<u>15 %</u>
1.13	Labor Hour Rate For Bulk Lubrication System Repairs	<u>\$58.00*</u> Per Hour
1.14	Parts Mark-Up For Bulk Lubrication System Repairs	<u>15 %</u>
1.15	Sublet Repair Mark-Up For Bulk Lubrication System Repairs	<u>15 %</u>



**OFFER AND ACCEPTANCE**

City of Scottsdale  
Purchasing Division  
9191 E. San Salvador Dr.  
Scottsdale, AZ 85258  
Phone: 480-312-5700 - Fax: 480-312-5701

<b>SOLICITATION #</b>	<b>13RP030</b>	<b>SOLICITATION TITLE:</b>	<b>Bulk Fuel-Lubrication System Testing-Maintenance and Repair Services</b>
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**OFFER**

**TO THE CITY OF SCOTTSDALE:**

The undersigned hereby offers and agrees, in accordance with the undersigned's written offer submitted in response to this solicitation, to furnish the material and/or service(s) in compliance with all terms, conditions, specifications, scope of work, and addendums in the solicitation listed above, including written exceptions that are subject to the approval of the City prior to acceptance. The undersigned agrees that the entire solicitation listed above is hereby incorporated by reference as if fully set forth herein.

The Offeror's signature on this OFFER form certifies that he has read, understands and will comply with all terms, conditions and specifications stated in all documents constituting the solicitation. The bidder also certifies it is in compliance with the Non Collusion, Business Dealings with Sudan and Iran and all Federal and Arizona State Immigration Laws.

<b>OFFER MADE - COMPANY INFORMATION</b>		<b>FOR CLARIFICATION OF THIS OFFER, CONTACT:</b>	
Company Name <u>Cochise</u>		Printed Name <u>Tyler Herzog</u>	
Address <u>333 N. Black Canyon Hwy</u>		Title <u>Service Sales Manager</u>	
City <u>PHX</u> State <u>AZ</u> Zip <u>85009</u>		Phone <u>602-242-8427</u>	
Signature for Offeror <u>[Signature]</u>	Date <u>6/20/13</u>	Cell # <u>602-721-2521</u>	
		Fax <u>602-943-6855</u> E Mail <u>Tyler@Cochise-AZ.com</u>	
Printed Name and Title of Authorized Signatory <u>Tyler Herzog / EIN 86-0854778</u>		Address (if different from Company info)	
Federal Employer Tax ID # or SSN as per W9 Statement		City, State, Zip (if different from Company info)	

**ACCEPTANCE OF OFFER, NOTICE OF CONTRACT AWARD**

(for City of Scottsdale Use Only)

The contractor's offer is hereby accepted by the City of Scottsdale. The Contractor is now bound to sell the materials and/or service(s) and perform based upon the above solicitation, including all terms, conditions, specifications, scope of work, and addendums contained in the Solicitation, as well as any written exceptions that have been separately accepted by the City.

This contract shall henceforth be referred to as **Contract # 13RP030**

The contract consists of the following documents: 1) Solicitation # 13RP030 and all addendums (if applicable) as issued by the City; 2) The Contractor's Response to the City's solicitation; 3) This signed offer and acceptance and any other applicable contractual agreements, 4) All written exceptions and/or modifications to the solicitation requirements as agreed to by the City and the Contractor as per attachment \_\_\_\_\_, dated \_\_\_\_\_.

The Contractor is hereby cautioned not to commence any billable work or provide any material or service under this contract until the Contractor receives a purchase order document from the City.

The Contractor must provide the following checked items within ten (10) calendar days from the date of this Acceptance of Offer, Notice of Contract Award in order for the City to issue the required Purchase Order:  Payment Bond  Performance Bond,  Insurance Certificate(s),  I.R.S. Form W-9/Taxpayer ID No. & Certification,  other documentation as identified.

If the Contractor fails to furnish the required documents within the stated ten (10) calendar days they may be considered in default and may be at risk of forfeiture of any applicable Bid Bond posted. All required documents are to be sent to the Bid & Contract Specialist listed in the solicitation.

This document has been approved as to form on the 22<sup>nd</sup> day of July, 2012 by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

City of Scottsdale, a municipal corporation  
Offer Accepted and Awarded this 1st day  
of AUGUST, 2013

Risk Management issues reviewed and approved as to form MAY 23<sup>rd</sup>, 2013  
by City of Scottsdale Risk Management Director

Recommended award approved JULY 12<sup>th</sup>, 2013  
by City of Scottsdale Contract Administrator

Margie Vasquez  
J. E. Flanagan  
Or Designee MARGIE VASQUEZ  
As City of Scottsdale Purchasing Director

# **REQUEST FOR PROPOSAL**



## **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

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**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

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## INSTRUCTIONS TO BIDDERS



### BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

The City of Scottsdale invites sealed submittals for the provision of testing, maintenance and repair services of the City's bulk fuel and bulk lubrication systems.

## SOLICITATION CRITICAL DATES

**BID/PROPOSAL SUBMITTAL DUE:** 2:00 P.M., LOCAL TIME, JUNE 27, 2013

**QUESTIONS DUE:** 10:00 A.M., LOCAL TIME, JUNE 18, 2013

### 1. SUBMITTAL RECEIPT AND OPENING

**SEALED SOLICITATION SUBMITTALS WILL BE RECEIVED** until 2:00 P.M., LOCAL TIME, JUNE 27, 2013, at the Purchasing Department Front Desk located on the second floor of the Scottsdale Corporation Yard Building at 9191 E. San Salvador Dr., Scottsdale, AZ 85258. **All submittals must be date and time stamped at the Purchasing Department front desk on or before the submittal receipt time and date. LATE SUBMITTALS WILL NOT BE ACCEPTED.** To allow staff to complete required internal administrative functions, submittals will be opened, read and the name of each bidder recorded, as a matter of public information, within thirty (30) minutes after the receipt time and date have past.

No Submittal will be considered unless it is submitted on the forms contained herein. **All submittals must be presented in a sealed envelope or box.** The outside of the submittal must be clearly marked with the solicitation number, solicitation title and the submitting company's name. This includes envelopes delivered by Fed Ex, UPS, DHL or other carrier.

### 2. PRE-BID CONFERENCE

(Not Applicable)

### 3. INFORMATION REQUESTS

Requests for additional information relating to this bid should be directed to:

Jim Swaziek  
Bid & Contract Specialist  
480-312-5719  
[jswaziek@scottsdaleaz.gov](mailto:jswaziek@scottsdaleaz.gov)

lh  
5/7/2013 11:51 AM

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **4. SOLICITATION QUESTIONS**

The Bidder shall submit all questions, requests for clarification and inquiries in regards to this Solicitation to Jim Swaziek, no less than eight (8) days prior to the original Solicitation opening date. It is preferred that all questions be submitted via email to the appropriate purchasing staff, [jswaziek@scottsdaleaz.gov](mailto:jswaziek@scottsdaleaz.gov), where possible. When submitting any questions the Bidder should indicate the page number, Section Number/Clause Title and if possible paragraph number that is being questioned.

It is your responsibility to give notice, in the form of written questions before the bid opening on any item or issue in this solicitation that you believe should not be included or contained in any amendment to this solicitation or that the City failed to include in this solicitation that should have been included, and by your notice, the City could have cured the problem if the item or issue had been timely raised or objected to.

Failure to give notice may constitute a waiver of your right to object to the inclusion or lack of inclusion of the item or issue in this solicitation in any subsequent protest filed by you.

All questions, regardless of the method they are communicated (email, regular mail or hand delivered), must be clearly marked as "Solicitation Questions" and state the Solicitation number in the subject line of the email or on the outside of the envelope. If questions are not submitted via email, the submittal envelope **MUST** be clearly marked with Solicitation number and words "SOLICITATION QUESTIONS", or it may be mistaken as an actual bid submittal and not be opened immediately.

All Solicitation questions **MUST** be received by the Purchasing Division by **10:00 A.M., LOCAL TIME, JUNE 18, 2013**. Any inquiries received after the specified time will be reviewed on an individual basis by the Purchasing staff to determine if a response would be advantageous for the City.

#### **5. APPROVED ALTERNATES**

(Not Applicable)

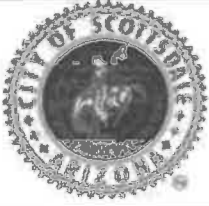
#### **6. ENVIRONMENTAL PROCUREMENT POLICY**

The City has established an Environmental Procurement Policy which encourages the inclusion of environmentally responsible products and services available to meet the intended purpose. We encourage the offer of alternatives that broaden the range of environmentally responsible products or services that will meet the performance requirements of this solicitation. IF YOU WISH TO SUBMIT AN ALTERNATIVE, follow the procedures specified in the Instructions to Bidders, Approved Alternate Section of this document., unless the approved alternate clause has been deemed not applicable.

#### **7. PURCHASING WEB SITE**

The Purchasing web site provides a wide variety of information including: capability to download solicitations and plan sheets (if applicable), invoicing guidelines, how to introduce your products, list of Buyers commodity lines, etc. The web site can be accessed at <http://www.scottsdaleaz.gov/Purchasing>. Registering and downloading a solicitation will also provide the supplier with notices of all addendums that are issued.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **8. DOWNLOADING SOLICITATIONS**

All solicitation documents; plan sheets/drawings if applicable and addenda are available for download in .pdf format. Bidders may print their own copies of these documents or provide the files to any reprographics/copy center in their area. Bidders will no longer be able to pick-up these documents at the Purchasing Department and plan shipments will no longer be available. There will be one set of plan sheets/drawings (if applicable) available for onsite review only at the Purchasing office located at 9191 E. San Salvador Dr., Scottsdale, AZ 85258.

It is imperative that you download the solicitation from the City website at [www.scottsdaleaz.gov](http://www.scottsdaleaz.gov) in order to be notified of associated addenda.

#### **9. EMAIL NOTIFICATION**

The City of Scottsdale does not maintain a bidder list, however, on the City's main web site page, select the Email Subscriptions link and subscribe to receive a notification of Solicitation Opportunities twice weekly. – [www.scottsdaleaz.gov](http://www.scottsdaleaz.gov)

#### **10. CITY OF SCOTTSDALE PROCUREMENT CODE**

All procurement activities, conducted by the City of Scottsdale, are in conformance with the rules and regulations of the Scottsdale Procurement Code. A copy of the Code is available for review in the Office of the City Clerk located at City Hall, 3939 Drinkwater Boulevard and the Purchasing Office located at 9191 E. San Salvador Drive, Scottsdale, Arizona. A copy of the Code is also available from the Purchasing website:

[http://www.scottsdaleaz.gov/Purchasing/Procurement\\_Code](http://www.scottsdaleaz.gov/Purchasing/Procurement_Code)

A hard copy of the Code is available for purchase, for a fee of \$10.00, at the Purchasing Office.

#### **11. PROSPECTIVE BIDDER'S CONFERENCE**

A prospective bidder's conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this Solicitation in order to prevent any misunderstanding of the City's position. This conference will also give Bidders an opportunity to submit any questions and discuss any questions previously submitted.

#### **12. BIDDER'S PRESENTATION**

Bidders may be invited to make a presentation. If invited, Bidders will be notified of the date and time of the presentation by the City of Scottsdale Purchasing Department.

#### **13. INELIGIBLE BIDDER**

The preparer of the bid specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or Offeror on the solicitation for which they prepared the specification.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **14. OBLIGATIONS**

The issuance of this Solicitation does not obligate the City to pay any costs incurred in the preparation and submission of proposals.

#### **15. NON COLLUSION AFFIDAVIT**

By signing the Offer Form/Signature Page of the solicitation, or other official contract form, the Bidder certifies that:

In connection with the performance of this solicitation or any resulting Contract, the Bidder is stating and certifying that the Contractor/Company has not either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive proposing in connection with the preparation or submission of its Submittal in response to this solicitation or any potential resulting Contract.

If any company is jointly owned or associated through common officers/employees with another company(s) that is/are responding to the same solicitation, both/all of those companies must take all precautions so as to make sure the preparation of their bid or proposal submittal is done completely independent of the other company(s) or individual(s). Specifically, any individual working on preparation, approving or signing one submittal can have no knowledge of or interaction with any other bid or proposal submission from a different company for that same solicitation.

If the subject matter of this solicitation is construction, the bidder shall submit a completed and Notarized Non Collusion Affidavit, stating and certifying that said Bidder/Company has not either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive proposing in connection with the preparation or submission of its Submittal in response to this solicitation or any potential resulting Contract. The Bidder is to return the completed and notarized Non Collusion Affidavit with their submittal.

#### **16. IMMIGRATION LAW COMPLIANCE**

By signing the Offer Form/Signature Page of this solicitation, the Bidder certifies and warrants that for all solicitations for services (including construction services) it has complied with the E-Verify Program as required by ARS §23-214(A) or will have complied with the requirements of the E-Verify Program before award. Failure to comply with the E-Verify Program may result in the automatic disqualification of the Submittal as being non-responsive or the termination of any contract awarded and the possible forfeiture of any applicable bond.

The City will include specific "Compliance with Federal and Arizona State Immigration Laws" language in any contract or subcontract it enters into with the successful Bidder. In addition, this language must be included in any subcontracts that the successful bidder enters into with its subcontractors.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **17. LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS**

Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS/INDIVIDUALS/SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations, Limited Partnerships or General Partnerships)*

By submitting your quote, bid or proposal to the City you are agreeing that if you are selected as the awardee and meet the criteria as a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation in proof of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion prior to issuing any contract.

If you have previously done business with the City and already have filed the above Affidavit with copies of an acceptable documentation please indicate when you submitted it. If your acceptable Affidavit is already on file with the City that will be sufficient to meet this requirement.

If you fail to complete and provide a completed Affidavit and accompanying acceptable copy of your documentation, or not advise us of your prior filing within 10 calendar days of being requested by then you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

#### **18. TAXES/LICENSES**

##### **Federal Excise Taxes:**

The City of Scottsdale is exempt from certain federal excise taxes. The most common areas where the City is exempt from Federal excise taxes are:

1. Fuel that is used by the City
2. Communication
3. Heavy trucks, trailers and tractors
4. Certain Superfund activity

If there is a specific circumstance that is in doubt you should contact the City to resolve that status of that Federal Excise tax and its applicability.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **18. TAXES/LICENSES – CONT'D**

##### **Transaction Privilege (Sales) Taxes on the City:**

The City of Scottsdale is not exempt from being charged the appropriate Arizona State, County, and City privilege (sales) taxes on the goods and services that we procure. For suppliers within the state of Arizona the City expects to be charged the appropriate privilege taxes on the invoice. For out of state suppliers that do not have the ability to collect Arizona State privilege taxes the City will self-accrue such Arizona State and City use taxes for collection and payment to the State of Arizona and City of Scottsdale.

**Transaction Privilege (Sales) Taxes on the Supplier / Contractor:** Certain Business Services and Activities may have a City of Scottsdale Privilege (sales) tax liability. To determine the City of Scottsdale tax treatment please visit the following website and view the City of Scottsdale Tax Code and other Privilege and Use tax resources.

Questions pertaining to the applicability of taxes shall be directed to the City of Scottsdale Tax & License Section at 480-312-2400. The Contractor shall be responsible for payment of all applicable taxes due on contract income whether or not such taxes are specifically separated in the bid amount.

<http://www.scottsdaleaz.gov/taxes/>

Certain Business Services and Activities may have a State Privilege (sales) tax liability. To determine the State tax treatment, please visit the following website or contact the Arizona Department of Revenue at 602-716-6578 or 602-716-6657.

<http://azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<http://www.azdor.gov/Business.aspx>

The City of Scottsdale requires a license for service-oriented businesses located in Scottsdale that do not have a City of Scottsdale transaction privilege (sales) tax liability. This includes all activities or acts including, but not limited to service, professionals, trades and occupations, personal or corporate. To engage or continue in business the owner must obtain a Business, Occupational and Professional license. Service oriented businesses located outside the City limits are NOT required to obtain a Business, Occupational and Professional License from the City of Scottsdale.

Please visit the following website for the City of Scottsdale Transaction Privilege & Use Tax License and the Business, Occupational and Professional License applications:

<http://www.scottsdaleaz.gov/licenses/boplicense>

Bidder is solely responsible for any and all tax obligations which may result out of the bidder's performance of this contract. The City has no obligation to pay any amounts for taxes, of any type incurred by the bidder.



## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **18. TAXES/LICENSES – CONT'D**

##### **Construction Related Transaction Privilege (Sales) Taxes Responsibility of the Contractor:**

The Contractor shall be responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether or not such taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. We advise you to consider this as you prepare your bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website:

<http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions; please reference ARS Title 42 at the following website:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

To determine tax treatment of design/build contracts, please contact the Arizona Department of Revenue at 602-255-2060 and the City of Scottsdale Tax Audit Section at 480-312-2629.

Bids will be evaluated and recommended for award based on the total bid cost including tax.

#### **19. CONTRACTOR'S LICENSING REQUIREMENTS**

The Contractor shall state his Arizona State Contractor's License Number and Classification on the Bid Form as evidence that he is licensed to contract the work indicated in the specifications at the time of bid submittal.

In accordance with Article 3, Regulation 32-1151 of the Arizona Registrar of Contractors Statutes and Rules, it is unlawful for any person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business of, submit a bid or respond to a request for qualification/quotation or a request for proposals for construction services as, act or offer to act in the capacity of or purport to have the capacity of a contractor without having a contractor's license in good standing in the name of the person, firm, partnership, corporation, association or other organization at the time of bid submittal, if such licensing is a requirement of the Arizona Registrar of Contractors.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **20. LITIGATION**

The Bidder will disclose any issue or potential issue that may have a material bearing on the financial condition, solvency or credit worthiness of the organization. Disclosure includes any material contingent liabilities or uninsured potential losses, involuntary contract terminations in other jurisdictions and any voluntary or involuntary bankruptcy filings over the past 7 years. The Bidder will also disclose any litigation in which the Bidder has been involved in, either as a plaintiff or defendant, within the past 3 years, and the Bidder shall agree to notify the City within 24 hours of any litigation or significant potential for litigation of which the Bidder becomes aware. Further, the Bidder will be required to warrant that it will disclose in writing to the City all litigation involving the Bidder, the Bidder's related organization, owners and key personnel.

#### **21. SUBCONTRACTOR'S LIST**

If, at the time of bidding, any bidder intends to subcontract any portion of this contract, the bidder must complete the information required on the Subcontractor's List preceding the Bid Form and include this list with bid submittal documents.

#### **22. SUBCONTRACTORS**

During the performance of the Contract, the Contractor may engage any additional Subcontractors as may be required for the timely completion of this Contract, unless specifically prohibited by the specification. The addition of any Subcontractors must first receive the approval of the City. The awarded Contractor may relieve Subcontractors of City Tax liability by providing them with a completed Subcontractor Written Declaration form.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Contractor. The Contractor assumes responsibility for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

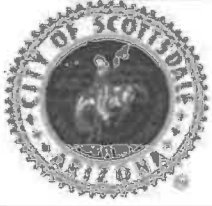
#### **23. CONFIDENTIAL INFORMATION**

Requests for nondisclosure of confidential information such as trade secrets and other proprietary data must be made known to the City within the bid submittal.

Bidders are instructed to clearly identify any proprietary information that may be submitted, and, if feasible, package such information in a separate, sealed envelope labeled "Confidential" or "Proprietary".

The City is subject to Arizona statutes and City Charter provisions that permit the inspection of public records. The City cannot insure confidentiality of any portion of a submittal document in the event a public inspection request is made.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **23. CONFIDENTIAL INFORMATION – CONT'D**

However, in accordance with Section R2-188.23 pertaining to Request for Proposals and Section R2-188.6 pertaining to Invitation for Bids, of the City's Procurement Code, the City shall examine the portions of your proposal noted as "Confidential" and/or "Proprietary". If a determination to disclose the information is made, you shall be so informed.

This is the only notification concerning confidential information that will be given to potential bidders, and this provision should be taken into consideration prior to submitting a bid.

After contract award, and unless otherwise instructed by the bidder, the City shall destroy all information identified as confidential or proprietary in accordance with public records retention requirements.

#### **24. SMALL BUSINESS**

Small, minority owned businesses (MBE/WBE/DBE) are encouraged to respond to City of Scottsdale solicitations.

#### **25. INTERPRETATIONS, ADDENDA**

THE CITY OF SCOTTSDALE WILL NOT BE RESPONSIBLE FOR BIDDERS ADJUSTING THEIR SUBMITTAL BASED ON ORAL INSTRUCTIONS BY ANY MEMBER OF THE CITY STAFF OR BY THE CITY'S CONTRACTED CONSULTANT OR AGENT. SUBMITTALS DEVIATING FROM THE SPECIFICATIONS CONTAINED HEREIN BY ANY MEANS OTHER THAN AN AUTHORIZED ADDENDUM BY THE PURCHASING DIVISION WILL BE SUBJECT TO REJECTION.

Should a Bidder find an ambiguity, inconsistency or error in the Plans if applicable or Specifications, or should he be in doubt as to their meaning, he shall at once notify the contact person listed on page one of this solicitation, who will prepare a written addendum. The City will not be responsible for oral instructions or information.

All questions shall be submitted as per the Solicitations Questions Clause.

Any Addenda issued by the City during the time of bidding are to be included in the Submittal, and will become a part of the Contract. Bidders must acknowledge receipt of all Addenda on the Bid Form in the space provided or by signing the Offer and Acceptance Form. Failure to indicate receipt of addenda may result in a bid submittal being rejected as non-responsive.

A Notice of Addenda will be emailed to those who have provided their email address; or provided by other appropriate means to each bidder, person or firm recorded on the Plan Holder's list. A viewing copy of the Addenda will also be available wherever the Solicitation Documents are kept.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **26. SUBMITTAL PROCEDURE**

No submittal will be considered unless it is submitted on the bid forms contained herein (or as otherwise requested). Faxed or emailed submittals will not be considered. Erasures, interlineations or other modifications in the submittal shall be initiated by the authorized person signing the Offer & Acceptance/Proposal Signature Page document.

The Bid Form/Pricing Proposal page (if applicable) containing the pricing must be completed, including the acknowledgement of any and all addendum that was issued. The name of the Contractor/Company must be listed on the page.

To be considered responsive, the Offer and Acceptance Form/Proposal Signature page must be signed and dated by an authorized person(s) eligible to sign contract documents for the contractor and is part of the original bid/proposal submittal due at the stated date and time indicated in the solicitation. Consortiums, joint ventures, or teams entering submittals will not be considered responsive unless it is established that all contractual responsibility rests solely with one bidder or one legal entity. The Submittal must indicate the responsible entity.

Submitters should be aware that joint responsibility and liability will attach to any resulting contract and failure of one party in a joint venture to perform will not relieve the other party or parties of total responsibility for performance.

If you wish to mail your submittal please note that it is the submitter's responsibility to ensure the submittal is received at the Front Desk of the Purchasing Office with enough time to have it time and date stamped on or before the solicitation receipt date and time. Faxed or emailed submittals will not be accepted. **LATE SUBMITTALS WILL NOT BE CONSIDERED.**

Submittals received after the time and date specified will be returned to the bidder unopened. A submittal may be withdrawn prior to the time set for opening submittals.

No submittal may be withdrawn for a period of one hundred and twenty (120) days after the date set for receipt of submittals.

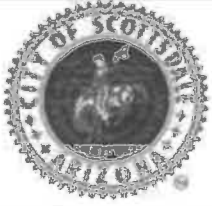
At any time prior to the specified solicitation due time and date a Bidder may withdraw the bid. Faxed withdrawals will not be considered.

Submittals received by the City with the signed Offer on the Offer and Acceptance form/Proposal Signature document constitutes a legally binding offer by the contractor.

#### **27. AWARD DETERMINATION**

Responsive proposals will be evaluated based on the evaluation criteria established within the solicitation document. Various elements of the proposal submittal will be reviewed and evaluated against the solicitation requirements. There may or may not be a requested presentation from the top proposals to further understand their proposal and how it responds to the solicitation requirements. Proposers should not assume there will be an opportunity for presentations and should therefore make their proposal submittals comprehensive in response to the solicitation requirements.

**INSTRUCTIONS TO BIDDERS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**27. AWARD DETERMINATION – CONT'D**

Upon conclusion of all of the evaluations, a recommendation is made to award to the proposer that best meets the City's needs and provides the best value to the City.

Notwithstanding any other provision of the Request for Proposal, the City expressly reserves the right to:

- (1). Waive any immaterial defect or informality; or
- (2). Reject any or all Proposals, or portions thereof; or
- (3). Reissue a Request for Proposal.
- (4). To award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

**28. REJECTION OF BIDS**

The Purchasing Director or City Council reserves the right, as the interest of the City requires, to reject any or all submittals, to waive any informality in submittals received, to award a contract by accepting or rejecting any alternate submittal(s) (additive or subtractive) and reserves the right to reject the submittal(s) of any bidder who has previously failed to perform competently in any contract with the City.

**29. PROTESTS**

Pursuant to the City of Scottsdale Procurement Code Section 2-213 an aggrieved person may protest any aspect of a solicitation prior to award of a contract. As used herein, the phrase "any aspect of a solicitation" shall be limited in its interpretation to mean an alleged violation of the City's Procurement Code as it relates to the bid solicitation, its evaluation, or its award.

A protest must be filed within ten (10) calendar days after the protestor, exercising reasonable diligence, knew or should have known of facts and circumstances upon which the protest is based. Failure to protest any issue, fact or circumstance the protestor knew or should have known upon the exercise of reasonable diligence within said ten (10) calendar day period shall forever preclude a hearing based upon that issue, fact or circumstance.

Notice of Awards will be given either through the City Council Meeting Agendas for those contracts being awarded by City Council ( i.e. ,for construction and professional services) or through a Notice of Intent to Award posting, seven (7) calendar days prior to award, on the Purchasing section of the City's Internet Web Site for all administratively awarded contracts. Award of contracts shall be final and no protest pursuant to this section may be filed after award.

A protest must be in writing and shall:  
State the name and address of the aggrieved person.  
Identify the contracting activity and the number of the solicitation.

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **29. PROTESTS – CONT'D**

Contain a statement of all the grounds for the protest that the protestor then knows or should know based upon the exercise of reasonable diligence. Include supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

Material submitted by a protester shall not be withheld from an interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to code provisions for confidential material.

If the protester believes the protest contains material that should be withheld, a statement advising the Director of this fact shall accompany the protest submission.

The written protest must be filed with the Purchasing Director at the following address:

City of Scottsdale  
Purchasing Services Department  
9191 E San Salvador Dr.  
Scottsdale, AZ 85258  
Attn: James Flanagan, Purchasing Director

The Director may dismiss a protest, upon a written determination, before scheduling a hearing if:

The protest does not state a valid basis for protest; or

The protest is untimely pursuant to Procurement Code Section 2-213.

If the director determines a hearing is appropriate under the circumstances, the director shall notify the protestor of the time and place set for a hearing on the protest. The director may also give notice of the hearing to any other persons involved in the solicitation whose interests may be affected by the ruling requested from the director. Any person whose interest is affected shall be permitted to intervene and participate in such hearing.

Nothing contained herein shall require that the protest hearing be held prior to the award, if evidence from the solicitation, its evaluation or its award cannot be released to the public until after the award in order to protect the competitive process or in the best interests of the City.

#### **30. CONTRACT AWARD NOTIFICATION**

Intent to Award notices for contracts conducted as formal solicitations will be posted on Purchasing's website on the Intent to Award listing. Informal solicitations will be posted to the Award listing upon award. Intent to Award and award information can be found at the link provided below:

<https://eservices.scottsdaleaz.gov/eServices/Solicitations/Awards.aspx?CID=0>

## INSTRUCTIONS TO BIDDERS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **30. CONTRACT AWARD NOTIFICATION – CONT'D**

The City Council must approve award of contracts for construction and professional services exceeding the formal procurement limit. Any contract award going to City Council for approval is not binding on the City until after approval by the City Council, even if previously signed by the Contractor and a City representative. All other contracts exceeding the formal procurement limit may be administratively awarded by the Purchasing Director.

**It is the submitter's responsibility to access this information from the City of Scottsdale Purchasing website link provided above.** This is the only notification you will receive regarding the posting of Notices of Intent to Award and Award.

#### **31. AWARD OF CONTRACT**

By signing the Offer portion of the Offer/Acceptance Form as a part of the Response to the Solicitation, the contractor is making a non contingent offer to contract with the City strictly based upon the terms, conditions, and specifications contained in the City's solicitation. The City is under no obligation to accept any identified exceptions. These Bid or Proposal offers do not become contracts until after the Purchasing Director has signed the Acceptance portion of the Offer/Acceptance Form. The contract is then considered awarded to the successful contractor, eliminating the signing of a separate contract.

For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, unless any of the terms, conditions or specifications are modified by an addendum to the solicitation, a contract amendment, or by mutually agreed written terms and conditions in the Contract documents.

The effective date of this contract shall be the date the Purchasing Director signs the Offer and Acceptance form, unless another date is specifically stated as the effective date.

The Contractor is cautioned not to begin any billable work or provide any materials or services under this contract until the contractor receives a purchase order document or separate Notice to Proceed.

#### **32. BID BOND**

(Not Applicable)

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **1. ADDITIONAL SERVICE REQUESTED**

Any service requested which is not specifically authorized by the Contract or written adjustments thereto, requires the issue of a separate purchase order by the City for authorization to perform, and separate billing by the Contractor for payment.

#### **2. ADVERTISING**

No advertising or publicity concerning the City using the Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale.

#### **3. ARIZONA LAW**

The Contract and all Contract Documents are considered to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy under this Contract will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of this Court.

#### **4. ASSIGNMENT**

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

#### **5. ATTORNEY'S FEES**

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

#### **6. AUTHORITY**

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.



## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **7. CANCELLATION OF CITY CONTRACTS**

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. 38-511).

#### **8. CAPTIONS/HEADINGS**

The headings used in the Contract Documents are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

#### **9. CERTIFICATE OF INSURANCE**

The successful vendor(s) will be required to furnish the City of Scottsdale a certificate of insurance on a standard insurance industry ACORD™ form or its equivalent when separate insurance requirements are listed under clause #29-Insurance Requirements. The ACORD™ form must be issued by an insurance company authorized to transact business in the State of Arizona. A sample of a standard insurance industry ACORD™ form with the required additional insured language can be found on our Vendor Resources webpage under forms at: <http://www.scottsdaleaz.gov/Purchasing>. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of your certificate and/or may be cause for contract default. Additionally, Certificates of Insurance submitted without referencing the Solicitation Number will be subject to rejection and discarded.

#### **10. CHANGES IN THE WORK**

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code. Change orders to contracts may be executed, according to established rules, when provided for in the original contract.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **10. CHANGES IN THE WORK – CONT'D**

The Contractor will not perform any additional services without a written Change Order approved by the City. If the Contractor performs additional services without a Change Order, the Contractor will not receive any additional compensation.

#### **11. CHEMICALS**

Contractors must agree to provide Material Safety Data Sheets ( MSDS ) for all substances that are delivered to the City of Scottsdale, that come under the Federal requirements of 29CFR 1910 Subpart Z - Toxic and Hazardous Substances, which includes 29CFR 1910.1200 - Hazard Communication

All Contractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative prior to bringing them on property.

Contractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation shall be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart-Z Toxic and Hazardous Substances, and Section 1910.1200 Hazard Communication, Contractors are hereby informed of the presence of (or possible presence) of chemicals in the area where the work requested will be performed. It is the responsibility of all selected Contractors to contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate material safety data sheets.

#### **12. COMPLIANCE WITH FEDERAL AND ARIZONA STATE IMMIGRATION LAWS**

Under the provisions of A.R.S. §41-4401, the Bidder warrants to the City that the Bidder and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Bidder and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Bidder or any of its subcontractors will be considered a material breach of this Contract and may subject the Bidder or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Bidder or any subcontractor who works on this Contract to ensure that the Bidder or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Bidder and any of its subcontractors to ensure compliance with this warranty. The Bidder agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **12. COMPLIANCE WITH FEDERAL AND ARIZONA STATE IMMIGRATION LAWS – CONT'D**

The City will not consider the Bidder or any of its subcontractors in material breach of this Contract if the Bidder and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Bidder enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

#### **13. COMPLIANCE WITH FEDERAL AND STATE LAWS**

The City has entered into this Contract with the Bidder relying on his knowledge and expertise to provide the services contracted for. As a part of that reliance, the Bidder represents that he knows and understands the relevant and applicable federal and state laws that apply to the services provided through this Contract, and agrees to comply with these relevant and applicable federal and state laws.

The Bidder understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Bidder must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

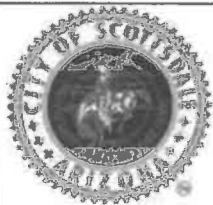
#### **14. CONFLICT OF INTEREST**

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all parties to the contract, unless the notice specifies a later time (A.R.S. 38-511).

#### **15. CONTRACT ADMINISTRATOR DUTIES**

The Contract Administrator shall be responsible to audit the billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **16. CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS**

For any non-construction City supplier whose service contract(s) (either singular or in aggregate) results in the contractor working 500 or more hours on site at a City of Scottsdale location(s) in any one calendar quarter, the following documentation must be provided by the contractor to the Contract Administrator (CA):

- the contractor's most recent OSHA 300A (if applicable);
- all accident reports for injuries that occurred in the city under the contract during the most recent review period;
- the contractor's current worker's compensation experience modifier;
- the above information is to be provided to the CA initially and every February thereafter as long as the contract is in force;
- the CA will provide this information to Risk Management when requested.

#### **17. CONTRACTS WITH SUDAN AND IRAN**

In accordance with A.R.S. §35-391.06 and 35-393.06, the Bidder certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

#### **18. CO-OP USE OF CONTRACT**

In addition to the City of Scottsdale, this Agreement may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

#### **19. COUNTERPARTS**

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

#### **20. ENDANGERED HARDWOODS**

Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions shall not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration.

The Director shall only grant an exemption if the use of endangered tropical hardwood is deemed necessary for historical restoration or to repair existing facilities and the use of any substitute material is not practical. Any lease-purchase agreement entered into by this state or its political subdivisions for construction shall specify that no endangered tropical hardwood may be used in the construction unless an exemption is granted by the Director. As used in this subsection, "endangered tropical hardwood" includes ebony, lauan, mahogany or teak hardwood.

**GENERAL TERMS AND CONDITIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

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**21. ENTIRE AGREEMENT**

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

**22. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract the Bidder will follow the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

**23. ESTIMATED QUANTITIES**

All Quantities referenced in this solicitation document are subject to adjustment dictated by City requirements. Quantities at variance with stated bid quantities may be purchased as required.

**24. EXECUTION OF CONTRACT**

The Contractor shall provide all the required documentation, which can include but may not be limited to, applicable bonds, insurance certificates, IRS W-9 form and other documentation required to issue the purchase order or notice to proceed within ten (10) calendar days after the date of the Acceptance of Offer or Notice of Contract Award by the City. If a separate City Contract is required, the Contractor must execute it within ten (10) calendar days and return it to the City. Failure to complete these requirements within ten (10) calendar days may place the Contractor in default.

**25. FORCE MAJEURE**

The City shall not be held responsible for acceptance of all or any part of the materials tendered for delivery under this Agreement due to federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire, windstorm or other incidents outside of the City's control which shall make such acceptance impossible or impractical.

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

**26. FUNDS APPROPRIATION**

If the City Council does not appropriate funds to continue this Contract and pay for required charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to the CONTRACTOR at least 30 days before the end of its current fiscal period and will pay the CONTRACTOR for all approved charges incurred through the end of this period.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

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#### **27. INDEMNIFICATION**

To the fullest extent permitted by law, Bidder, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or willful actions, acts, errors, mistakes or omissions by Bidder relating to work or services performed under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Bidder's and Subcontractor's employees.

Insurance provisions set forth in this agreement, if any, are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

#### **28. INDEPENDENT CONTRACTOR**

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

#### **29. INSURANCE REQUIREMENTS**

##### **Insurance Representations and Requirements**

###### **General**

Contractor agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Contractor, must purchase and maintain, at its own expense, this Contract's stipulated minimum insurance with insurance companies properly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

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## **29. INSURANCE REQUIREMENTS – CONT'D**

### **Insurance Representations and Requirements – Cont'd**

#### No Representation of Coverage Adequacy

By requiring the insurance stated in this Contract, the City of Scottsdale does not represent that coverage and limits will be adequate to protect Contractor. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements required by this Contract, but have no obligation to do so. Failure to demand any evidence of full compliance with the insurance requirements stated in this Contract or failure to identify any insurance deficiency does not relieve Contractor from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

#### Coverage Term

All insurance required by this Contract must be maintained in full force and effect until all work or services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.

#### Claims Made

In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.

#### Policy Deductibles and or Self-Insured Retentions

The policy requirements may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to City of Scottsdale. Contractor is solely responsible for any deductible or self-insured retention amount. City of Scottsdale, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

#### Use of Subcontractors

If any work under this Contract is subcontracted in any way, Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Contractor. Contractor will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

## GENERAL TERMS AND CONDITIONS



### BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

## 29. INSURANCE REQUIREMENTS – CONT'D

### Insurance Representations and Requirements – Cont'd

#### Evidence of Insurance

Before starting any work or services under this Contract, Contractor must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

#### Certificates must specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
  - c) Excess Liability - Follow Form to underlying insurance as required.
2. Contractor's insurance must be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Contract.
4. If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

### Required Coverage

#### Commercial General Liability

Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.



## GENERAL TERMS AND CONDITIONS



### BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

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## 29. INSURANCE REQUIREMENTS – CONT'D

### Required Coverage – Cont'd

#### Vehicle Liability

Contractor must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.

#### Workers Compensation Insurance

Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

## 30. LITIGATION

The Bidder will disclose any issue or potential issue that may have a material bearing on the financial condition, solvency or credit worthiness of the organization. Disclosure includes any material contingent liabilities or uninsured potential losses, involuntary contract terminations in other jurisdictions and any voluntary or involuntary bankruptcy filings over the past 7 years. The Bidder will also disclose any litigation in which the Bidder has been involved in, either as a plaintiff or defendant, within the past 3 years, and the Bidder shall agree to notify the City within 24 hours of any litigation or significant potential for litigation of which the Bidder becomes aware. Further, the Bidder will be required to warrant that it will disclose in writing to the City all litigation involving the Bidder, the Bidder's related organization, owners and key personnel.

## 31. LOCAL CONDITIONS, RULES AND REGULATIONS

The Bidder shall familiarize himself with the nature and extent of the Contract documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

## 32. MODIFICATIONS

Any adjustments, alterations, additions, deletions, or modifications in the terms and/or conditions of this contract must be made by written Change Authorization approved by the Contract Administrator, Purchasing Director and the Contractor.

If Contractor performs any modification without written Change Authorization, the City shall not be obligated to accept said modification.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **33. NO PREFERENTIAL TREATMENT OR DISCRIMINATION**

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

#### **34. NO WAIVER**

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions of this Contract will not be construed to be a waiver of those provisions, nor will it affect the validity of the Contract Documents, or the right of either party to enforce each and every provision.

No delay or failure of either party in exercising any right hereunder, and no partial or single exercise thereof, shall be deemed to constitute a waiver of such right or any other rights hereunder. All waivers must be in writing and signed by the party to be charged. Any waiver by either party of any requirement hereunder shall be deemed to be a specific limited waiver, and shall not be deemed to be a continuing waiver nor a waiver of any other requirement hereof.

#### **35. ORDER OF PRECEDENCE**

In the event of a conflict in the provisions of this solicitation or resulting contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:

1. Signed and fully executed separate Contract or Offer and Acceptance Sheet
2. Special Terms & Conditions of the solicitation
3. General Terms & Conditions of the solicitation
4. Statement or Scope of Work ( SOW )
5. Specifications
6. Attachments
7. Exhibits
8. Instructions to Bidders
9. Other documents referenced or included in the solicitation or contract

#### **36. PATENTS**

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Scottsdale and its agents or bidders for alleged patent and/or copyright infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein.

The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **37. PAYMENT TERMS**

The City of Scottsdale's payment terms are payment within thirty (30) days except in Title 34 circumstances where payment is required within fourteen (14) days. Payment may be sooner where cash discounts are offered for early payment, however, cash discounts offered will not be considered in determining lowest bidder. In no event will payment be made prior to receipt of an original invoice containing invoice and Purchase Order numbers and receipt of purchased item. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

CITY OF SCOTTSDALE  
ACCOUNTS PAYABLE  
7447 E. INDIAN SCHOOL ROAD, #210  
SCOTTSDALE, ARIZONA 85251-4468

#### **38. PRICE REDUCTION**

If Contractor's, manufacturer, or supplier at any time during the course of this contract, makes a general price decrease, to the Contractor, the Contractor shall promptly notify the City in writing and extend such decrease to the City effective on the date of such general price decrease.

#### **39. RECORDS AND AUDIT RIGHTS**

Bidder's and Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City of Scottsdale, or its authorized representative, to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on Bidder's or Subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Contract. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City of Scottsdale or its authorized representative shall have access to said Records from the effective date of this Contract for the duration of the work and until three (3) years after the date of final payment by the City of Scottsdale to Bidder pursuant to this Contract.

The City of Scottsdale or its authorized representative shall have access, during normal working hours, to all necessary Bidder and Subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. The City of Scottsdale shall give Bidder or Subcontractor reasonable advance notice of intended audits.

Bidder shall require Subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any subcontract pursuant to this Contract.

If an audit in accordance with this article, discloses overcharges, of any nature, by the Contractor to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **40. REGISTERED/LICENSES**

To be considered responsive, Contractors must be registered/licensed in the State of Arizona, if such registration/license is normally a requirement.

#### **41. REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION IRS W-9 FORM**

Upon request, the Contractor shall provide the required I.R.S. W-9 FORM which is available from the IRS website at [www.IRS.gov](http://www.IRS.gov) under their forms section.

#### **42. RISK OF LOSS**

Contractor agrees to bear all risks of loss, injury or destruction of goods and materials ordered as a result of this Invitation for Bid which occur prior to delivery to the City; and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Scottsdale and its agents or vendors for alleged patent and/or copyright infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein.

The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires.

#### **43. SCOTTSDALE CITY SEAL AND CITY SYMBOL**

The Scottsdale City seal (as defined in S.R.C. § 2-1) and the City symbol are registered marks and are reserved solely for the City's use. Any other use or reproduction of the City's registered marks in any print, digital, or other media and without the City's express, written consent is prohibited. As a breach of this prohibition may impair the City's reputation, dilute its mark(s), or otherwise cause the City irreparable harm, the City shall be entitled to an immediate injunction enjoining such use in addition to any other legal or equitable remedies.

#### **44. SEVERABILITY**

If any provision of the Contract Documents or the application of them to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and their application will not be affected and are enforceable to the fullest extent permitted by law.

#### **45. SUCCESSORS AND ASSIGNS**

No right or interest covered by this Contract shall be assigned in whole or in part without the prior written consent of the City.

## GENERAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **45. SUCCESSORS AND ASSIGNS – CONT'D**

The CONTRACTOR and the City agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs and assigns. This Contract extends to and is binding upon the CONTRACTOR, its successors and assigns, including any individual, company, partnership or other entity with or into which the CONTRACTOR merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which the CONTRACTOR sells its assets.

#### **46. TERMINATION**

**Termination for Convenience:** City reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. Contractor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination.

Contractor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. Contractor shall not unreasonably anticipate the requirements of this contract.

**Cancellation for Cause:** City may also terminate this contract or any part hereof with seven (7) days notice for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the terms and conditions of this contract. Late deliveries, deliveries of products which are defective or do not conform to this contract, unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause.

In the event of termination for cause, City shall not be liable to Contractor for any amount, and Contractor shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that City has improperly terminated this contract for default, such termination may be deemed a termination for convenience.

In the event Contractor is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Contractor.

#### **47. TESTING OF MATERIALS**

When required in the course of any service or contract the procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and test will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, The City of Scottsdale Material Testing Manual and the standard methods of AASHTO or ASTM, DSPM and MAG supplements.

The City will provide a pre-qualified City or Independent Testing Laboratory and will pay directly for initial City Acceptance Testing. When the first and subsequent tests indicate noncompliance with the specifications, the cost associated with that noncompliance will be paid for by the Contractor.

**GENERAL TERMS AND CONDITIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**47. TESTING OF MATERIALS – CONT'D**

When the first and subsequent tests indicate noncompliance with the specifications, all retesting will be performed by the same testing agency.

Rejected materials shall be immediately removed and shall not be used in any form for any other part of the work.

**48. TIME IS OF THE ESSENCE**

The City and the CONTRACTOR mutually agree that time is of the essence with respect to the dates and times contained in the Contract Documents.

**49. WARRANTY**

Contractor expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use.

Contractor's warranty shall run to City, its successors, and assigns. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to City, when notified of such nonconformity by City, provided City elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by City in doing so. Contractor recognizes that City's requirements may require immediate repairs or reworking of defective goods, without notice to the Contractor. In such event, Contractor shall reimburse City for the costs, delays, or other damages which City has incurred.

**SPECIAL TERMS AND CONDITIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**1. ACCEPTANCE / AGREEMENT**

Contractor shall act under the authority and approval of the Contract Administrator for the City, further named herein, to provide the services required by this Contract.

Any Contract/Agreement made pursuant to this solicitation must be accepted in writing by the Offeror. If for any reason the Offeror should fail to accept in writing, any conduct by Offeror which recognizes the existence of a Contract/ Agreement pertaining to the subject matter hereof shall constitute acceptance by Offeror of the Contract/Agreement and all of its terms and conditions. Any terms proposed in Offeror's acceptance of City's Contract which adds to, varies from or conflicts with the terms herein are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the Contract/Agreement between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties.

**2. CITY OBSERVED HOLIDAYS**

City holiday time frame to be 6:00 P.M. the eve of the holiday until 6:00 A.M. on the day after the holiday.

City Holidays Include: New Years, Martin Luther King, Presidents, Memorial, July 4<sup>th</sup>, Labor Day, (Thanksgiving – Thursday and Friday of the third week in November), Christmas.

- |    |                        |  |
|----|------------------------|--|
| a. | Independence Day       | July 4th (or Friday before or Monday after)      |
| b. | Labor Day              | 1st Monday in September                          |
| c. | Thanksgiving Day       | 4th Thursday in November                         |
| d. | Day after Thanksgiving | 4th Friday in November                           |
| e. | Christmas Day          | December 25th (or Friday before or Monday after) |
| f. | New Year's Day         | January 1st (or Friday before or Monday after)   |
| g. | Martin Luther King Day | 3rd Monday in January                            |
| h. | President's Day        | 3rd Monday in February                           |
| i. | Memorial Day           | Last Monday in May                               |

**3. CONTRACTOR'S EMPLOYEES' IDENTIFICATION AND WORK APPAREL**

All Contractor employees performing work under the scope of this contract shall wear conservative style uniforms that will have sewn on or embossed identification labels of the Contractors company name, and/or, logo, and will appear on the front area of the shirt near chest height of the shirt. Employees shall use all proper Personal Protection Equipment as required, including proper eyewear and foot wear.

The Contractor shall instruct all employees, in advance, as to what to do in a medical emergency.

If an injury to an employee is of sufficient nature to warrant immediate professional medical attention, the employee shall seek out proper medical attention immediately.

## SPECIAL TERMS AND CONDITIONS



### BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

#### 3. **CONTRACTOR'S EMPLOYEES' IDENTIFICATION AND WORK APPAREL – CONT'D**

The employee shall notify the on-duty lead person (or supervisor) of any personal injury, including minor cuts, scrapes or burns. The on-duty lead person shall immediately notify the Contract Administrator of such injuries.

#### 4. **CONTRACTOR SUPERVISORS AND CREWS**

The Contractor's Supervisor(s) shall have full authority to act on behalf of the Contractor in any situation.

The Contractor's Supervisor(s) and crews shall be monitored by the Contract Administrator for their effectiveness interacting with City personnel, citizens, and ability to maintain a written schedule. The knowledge and effectiveness of the Contractor's Supervisor(s) and crews shall have a direct impact on any possible and applicable contract extensions.

Actual crew size shall be the responsibility of the Contractor to establish.

A fully staffed crew shall be defined as a **MINIMUM** of the following:

- One (1) Supervisor (Crew Leader) who is conversant in the 'English language'
- One (1) vehicle capable of performing the required work as indicated by the Contract Administrator at the time of the service request.
- Additional crew members as required to complete the required work as indicated by the Contract Administrator at the time of the service request.

#### 5. **FREIGHT**

All shipments of goods covered under the scope of this contract are F.O.B. City of Scottsdale. All standard freight and/or delivery charges shall be included in the unit pricing quoted herein. The only allowable freight and/or delivery charges shall be if the Contract Administrator specifically requests other than standard freight and/or delivery (e.g., overnight delivery, etc.). Special freight charges shall be quoted to and authorized by the Contract Administrator prior to invoicing.

#### 6. **FUEL SURCHARGES**

Fuel surcharges shall NOT be allowable during the term of this contract.



## SPECIAL TERMS AND CONDITIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **7. INVOICING**

All invoices submitted for work done under the scope of this contract **MUST BE ITEMIZED**. Itemized invoices shall contain a **MINIMUM** of the following information:

- Vendor Name
- Remit to Address
- Purchase Order Number
- Invoice Date
- Invoice Number
- Date service/work was completed
- Complete description of work completed
- Location where service/work was performed
- Itemized list of all charges (quantity, description, unit pricing per the contract)
- Tax Amount (if applicable)
- Total Invoice Amount

The Contractor shall submit invoices with all supporting documentation within thirty (30) days after the service/work is completed and approved by the Contract Administrator.

#### **8. PRICE ESCALATION**

Price increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of the Agreement. Failure to do so may result in the denial of any increase requested.

Price increases will become effective only after approval by the Contract Administrator and the Purchasing Director and shall be effective for at least one (1) year from the date of approval.

Approved price increases will be applied to the unit pricing in the Agreement as a percentage increase.

The increased rate shall be based upon mutual consent of the Contractor and the Contract Administrator, however; the Contract Administrator shall evaluate the Contractor's performance, services and records documentation to determine the appropriateness of the increase requested.

The percentage increase in the unit pricing may not exceed the percent in the United States "Consumer Price Index" for All Urban Consumers West Urban (C.P.I.U.) U. S. City Average for the Percent Change from the Year Ago as published by the U. S. Department of Labor Bureau of Labor Statistics. Index Base Period 1982-84=100.

#### **9. PRICING**

Pricing shall be listed on the Pricing Proposal Form page. Prices quoted by the Offerors shall be applicable during the entire initial term of the contract.

**SPECIAL TERMS AND CONDITIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**9. PRICING – CONT'D**

For reasons of clarity all submissions of pricing shall be priced in the same unit (size, volume, quantity, weight, etc.) as requested on the Pricing Proposal Form herein. Offerors failing to comply with this requirement may be declared non-responsive.

**10. SINGLE AWARD**

The City of Scottsdale reserves the right to award this solicitation as deemed in the best interest of the City. While multiple awards are possible, the preferred procedure is to make a single award as a result of this solicitation process.

**11. TERM OF AGREEMENT**

The term of this Contract shall be for a one (1) year period from the effective date of acknowledgment of the Acceptance of Offer/Notice of Award.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

**12. UNIT PRICING**

An "Hourly Labor Rate" for: Routine repair; After Hour/Weekend/Holiday repairs; and Emergency repairs shall be identified by the Contractor and listed on the appropriate line on the bid form. The City of Scottsdale will not accept a "minimum respond time charge" that is equal to an amount greater than (2) hours of the established labor rate, for any of the above service calls. Travel time to and from the job site should be considered in the bid price and shall not be paid for as an extra item or reimbursable cost.

The Contractor shall not charge the City of Scottsdale more than a 20% "mark-up" on the Contractor's cost of all parts and materials used in the repair and maintenance of the city elevators and related equipment.

Unit prices quoted herein shall be all inclusive and include all pertinent additional fees normally associated with this type of service. This shall include, but not be limited to, environmental fees, shop supplies, clean-up, transportation, etc. No additional charges beyond the quoted unit price (except applicable sales tax) shall be allowed, unless authorized by the Contract Administrator before final invoicing.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
COCHISE PETROLEUM EQUIPMENT COMPANY, INC.**

**EXHIBIT B  
Scope of Work**

**PROJECT**

Bulk fuel, lubrication system testing, maintenance and repair services for City of Glendale on an as-needed basis for Fleet Management and the Glendale Municipal Landfill of the Public Works Department.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **1.0 GENERAL INFORMATION**

- 1.1 The City of Scottsdale (COS) desires to contract for the maintenance, repair, upgrading and testing of Fleet Management's Bulk Fueling and Bulk Lubrication Systems.
- 1.2 The Contractor shall provide all materials, equipment and labor necessary to complete the scope of work contained herein.
- 1.3 The scope of work shall include, but is not limited to:
  - Repairs to bulk fuel tanks (Aboveground Storage Tanks (AST) and Underground Storage Tanks (UST))
  - Repairs to bulk fuel dispensers
  - Certification and testing of Bulk Fuel and Bulk Oil Storage Tanks
  - All required Federal, State, and Local compliance testing pertaining to Bulk Fueling/Fuel Dispensing/Bulk Lubrication Systems
  - Testing, certification and repair of the Tank Monitoring System (Veeder-Root)
  - Knowledgeable and familiar of the EJ Ward fuel management system and how it works with fuel dispensing equipment.
  - Be certified by EJ Ward to work on the EJ Ward Fuel Management System within ten (10) days of issuance of the notice of intent to award
- 1.4 The required services shall be provided on an 'as needed' basis.
- 1.5 The Contractor shall be familiar with the work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work.

#### **2.0 CONTRACT ADMINISTRATION**

- 2.1 The COS Contract Administrator shall be the COS Fleet Systems Coordinator, or designee.
- 2.2 The COS Contract Administrator shall audit the billings, approve payments, establish schedules, approve addenda to the contract, and generally be responsible for overseeing the execution of the contract.

#### **3.0 WARRANTY REQUIREMENTS**

- 3.1 All of the Contractor's workmanship and materials provided by the Contractor shall be warranted for a MINIMUM of one year.
- 3.2 All warranty items/issues/concerns shall be resolved at no charge to the COS.
- 3.3 All warranty items/issues/concerns shall include, but not be limited to, parts, labor, freight, travel, etc.
- 3.4 All warranty items/issues/concerns shall be resolved within a time frame determined by the COS Contract Administrator.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **3.0 WARRANTY REQUIREMENTS – CONT'D**

- 3.5 The Contractor shall warranty all parts and services provided by a subcontractor just as if supplied directly by the Contractor.
- 3.6 The COS Contract Administrator will monitor warranty issues by the Contractor.
- 3.7 Warranty issues that exceed five percent (5%) for two (2) consecutive months may result in the contract being terminated.

#### **4.0 GENERAL VENDOR QUALIFICATIONS**

- 4.1 The Contractor shall be in compliance with all applicable Federal, State, County, Local, ANSI, ADEQ and O.S.H.A. laws, rules, and regulations and all other applicable regulations for the term of this contract.
- 4.2 The Contractor, without additional expense to the COS, shall be responsible for obtaining and maintaining any necessary licenses and permits required in connection with the completion of the required services herein.
- 4.3 The Contractor may not subcontract any segment or services covered herein, without prior approval of the COS Contract Administrator.
- 4.4 All subcontracted services shall be warranted by and be the responsibility of the Contractor.
- 4.5 The Contractor shall have been conducting business within the Phoenix Metropolitan area for a MINIMUM of two (2) consecutive years prior to the award of the contract.
- 4.6 The Contractor MUST have and maintain full time Company representation located in the Phoenix, Arizona metropolitan area, with the ability and authority to address all Contract issues that may develop.
- 4.7 The Contractor shall provide the local company representative's name and contact information, including cellular phone, pager, and off-hours phone numbers, to the COS Contract Administrator.

#### **5.0 VEHICLE REQUIREMENTS AND IDENTIFICATION**

- 5.1 The Contractor shall only use trucks and vehicles licensed for use on public streets.
- 5.2 All Contractor vehicles shall contain signage which includes a MINIMUM of the Contractor Company name; and/or logo.
- 5.3 All Contractor vehicle signage shall be sufficient, in the opinion of the COS Contract Administrator, to make it apparent to others, as to the nature of the business and the occupants of the vehicle.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **5.0 VEHICLE REQUIREMENTS AND IDENTIFICATION – CONT'D**

- 5.4 All Contractor vehicle signage shall appear on either side of the vehicle.
- 5.5 All Contractor vehicles that are used in the performance of work under the scope of this contract shall display the proper vehicle signage.
- 5.6 The COS Contract Administrator will approve proper identification of vehicles during the life of the contract.

#### **6.0 GENERAL PRODUCT AND SERVICE REQUIREMENTS**

- 6.1 All components (equipment / parts / products) furnished under the scope of this contract shall be new and shall be Original Equipment Manufacturer (or approved equivalent) products of the components being serviced.
- 6.2 All products supplied by the Contractor shall meet all applicable Federal, State, Local, ANSI, and O.S.H.A. laws, rules, and regulations pertaining to the products covered under the scope of this contract.
- 6.3 All work performed by the contractor shall be PERFORMED by and SUPERVISED by properly trained and certified personnel.
- 6.4 The Contractor shall furnish all labor, materials and equipment necessary for the completion of the scope of work described herein.
- 6.5 The Contractor shall have sufficient personnel and equipment to complete all work requests, as defined in this Solicitation, in the time frame required by the COS Contract Administrator.
- 6.6 All equipment used for performance of work under the scope of this Contract, shall be maintained in a safe operating condition, and shall comply with all applicable Federal, State, County, Local, ANSI, ADEQ and O.S.H.A. laws, rules, and regulations.
- 6.7 The Contractor shall protect and prevent damage to wires, cable, structures, fences, vehicles, trees, plants and other artifacts.
- 6.8 Any damage to public or private property caused by the Contractor shall be corrected by repair or replacement by the Contractor, at the Contractor's expense, to the satisfaction of the property owner and/or the COS Contract Administrator.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **7.0 QUANTITY**

- 7.1 The estimated quantities that will be required during the initial term of this contract are indicated on the Proposal Pricing Form herein.
- 7.2 The actual service requests, and service requests for future years may be more or less, and any quantities listed herein should be used for information purposes only.

#### **8.0 FREIGHT**

- 8.1 All shipments of goods covered under the scope of this contract are F.O.B. City of Scottsdale.
- 8.2 All standard freight and/or delivery charges shall be included in the unit pricing quoted herein.
- 8.3 The only allowable freight and/or delivery charges shall be if the COS Contract Administrator specifically requests other than standard freight and/or delivery (i.e. overnight delivery, etc.).
- 8.4 Special freight charges shall be quoted to and authorized by the COS Contract Administrator prior to invoicing.

#### **9.0 PRICING**

- 9.1 Pricing shall be listed on the Proposal Pricing Form.
- 9.2 Prices proposed by the Offeror shall be applicable during the entire initial term of the contract.
- 9.3 For reasons of clarity all submissions of pricing shall be priced in the same unit (size, volume, quantity, weight, etc.) as requested on the Proposal Pricing Form herein. Proposals failing to comply with this requirement may be declared non-responsive.
- 9.4 The Offeror shall structure their proposed pricing for testing and inspections as an all-inclusive price per type of testing or inspection service requested. No other additional charges shall be allowed, unless noted on the Offeror's Proposal Pricing Form under "miscellaneous charges."
- 9.5 All other labor shall be billed at the hourly rate proposed herein, times the number of hours the repair shall take as agreed upon by the Contractor and the COS Contract Administrator.
- 9.6 All parts shall be billed on a "cost-plus" basis as proposed herein. To verify the "cost-plus" charges for parts, the Contractor shall submit a copy of the invoice showing what the Contractor was actually billed for the parts, with the Contractor's invoice to the COS

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **9.0 PRICING – CONT'D**

- 9.7 All sublet repairs shall be billed on a “cost-plus” basis as proposed herein. To verify the “cost-plus” charges for sublet repairs, the Contractor shall submit a copy of the invoice showing what the Contractor was actually billed for the sublet repairs, with the Contractor’s invoice to the COS.
- 9.8 A change in pricing may only be requested by the Contractor, thirty (30) days prior to the annual anniversary date of the Contract.
- 9.9 Failure by the Contractor to request a change in pricing thirty (30) days prior to the annual anniversary date of the Contract may result in the denial of any increase requested.
- 9.10 A change in pricing shall only apply to the Inspection Fees, Testing Fees, ‘Per Hour’ labor rates, and miscellaneous charges quoted herein.
- 9.11 There shall be no change to the “Cost Plus %” rates for the term of this contract and all applicable extensions.
- 9.12 Price increases shall become effective only after approval by the Purchasing Director and will be effective for at least one year from the date of approval.
- 9.13 Approved price increases shall be applied to the unit pricing in the Contract as a percentage increase.
- 9.14 The increased rate shall be based upon mutual consent of the Contractor and the COS Contract Administrator; however, the COS Contract Administrator shall evaluate the Contractor’s performance, services and documentation to determine the appropriateness of the increase requested.
- 9.15 All charges associated with this contract MUST be shown on the Proposal Pricing Form returned by the Offeror or other supporting documentation.
- 9.16 Any charges not listed on the Proposal Pricing Form or supporting documentation submitted with the Offeror’s proposal, shall not be allowed during the contract period and any applicable extensions.
- 9.17 Unit prices proposed herein shall be all inclusive and include all pertinent additional fees normally associated with this type of service. This shall include, but not be limited to, environmental fees, shop supplies, clean-up, transportation, etc.
- 9.18 No additional charges beyond the proposed unit price (except applicable sales tax) shall be allowed, unless authorized by the COS Contract Administrator before final invoicing.



## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **9.0 PRICING – CONT'D**

9.19 Unit prices quoted shall be applicable for any quantity ordered by the COS, or differentiated on the Proposal Pricing Form or other supporting documentation.

#### **10.0 PURCHASING PROCEDURE**

10.1 All orders require a COS purchase order that will be communicated by phone, fax or e-mail.

10.2 The Contractor shall not deliver parts or commodities or perform service without the issuance of a COS purchase order.

10.3 Any Contractor invoices received without a COS purchase order on the invoice may remain unpaid.

10.4 When a fuel system or lube system repair is needed, the contractor will be contacted by phone, email or in person by the COS Contract Administrator or designee. .

10.5 For non-emergency repairs, the Contractor shall arrive on site within twenty-four (24) hours or as agreed upon time per the COS Contract Administrator or designee from the receipt of the call from the COS

10.6 For emergency repairs, the Contractor shall arrive on site within two (2) hours or agreed upon time per the COS Contract Administrator or designee from the receipt of the call from the COS.

10.7 The COS Contract Administrator shall authorize any additional work that is required, BEFORE any additional repairs are done.

10.8 All of the Contractor's Testing/Inspections shall be scheduled a MINIMUM of thirty (30) days in advance.

#### **11.0 BULK FUELING / LUBRICATION SYSTEM – GENERAL SPECIFICATIONS**

11.1 The COS owns a number of Bulk Fueling Systems situated throughout the COS, which contain motor fuels (diesel, bio-diesel blend, unleaded and oxygenated fuel, unleaded gasoline blends), and which are regulated as underground and above ground storage tank systems under the Resource Conservation and Recovery Act (RCRA), CFR Title 40 (or any superseding or replacing requirements), and the Uniform Fire Code.

11.2 The Contractor shall comply with all current Federal, State, County and City Regulations concerning the operation and maintenance of these various fuel and oil storage tanks and allied dispensing systems.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **11.0 BULK FUELING / LUBRICATION SYSTEM – GENERAL SPECIFICATIONS – CONT'D**

- 11.3 All current COS bulk fuel and oil systems are in compliance with current Federal, State, County and City Regulations. It is the contractor's responsibility to maintain the City's compliance.
- 11.4 The Contractor shall ensure that all modifications and upgrades of the existing Bulk Fueling Systems shall meet current and future requirements in CFR Title 40 (or any superseding or replacing requirements).
- 11.5 The Contractor shall ensure that all modifications and upgrades to improve the Bulk Fueling System's shall be compatible with oxygenated fuels.
- 11.6 The Contractor shall be responsible for all maintenance and repair of the existing Bulk Fueling Systems, including, but not limited to:
- Maintenance and Repair of pumps
  - Maintenance and Repair of piping
  - Maintenance and Repair and cleaning of dispensers
  - Maintenance and Repair of leak prevention, detection and monitoring equipment (Veeder-Root TLS)
  - Knowledgeable and familiar of the EJ Ward fuel management system and how it works with fuel dispensing equipment – shall be certified by EJ Ward to work on the EJ Ward Fuel Management System within ten (10) days of issuance of the notice of intent to award
- 11.7 The Contractor shall ensure that all of the Contractor's work is in compliance with the Arizona State Mandated guidelines (A.R.S. § 49-1001 to 1021 and Arizona Administrative Code R18-12) or superseding for Annual UST Tightness Testing, Inventory Control, ATG monitoring (Overspill/Overfill Containment) for both unleaded and diesel tanks, and Vapor Recovery Testing for unleaded tanks.
- 11.8 The Contractor shall provide all testing equipment.
- 11.9 The Contractor shall provide new tests, if new tests are mandated by EPA/ADEQ during the life of this contract, and then the Contractor will notify the Contract Administrator and submit a cost per test.
- 11.10 The Contractor shall coordinate the dates, time, and site locations with the COS Contract Administrator, and the Arizona Department of Weights and Measures for all required "Witness" tests.
- 11.11 The Contractor's technicians shall be certified with the Arizona Department of Environmental Quality (ADEQ), in accordance with Arizona State Legislation (effective December 31, 1996) for Underground Storage Tank (UST) service providers.
- 11.12 The Contractor's technician, performing UST service MUST have a certification identification number with ADEQ.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **11.0 BULK FUELING / LUBRICATION SYSTEM – GENERAL SPECIFICATIONS – CONT'D**

- 11.13 The Contractor shall issue a Certification of Compliance as the result of the COS UST passing, and the Certification of Compliance shall be accompanied by data sheets stating the test methods and the results.
- 11.14 The Contractor shall provide qualified personnel and equipment to conduct the necessary testing of tanks in accordance with the Federal spill prevention regulations, 40 CFR 112.8(c) (6), or superseding all bulk Aboveground Storage Tanks (AST's) to include, but not limited to, shell integrity according to industry standard on a regular schedule and after any material repairs. These tests shall include visual inspection by an authorized inspector, external ultrasonic shell thickness testing and internal tank bottom integrity testing.
- 11.15 The Contractor shall inspect all COS oil containing Aboveground Storage Tanks (AST's) in accordance with the American Petroleum Institute (API) Standard 653.
- 11.16 All of the Contractor's oil containing Aboveground Storage Tanks (AST's) inspections in accordance with the American Petroleum Institute (API) Standard 653 shall include visual inspection by an authorized inspector, external ultrasonic shell thickness testing and internal tank bottom integrity testing.
- 11.17 The Contractor shall provide qualified personnel and equipment to conduct the necessary testing of all oil containing Aboveground Storage Tanks (AST's) in accordance with the American Petroleum Institute (API) Standard 653.
- 11.18 The Contractor shall be responsible to provide testing and inspection services for all current Aboveground Storage Tanks (AST's), Underground Storage Tanks (UST's) and any new locations or tanks that are added to the COS's inventory during the course of the contract.

#### **12.0 BULK FUEL / OIL TANK LISTS**

- 12.1 The following is a list of current bulk fuel / bulk oil sites operated by the COS.
- 12.2 Sites may be added or deleted from this list based on the needs of the COS.
- 12.3 The following lists should be used as a basic reference for internal planning by the Contractor only.

**SPECIFICATIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**12.0 BULK FUEL / OIL TANK LISTS – CONT'D**

**12.4 UNDERGROUND STORAGE TANKS (UST)**

<b>UNDERGROUND STORAGE TANKS (UST)</b>			
<b>SITE LOCATION</b>	<b>PRODUCT</b>	<b>TANK SIZE</b>	<b>NUMBER OF DISPENSERS/H OSES</b>
Corporation Yard 9191 E. San Salvador Dr.	Unleaded	15,000 Gals.	1 / 2
	Unleaded	15,000 Gals.	1 / 2
	Diesel	15,000 Gals.	1 / 2
	Diesel	15,000 Gals.	1 / 2
North PD 9065 E. Via Linda	Unleaded	15,000 Gals.	1 / 2
McKellips Service Center 7601 E. McKellips Rd.	Unleaded	20,000 Gals	1 / 2
	Diesel	20,000 Gals.	1 / 2

**12.5 ABOVEGROUND STORAGE TANKS (AST)**

<b>ABOVEGROUND STORAGE TANKS (AST)</b>			
<b>SITE LOCATION</b>	<b>PRODUCT</b>	<b>TANK SIZE</b>	<b>NUMBER OF DISPENSERS/H OSES</b>
Fire Station 609- Airport 14970 78th Way	Diesel	1,000 Gals.	1 / 1
McKellips Service Center 7601 E. McKellips Rd.	E85	2,000 Gals	1 / 1
McCormick Railroad Park 7301 E. Indian School Rd.	Unleaded	1,000 Gals.	1 / 1
	Diesel	1,000 Gals.	1 / 1
Solid Waste Transfer Station 8417 E. Union Hills Rd.	Unleaded	5,000 Gals	1 / 1
	Diesel	5,000 Gals	2 / 2
West World Equestrian Park 16601 N. Pima Rd.	Unleaded	1,000 Gals.	1 / 1
	Diesel	2,000 Gals.	1 / 1
Jomax Well Site 26602 N. Pima Rd.	Diesel	4,000 Gals.	1 / 1

**SPECIFICATIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**12.0 BULK FUEL / OIL TANK LISTS – CONT'D**

**12.6 BULK OIL ABOVEGROUND STORAGE TANKS (AST)**

<b>BULK OIL ABOVEGROUND STORAGE TANKS (AST)</b>			
<b>SITE LOCATION</b>	<b>PRODUCT</b>	<b>TANK SIZE</b>	<b>NUMBER OF DISPENSERS/H OSES</b>
Corporation Yard 9191 E. San Salvador Dr.	Motor Oil	500 Gals.	8 / 8
	Hydraulic Oil	500 Gals.	8 / 8
	Used Oil	500 Gals.	8 / 8
	Automatic Transmission Fluid (ATF)	220 Gals.	8 / 8
	Used Antifreeze	250 Gals.	8 / 8
McKellips Service Center 7601 E. McKellips Rd.	Motor Oil	500 Gals.	6 / 6
	Used Oil	250 Gals.	6 / 6
	Automatic Transmission Fluid (ATF)	250 Gals.	6 / 6

**13.0 BULK FUELING / LUBRICATION SYSTEM SERVICE SPECIFICATIONS**

- 13.1 The Contractor shall perform all equipment installation, equipment repair and equipment testing procedures according to the equipment manufacturer's recommended equipment installation, equipment repair and equipment testing procedures.
- 13.2 If no equipment installation, equipment repair and equipment testing procedures are recommended by the equipment manufacturer, then the Contractor shall use the industry standard equipment installation, equipment repair and equipment testing procedures.
- 13.3 The Contractor shall complete all repairs and testing performed under the scope of the contract in a timely manner. Timely manner shall be defined for the purposes of this contract as a MINIMUM of ninety-five percent (95%) of all repairs requested are completed in less than twenty-four (24) hours.
- 13.4 The Contractor shall survey all sites covered under the scope of this contract and review all records pertaining to these sites within thirty (30) days after contract award.
- 13.5 Upon completion of the survey and review, the Contractor shall submit a testing and inspection schedule to bring all sites covered by this contract into compliance.

## SPECIFICATIONS



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **13.0 BULK FUELING / LUBRICATION SYSTEM SERVICE SPECIFICATIONS – CONT'D**

- 13.6 The Contractor shall meet all testing and inspection requirements within one calendar year from date of contract award.
- 13.7 The Contractor shall complete all site surveys, all reviews and all scheduling at NO CHARGE to the COS.
- 13.8 The Contractor shall update the testing and inspection schedule on a yearly basis or as needed for the term of this contract at NO CHARGE to the COS.
- 13.9 The Contractor shall only dispatch properly trained and certified technicians to COS locations to perform repairs and testing covered under the scope of work covered by this contract.
- 13.10 The Contractor shall be capable of responding to requests for repair service, twenty-four (24) hours a day, seven (7) days a week, including all holidays.
- 13.11 The Contractor shall not perform any duties pursuant to this contract unless instructed to do so by the COS Contract Administrator or the COS Contract Administrator's designee.
- 13.12 The Contractor shall submit to the COS, after completion of all work, a statement of all charges.
- 13.13 The Contractor's charges shall conform to the contract and to the authorized and proposed work. Any deviations from the proposed work must be approved prior to the submittal of charges. Pricing shall conform to the pricing in the contract. Items not in the contract shall have backup documentation submitted to verify pricing in accordance with the contract.
- 13.14 The Contractor's written reports required by law must be submitted to the appropriate governmental departments and a copy provided to the COS Contract Administrator.
- 13.15 The Contractor shall ensure that the COS is in compliance with all Local, State, County, and Federal rules and laws.
- 13.16 In case of any spill or confirmed or suspected leak discovered in performance of the Contractor's duties under this contract, the Contractor shall cease all work and immediately inform the COS Contract Administrator or the COS Contract Administrator's designee.
- 13.17 The COS may utilize an existing contract for environmental site assessment and remediation of hazardous material or substances for any spills, and an existing contract for investigation, planning, and clean-up activities for underground petroleum storage tanks and/or delivery systems which may pose a liability to the COS.

**SPECIFICATIONS**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**13.0 BULK FUELING / LUBRICATION SYSTEM SERVICE SPECIFICATIONS – CONT'D**

- 13.18 The Contractor shall be responsible for the payment of any assessment and clean-up costs for all spills and/or leaks determined to be due to the negligence or fault of the Contractor during the Contractor's performance under this contract.
- 13.19 The Contractor shall be responsible for any fees, fines or penalties assessed against the COS related to inspection failures, unless such failure is directly attributed to negligence, abuse or accident by the COS since the most recent inspection by the Contractor.

## SUBMITTAL REQUIREMENTS CHECKLIST



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

It is preferred that all submittals be prepared on 8½" X 11" paper and printed on one (1) side only. Foldout pages should be kept to a minimum. Bidders are reminded that the Evaluation Committee's ability to evaluate the proposals is dependent upon the organization, detail and readability of the submittal documents. A clear, complete and adequate response is very important. Please format your response to correspond with the areas listed below in the order they are listed below.

The Bidder's submittal should not exceed a **MAXIMUM of one hundred (100)** pages in length (single sided 8½" X 11" paper) and **MUST** include a **MINIMUM** of the following items listed below. **NOTE:** Total page count excluded OR includes cover letter, section dividers, table of contents, pre-printed material (City's Signature Page, Firm and Staff Qualification Summary Letter, and Disclosure Forms.), and all required submittal attachments included in the Bidder's proposal.

To constitute a valid responsive proposal by the Bidder to this solicitation, the Bidder's submittal **MUST** include a **MINIMUM** of the following items:

- Offer/Acceptance Document** – Complete Offer portion of the document, signed in ink.
- General Disclosure Form** – Fully completed General Disclosure Form, signed in ink.
- Litigation Disclosure Form** – Fully completed Litigation Disclosure Form, signed in ink.
- Pricing Proposal Form** – Fully completed Pricing Proposal Form(s).
- Firm and Staff Qualification Summary Letter** - The Bidder shall submit a Firm and Staff Qualification summary document that is a **MAXIMUM** of ten (10) pages in length (single sided – 8½" X 11"). Firm and Staff Qualification summary documents that are larger than ten (10) pages may be considered non-responsive. The summary letter shall illustrate the Bidder's understanding of the objectives of this Solicitation, as well as the qualifications, experience, training and other credentials that illustrate the Bidder and employee's abilities to successfully complete the scope of work represented in this Solicitation. The Firm and Staff Qualifications document shall include, at a **MINIMUM**, of the following items:
  - Offeror's document shall contain a synopsis of the firm's history, including a statement indicating the length of time the Offeror has been doing business in the Phoenix Metropolitan area.
  - Company Name, Main office business address, local office business address (if different), Office phone, fax and email address and Company web page address (if available).
  - A brief description of your company's primary business and any other associated business. Include years of operation and the associated professional and business licenses for those businesses.
  - Offeror's document shall demonstrate previous experience performing work similar to the size and scope of the work identified herein.



## SUBMITTAL REQUIREMENTS CHECKLIST



### BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

- Staff Qualifications - Key Personnel Resume and Qualifications** – Offeror’s proposal shall include the qualifications of the key personnel that will be involved in the required work covered by the scope of this solicitation. The qualifications provided shall include resumes, academic credentials, applicable training classes, Professional Certifications, Professional Association Memberships, etc.
  - Resumes of all key project personnel shall be submitted separately in the Offeror’s proposal. All resumes shall be limited to one page and include a brief summary of past accomplishment, academic credentials, Professional Certifications, Professional Engineering Registration, Professional Association Memberships, etc.).
  - Offeror’s document shall contain an organizational chart that identifies key personnel by name and title
  - Certifications by EJ Ward to work on the EJ Ward Fuel Management System or the dates certification training and testing are to take place
  
- Subcontractor List** – Offeror shall provide a complete list of all the anticipated subcontractors the Offeror intends to use to complete the work covered under the scope of this contract. Offeror shall identify the role envisioned by the subcontractor in the project. The Offeror shall supply a MINIMUM of the following information for each subcontractor:
  - Subcontractor Name
  - Subcontractor Address
  - Subcontractor Phone Number
  - Subcontractor Contact Name
  - Subcontractor License Numbers (If applicable)
  - Extent of Work Subcontractor will do for the OfferorNote: if the Offeror does not plan to use any subcontractors, then the Offeror must indicate that in this section.
  
- Approach** – Offeror’s document shall demonstrate an understanding of the goals identified herein for the required work, and provide a basic overview for the accomplishment of these goals. Offeror’s proposal shall address a MINIMUM of the following key project areas:
  - Offeror’s document shall demonstrate an understanding of the goals identified herein for this contract, and provide a basic overview for the accomplishment of these goals.
  - Offeror’s document shall identify the key issues and potential obstacles with respect to the scope of work identified herein. Offer’s documents should provide a basic methodology to address and overcome all identified issues and obstacles.
  - Offeror’s document shall contain a comprehensive description of all services that shall be provided.
  
- Reference List** – Offeror’s proposal shall demonstrate previous experience performing work similar to the size and scope of the work identified herein. Offeror’s proposal shall include a MINIMUM of three (3) letters of reference that illustrate this.

## SUBMITTAL REQUIREMENTS CHECKLIST



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

- Exceptions** – Offeror shall include all exceptions taken in regards to the terms and conditions as specified in this solicitation document, any award documents, or attached contracts. All exceptions taken by the Offeror shall be clearly defined and the changes requested clearly identified in their submittal document. Exceptions taken by the Offeror shall be used in the evaluation process. If the Offeror does not indicate exceptions in their submittal document this will signify to the City that the Offeror is in full agreement with all areas of the solicitation document, attached award documents and contracts, and agree to all terms as stated.
  
- Proposal Copies** – Identify and submit one unbound original and three (3) copies of the Offeror's proposal (Proposal copies can be bound if the Offeror so desires). In addition, the Offeror is requested to provide an electronic copy of the Offeror's complete proposal. This electronic copy shall be one file, on a Compact Disc (CD), in Adobe® Acrobat format (PDF), and be an electronic representation of the Offeror's complete proposal document (signature page, quotation page, sample documents, all attachments, brochures, pamphlets, etc.). The CD shall be labeled with the solicitation number, along with the Offeror's company name.

## EVALUATION CRITERIA



### **BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

#### **GENERAL**

After receipt of all proposals, each submittal shall be screened to determine if any shall be deemed non-responsive. Unsigned proposals, unacknowledged Addenda, incomplete proposals, non-conformance with mandatory requirements, etc., may result in the determination of non-responsive.

Subsequent to the initial review, all remaining proposals shall be reviewed by the Proposal Evaluation Committee.

#### **PROPOSAL EVALUATION**

All responsive proposals shall be evaluated by the Proposal Evaluation Committee using the weighting and criteria listed below. The recommendation for contract award will be made to the responsible Bidder whose proposal is determined to be the most advantageous to the City when applying the following criteria and weighting.

The following is the weighting of criteria that will be used to review the proposals:

- Firm Qualifications and Experience – (30%)
- Staff Qualifications - Key Personnel Resumes – (25%)
- Proposal Pricing – (25%)
- Approach - References – Subcontractors – Exceptions - (20%)

Bidder may be invited to make a presentation, but Bidder should not rely on a possible presentation to present their qualifications and offered services. If invited, the Bidder will be notified of the date and time of the presentation by the Contract Administrator. Results of any presentation may be used to determine the contract award.

Each proposal will be reviewed in entirety and assigned a score with respect to each of the criteria. The proposals will be ranked by the evaluation committee according to their total weighted ranking.

The evaluation committee may establish a short list of those proposals considered most advantageous to the City of Scottsdale.

- Short-listed Bidders may be invited to make presentation. At the presentation, the evaluation committee will score each Bidder.
- At the conclusion of all presentations, an overall ranking of proposals will be performed, combining the results of the proposal evaluations and the presentations.

The City of Scottsdale intends to enter into negotiations with the top ranked Bidder determined to provide the most advantageous combination of product and services as determined by the proposal and presentation.

Should negotiations with the top ranked Bidder fail to reach a satisfactory conclusion, the City of Scottsdale may at its sole discretion enter into negotiations with the second ranked vendor, or the City of Scottsdale may determine that no further negotiations will be conducted.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
COCHISE PETROLEUM EQUIPMENT COMPANY, INC.**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

The method of payment is provided in Section 3 of the Agreement. The amount of compensation is provided in the attached Exhibit B Pricing.

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$255,000 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

Bulk fuel, lubrication system testing, maintenance and repair services for City of Glendale on an as-needed basis for Fleet Management and the Glendale Municipal Landfill of the Public Works Department.

**PRICING PROPOSAL FORM**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

RFP # 13RP030

Prices quoted shall be all inclusive and include all applicable invoice charges for the service being requested.

TESTING				
ITEM NO.	DESCRIPTION	ESTIMATED ANNUAL REQUIREMENTS	UNIT PRICE	EXTENDED PRICE
1.1	Annual Tank Monitor Certification (Veeder-Root)	8	\$ 105 <sup>00</sup>	\$ 840 <sup>00</sup>
1.2	Annual Stage II Preliminary Test	4	\$ 350 <sup>00</sup>	\$ 1400 <sup>00</sup>
1.3	Annual Tank Tightness/Leak Detector/Line Test	7	\$ 310 <sup>00</sup>	\$ 2170 <sup>00</sup>
1.4	Annual Stage II Witness Test	4	\$ 110 <sup>00</sup>	\$ 440 <sup>00</sup>
1.5	Compliance Leak Check	16	\$ 105 <sup>00</sup>	\$ 1680 <sup>00</sup>
1.6	Annual Bulk Oil Tank Inspection	9	\$ 95 <sup>00</sup>	\$ 855 <sup>00</sup>
1.7	AST Tank Test per API Stand 653	9	\$ 325 <sup>00</sup>	\$ 2925 <sup>00</sup>
1.8	TOTAL OF EXTENDED PRICING (1.1 THROUGH 1.7)			\$ 10,310

REPAIRS AND MAINTENANCE				
ITEM NO.	DESCRIPTION	ESTIMATED NUMBER OF HOURS (ANNUAL)	LABOR HOUR RATE	1.9 EXTENDED PRICE
1.9	Bulk Fueling System Repairs	150 Hours	\$ 57.50	\$ 8,625 <sup>00</sup>

1.10	GRAND TOTAL (Item Number 1.8 plus Item Number 1.9)			\$ 18,935 <sup>00</sup>
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COMPANY NAME: Cochise

**PRICING PROPOSAL FORM – CONT'D**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

RFP # 13RP030

**REPAIRS AND MAINTENANCE**

ITEM NO.	DESCRIPTION	UNIT PRICE OR PERCENT MARKUP
1.11	Parts Mark-Up For Bulk Fueling System Repairs	<u>15</u> %
1.12	Sublet Repair Mark-Up For Bulk Fueling System Repairs	<u>15</u> %
1.13	Labor Hour Rate For Bulk Lubrication System Repairs	\$ <u>57.50</u> Per Hour
1.14	Parts Mark-Up For Bulk Lubrication System Repairs	<u>15</u> %
1.15	Sublet Repair Mark-Up For Bulk Lubrication System Repairs	<u>15</u> %

COMPANY NAME: Cochise

**PRICING PROPOSAL FORM – CONT'D**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

RFP # 13RP030

**REPAIRS AND MAINTENANCE**

List any miscellaneous charges (per invoice, if applicable). Please give a description of each miscellaneous charge and cost.

TRUCK FEE	\$ 15 <sup>00</sup>
OVERTIME Hourly Rate	\$ 80 <sup>25</sup>
Holiday Hourly Rate	\$ 115 <sup>00</sup>
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

COMPANY NAME: \_\_\_\_\_

PRICING PROPOSAL FORM – CONT'D



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

**\*\*TAXES**

1. Do not include any use, or federal excise tax in your bid. The city is exempt from the payment of federal excise tax and will add use tax as applicable.

**DELIVERY DESTINATION**

Delivery Location: Various City Locations

1. Delivery terms are F.O.B. destination.
2. Delivery will be completed within 2 days after receipt of Purchase Order.
3. Prices quoted herein are effective through completion of delivery against this Contract.

**ADDENDA**

The bidder hereby acknowledges receipt of and agrees his bid is based on the following Addenda.

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_ ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_ ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

NO BID: If no bid please state reason:

\_\_\_\_\_

COMPANY NAME: Cochise



SUBCONTRACTOR'S LIST



BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

COMPANY NAME: Cochise

If any bidder intends to subcontract any portion of this contract, the bidder must submit the name, address, license number (if applicable) of each subcontractor including the extent of such subcontracting and include with bid submittal documents. (Bidder may supply additional pages as needed to identify all subcontractors).

NAME: WESTEST LICENSE: \_\_\_\_\_

ADDRESS: P.O. Box 11727 PHX, AZ 85061

CONTACT PERSON/TELEPHONE#: Barb 602-841-2550

EMAIL ADDRESS: WESTESTINC@gmail.com

EXTENT OF WORK: Tank, Line, ATCs, Stage II, Leak Detector Testing

NAME: \_\_\_\_\_ LICENSE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON/TELEPHONE#: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

EXTENT OF WORK: \_\_\_\_\_

NAME: \_\_\_\_\_ LICENSE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON/TELEPHONE#: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

EXTENT OF WORK: \_\_\_\_\_

NAME: \_\_\_\_\_ LICENSE: \_\_\_\_\_

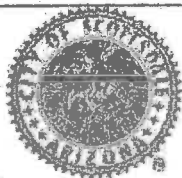
ADDRESS: \_\_\_\_\_

CONTACT PERSON/TELEPHONE#: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

EXTENT OF WORK: \_\_\_\_\_

**REFERENCES**



**BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES**

**RFP # 13RP030**

List minimum of three (3) Arizona customers, excluding the City of Scottsdale, for whom your company has provided service(s) of a similar scope as this Invitation for Bid, during the past three years. Include the length of any contracts listed. Bidders may make multiple copies of this document as needed.

The following questions are asked to enable the evaluation team to assess the qualifications of bidders under consideration for final award. This information may or may not be a determining factor in award of this Solicitation.

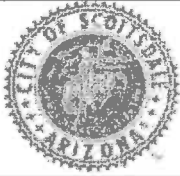
Company Name: BRO RETAIL  
 Company Address: 14644 N 74TH STREET STE 101  
 City/State/Zip: SCOTTSDALE, AZ 85260  
 Contact Person: ERIC SEITZ Telephone #: 602-721-3381  
 Email: ERSEITZ@BROGROUP.NET Date of Service: 05/31/2013  
 Type of Service Provided: REPAIRED FUEL PUMPS

Company Name: WESTERN REFINING - ARIZONA FUEL SITES  
 Company Address: 7324 4TH ST NW  
 City/State/Zip: ALBUQUERQUE, NM 87107  
 Contact Person: JOHN SMITH Telephone #: 602-286-1920  
 Email: JOHN.SMITH@WNR.COM Date of Service: 06/15/2013  
 Type of Service Provided: REPAIRED FUEL PUMPS

Company Name: ADOT  
 Company Address: 2225 S 22ND AVE  
 City/State/Zip: PHOENIX, AZ 85009  
 Contact Person: JAMES BROWN Telephone #: 602-712-6526  
 Email: JTBROWN@AZDOT.GOV Date of Service: 06/12/2013  
 Type of Service Provided: PRETEST + STATE TESTING ON FUEL PUMPS

YOUR COMPANY NAME: COCHISE PETROLEUM EQUIPMENT CO.

BIDDER GENERAL DISCLOSURE FORM



BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

Bidder shall respond to each of the questions below by checking the appropriate box and provide supplemental information as needed. Failure to fully and truthfully disclose the information required by this disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.

Debarment / Suspension Information – Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

YES

NO

If "YES", in an attachment to this form identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

Surety Information – Has the Respondent or any of its principals ever had a bond or surety cancelled or forfeited?

YES

NO

If "YES", in an attachment to this form identify the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

Bankruptcy Information – Has the Respondent or any of its principals ever been declared bankrupt or filed for protection from creditors under State or Federal proceeding in the last seven (7) years?

YES

NO

If "YES", in an attachment to this form identify the date, court, jurisdiction, case number, amount of liabilities and amount of assets.

Signature April D. Erickson

Title CEO

Printed Name APRIL D. ERIKSON

Date 6/20/13

COMPANY NAME: Cochise

BIDDER LITIGATION DISCLOSURE FORM



BULK FUEL - LUBRICATION SYSTEM TESTING - MAINTENANCE AND REPAIR SERVICES

RFP # 13RP030

Bidder shall respond to each of the questions below by checking the appropriate box and provide supplemental information as needed. Failure to fully and truthfully disclose the information required by this disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.

Have you or any member of your Firm or Team to be assigned to this contract ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

YES

NO

Have you or any member of your Firm or Team to be assigned to this contract ever been terminated (for cause or otherwise) from any work being performed for the City of Scottsdale or any other Federal, State or Local Government?

YES

NO

Have you or any member of your Firm or Team to be assigned to this contract ever been involved in any claim or litigation with the City of Scottsdale or any other Federal, State or Local Government during the last ten (10) years?

YES

NO

If you answered "YES", to any of the above questions, in an attachment to this form, please indicate the name(s) of the person(s), the nature, and status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable.

April D. Erikson  
Signature

CEO  
Title

April D. Erikson  
Printed Name

6/20/13  
Date

COMPANY NAME: Cockise



## Legislation Description

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**File #: 16-631, Version: 1**

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**AUTHORIZATION TO ENTER INTO AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH GAVAN & BARKER, INC., FOR 2014-2015 DRAINAGE STUDIES**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into Amendment No. 3 to the Professional Services Agreement (PSA) with Gavan & Barker, Inc., Contract No. C-9683, for 2014-2015 Drainage Studies, to increase compensation \$34,450 to a total not to exceed amount of \$203,350.

**Background**

On February 5, 2015, the city entered into a PSA with Gavan & Barker, Inc. to perform the 2014-2015 Drainage Studies. On May 12, 2015, the PSA was amended to include drainage studies at two locations: the 59th and Paltaire Avenues intersection and the 64th Drive and St. John Avenue intersection. The preliminary drainage study for these two intersections was delivered to the city in December 2015.

Gavan & Barker's preliminary drainage study has recommended that to improve drainage in the 59th Avenue and Paltaire Avenue intersection, the following items are necessary: 1) the design of a new storm drain catch basin at a low spot connected to the existing storm drainage, 2) new curb, gutter and driveways on Paltaire Avenue, east of 59th Avenue, and 3) design of new curb, gutter and sidewalk on Myrtle Avenue, also east of 59th Avenue.

The preliminary drainage study also recommended that to improve drainage in the 64th Drive and St. John Avenue intersection, the following items are necessary: 1) the enlargement of the existing drop inlet at an existing drainage channel, and 2) regrading of the channel.

**Analysis**

Engineering staff reviewed several options presented in the Gavan & Barker, Inc. preliminary drainage study, and found the items outlined above would provide the most economical solution to flooding in the two intersections. Gavan & Barker, Inc. will provide surveying, plan design, bid assistance, and construction administration for these projects.

**Previous Related Council Action**

On November 10, 2015, City Council authorized entering into Amendment No. 2 to the PSA with Gavan & Barker, Inc., Contract C-9683, in the amount of \$92,840.

On May 12, 2015, City Council authorized entering into Amendment No. 1 to the PSA with Gavan & Barker, Inc., Contract C-9683, in the amount of \$30,860. The original PSA, in an amount not to exceed \$45,200, was administratively approved on February 5, 2015.

**Community Benefit/Public Involvement**

Residents at the intersections of 59th and Palmaire Avenues, and 64th Drive and St. John Avenue have had storm water flooding their property during significant rain events. These storm drainage designs will greatly reduce the storm water from encroaching onto private property and encourage runoff to be contained within city right-of-way.

**Budget and Financial Impacts**

Funding is available in the Fiscal Year 2016-17 Capital Improvement Plan budget. The increase in expenditures with Gavan & Barker, Inc. for Amendment No. 3 shall not exceed \$34,450.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$34,450</b>	<b>2180-79004-551200, Local Drainage Problems</b>

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AMENDMENT NO. 3 to the  
 Agreement for Professional Services  
 (Project 141517-2014/2015 Drainage Studies, Contract No. C-9683)

This Amendment No. 3 ("Amendment") to the Professional Services Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Gavan & Barker, Inc., an Arizona corporation authorized to do business in Arizona ("Contractor").

RECITALS

- A. City and Gavan & Barker, Inc. ("Contractor") previously entered into Professional Services Agreement, Contract No. C-9683, dated February 5, 2015 ("Agreement"); and
- B. The original scope of work to be performed under this agreement included hydrologic analysis of drainage issues at two sites, identification of alternative solutions, development of concept plans and estimates of construction costs; and
- C. The City and Contractor previously entered into Agreement Amendment No. 1 to amend the scope of work to include two additional sites; and Agreement Amendment No. 2 to further amend the scope of work to include development of construction drawings and specifications for storm drain improvements at one of the sites identified in the original study.
- D. City and Contractor wish to modify and amend the Agreement subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 3. **Term.** The term of the Agreement is extended for a one-year period from November 16, 2016 through November 16, 2017, unless otherwise terminated or canceled as provided by the Agreement. All other provisions of the Agreement except as set forth in this Amendment shall remain in their entirety.
- 3. **Scope of Work.** This project is the design of drainage improvements for two separate flood prone areas located within the City of Glendale. The services provided for this project will include field survey and base sheet preparation, development of plan and profile drawings, preparation of special details, utility coordination, quantity/cost estimates, final plans and other services during construction at 59<sup>th</sup> and

Palmaire Avenues and 64<sup>th</sup> and St. John Avenues and further described in the attached exhibit.

4. **Compensation.** Increase in compensation an additional \$34,450 as described and shown in the attached exhibit, to a total not to exceed amount of \$203,350.
5. **Insurance Certificate.** Current certificate will expire on (Date) and a new certificate applying to the extended term must be provided prior to this date to Materials Management and the Contract Administrator.
6. **Non-discrimination.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.
7. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
8. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
9. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

[Signatures on the following page.]



CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Kevin R. Phelps, City Manager

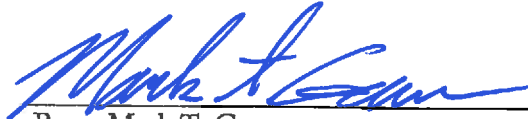
ATTEST:

\_\_\_\_\_  
Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

Gavan & Barker, Inc.  
an Arizona corporation



By: Mark T. Gavan

Its: President

10/18/16

**AMENDED EXHIBIT B**  
**Professional Services Agreement**

**SCOPE OF WORK**

A. General project administration services may include:

- Coordinating with the City Project Team during the design of the project.
  - Attending project meetings as necessary to maintain the project budget and schedule; chairing periodic regular meetings and any additional meetings as requested by the City; setting agendas and preparing and distributing meeting minutes. Meetings under basic services may include:
    - a) Meetings with City staff and management.
    - b) Field visits with City staff.
    - c) Meetings with oversight committees (i.e. City Management, City Council, Planning, etc.).
  - Coordinating with private, public and City utilities (i.e., Information Technology Department, Water Services Department) regarding standard technology and utility issues and incorporating pertinent information into the plans.
  - Preparing and maintaining a project schedule after meeting with the designated City project manager (referred to as "Project Manager") to determine appropriate submittal deadlines and to coordinate project submissions.
  - Submitting a written monthly Design and Progress Report to the City during the entire period of design.
  - Project Schedule: The Consultant shall prepare a significant event calendar within fourteen (14) days of the Notice to Proceed (NTP). The initial schedule should show the original start date with initial completion date as a reference. One copy of the original overall schedule with original time line and data dates shall be submitted at the project kick-off meeting. Additionally, minimum general time frames for project milestones shall be provided. The Consultant shall update the schedule monthly to keep it current showing comparison with the Baseline/Target schedule. The updated schedule report shall be submitted with the monthly invoice.
  - Invoices: The invoices will be consistent with the project tasks, project schedule, fee proposal, and projected billings. The invoice will identify the contract number and include the amount of each work task and man-hour level of effort and consultant service identified in the approved fee proposal. The percent complete shall be determined the project schedule, tasks, and fee proposal per tasks. The total invoice submitted shall be less than or equal to the report that details the task percent complete with the associated cost. The invoice will show the amounts previously billed, the amount due for the current period, the project balance and the percent complete per tasks. The Consultant shall submit one hard copy invoice to the City Project Manager, City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona 85301.
- B. Task 1 – 59th Avenue and Palmaire Avenue:
- Field Survey – A field survey will be conducted along Palmaire Avenue and along Myrtle Avenue to cover the area where the new storm drain and paving improvements are planned to be constructed. The limits of the survey on Palmaire will cover the street from back of sidewalk to back of sidewalk and extend from the east curb line on 59th Avenue to about 50 feet west of the west curb line on 58th Drive. The limits of the survey on Myrtle will also cover the street from back of sidewalk to back of sidewalk and extend from the centerline of 59th Avenue to about 160 feet west of the west curb line on 58th Drive. The surveys will include the location of existing street monuments, cross sections of the street, above ground evidence of utility lines, fences, pipe inverts at manholes, top of nut at water valves, walls, driveways, etc. The survey will be tied to at least two city benchmarks and will be done on City vertical and horizontal datum.

- **Base Sheet Drafting** – Base sheets for the proposed improvements will be prepared for both Palmyra Avenue and Myrtle Avenue which will include the topographic data obtained with the survey (curbs, sidewalks, walls, fences, trees, driveways, manholes, storm drain inlets, etc.), R/W lines, property lines, and utilities of record.
  - **Preliminary Plans** – Preliminary plan and profile sheets of the paving improvements will be developed that will include the horizontal and vertical alignment of the new curb and gutter as well as grading plans of the new pavement, driveways and sidewalk ramps. These plans will also include typical sections and a profile of the new storm drain connector pipe. The Consultant will coordinate with utility companies and other agencies to incorporate existing utility facilities into the construction plans. All existing utilities shall be shown on the preliminary construction plans.
  - **Quantity/Cost Estimates** – Quantity and cost estimates will be prepared for the 60% progress submittal.
  - **60% Submittal** – A submittal will be prepared at the 60% stage which will include: Preliminary plans, quantity estimate, and a CD with PDF files of the project drawings.
  - **Utility Coordination** –The Consultant will send 60% plans to the utility companies; requesting letters of conflict review. The relocation of any utilities that are in conflict will be coordinated by the Consultant. Utilities in conflict will be potholed to obtain precise information as to their vertical and horizontal position.
  - **Pre-Final Plans and Details** – Pre-final plans will be prepared that will include final curb and gutter alignment, final storm drain profile, final details, and completion of construction call outs and quantities.
  - **Pre-Final Special Provisions** – Bid item descriptions will be prepared using MAG Uniform Standard Specifications. Special provisions, if required, will be prepared for unique items of work that are not covered by MAG.
  - **Quantity/Cost Estimates** – Quantity and cost estimates will be prepared for the 90% progress submittal.
  - **90% Submittal** – A submittal will be prepared at the 90% stage which will include: Pre-final plans, special provisions (if necessary), quantity estimate, and a CD with PDF files of the project drawings.
  - **Utility Coordination** –The Consultant will send 90% plans, if necessary, to the utility companies; requesting letters of conflict review. The relocation of any utilities that are in conflict will be coordinated by the Consultant.
  - **Final Plans and Details** – Final plans will be prepared that will incorporate all City comments received on the pre-final plans.
  - **Final Special Provisions** – Special provisions, if required, will be finalized and will include any revisions to respond to City comments on the pre-final special provisions.
  - **Quantity/Cost Estimates** – Quantity and cost estimates will be prepared for the 100% progress submittal.
  - **100% Submittal** – A submittal will be prepared at the 100% stage which will include: final plans, final special provisions (if required), final quantity estimate, and a CD with PDF files of the project drawings.
  - **Project Coordination/Meetings** - The Consultant will attend design meetings, as necessary, with city staff during the development of the construction documents.
- C. **Task 2 – 64th Drive and St. John Avenue:**
- **Field Survey** – A field survey will be conducted along the St. John Avenue drainage way to cover the area where the new channel improvements are planned to be constructed. The limits of the survey will cover the drainage

way from wall to wall and extend from the east bank of Skunk Creek to the west curb line on 64th Drive. The survey will include the location of existing street monuments, cross sections of the channel, above ground evidence of utility lines, fences, pipe inverts at manholes and at the existing drop inlet, top of nut at water valves, walls, etc. The survey will be tied to at least two city benchmarks and will be done on City vertical and horizontal datum.

- **Base Sheet Drafting** – Base sheets for the proposed improvements will be prepared which will include the topographic data obtained with the survey (curbs, sidewalks, walls, fences, trees, driveways, manholes, storm drain inlets, etc.), R/W lines, property lines, and utilities of record.
- **Preliminary Plans** – Preliminary plan and profile sheets for the channel improvements will be developed that will include the horizontal and vertical alignment of the regraded channel, typical sections and preliminary details of the modified drop inlet. The Consultant will coordinate with utility companies and other agencies to incorporate existing utility facilities into the construction plans. All existing utilities shall be shown on the preliminary construction plans.
- **Quantity/Cost Estimates** – Quantity and cost estimates will be prepared for the 60% progress submittal.
- **60% Submittal** – A submittal will be prepared at the 60% stage which will include: Preliminary plans, quantity estimate, and a CD with PDF files of the project drawings.
- **Utility Coordination** –The Consultant will send 60% plans to the utility companies; requesting letters of conflict review. The relocation of any utilities that are in conflict will be coordinated by the Consultant. Utilities in conflict will be potholed to obtain precise information as to their vertical and horizontal position.
- **Pre-Final Plans and Details** – Pre-final plans will be prepared that will include final channel alignment, final details, and completion of construction call outs and quantities.
- **Pre-Final Special Provisions** – Bid item descriptions will be prepared using MAG Uniform Standard Specifications. Special provisions, if required, will be prepared for unique items of work that are not covered by MAG.
- **Quantity/Cost Estimates** – Quantity and cost estimates will be prepared for the 90% progress submittal.
- **90% Submittal** – A submittal will be prepared at the 90% stage which will include: Pre-final plans, special provisions (if necessary), quantity estimate, and a CD with PDF files of the project drawings.
- **Utility Coordination** –The Consultant will send 90% plans, if necessary, to the utility companies; requesting letters of conflict review. The relocation of any utilities that are in conflict will be coordinated by the Consultant.
- **Final Plans and Details** – Final plans will be prepared that will incorporate all City comments received on the pre-final plans.
- **Final Special Provisions** – Special provisions, if required, will be finalized and will include any revisions to respond to City comments on the pre-final special provisions.
- **Quantity/Cost Estimates** – Quantity and cost estimates will be prepared for the 100% progress submittal.
- **100% Submittal** – A submittal will be prepared at the 100% stage which will include: final plans, final special provisions (if required), final quantity estimate, and a CD with PDF files of the project drawings.
- **Project Coordination/Meetings** - The Consultant will attend design meetings, as necessary, with city staff during the development of the construction documents.

D. Task 3 – Allowance for Extra Work:

This allowance is for extra work, as determined by the City, to provide potholing services during design and/or services during construction which may include redesign to address unforeseen field conditions, conduct special inspections and prepare record drawings and/or carry out additional work on the previous tasks identified in this scope of work. The Consultant shall not use any portion of this allowance without prior authorization from the City.

**AMENDED EXHIBIT D**  
**Professional Services Agreement**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

Compensation shall be hourly rates plus allowable reimbursable expenses at a cost not to exceed \$34,450.

**DETAILED PROJECT COMPENSATION**

Original Contract Amount	\$ 45,200.00
Amendment No. 1	\$ 30,860.00
Amendment No. 2	\$ 92,840.00
Amendment No. 3	
Task 1 – 59th Ave. and Palmaire Ave. Improvements	\$ 16,110.00
Task 2 – 64th Dr. and St. John Ave. Improvements	\$ 12,340.00
Task 3 - Extra Work Allowance	\$ 6,000.00
Subtotal Amendment No. 3	\$ 34,450.00
Total Professional Services Fee	\$ 203,350.00



## Legislation Description

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**File #: 16-633, Version: 1**

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**AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH HOLBROOK ASPHALT, LLC, FOR THE HA5 SURFACE PRESERVATION PROJECT**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager enter into a Linking Agreement with Holbrook Asphalt, LLC for the HA5 High Density Mineral Bonding Surface Preservation project, in an amount of \$76,711.67 and to authorize an expenditure limit of \$84,382.84 (base contract plus 10% contingency). The term of the Agreement is effective until November 15, 2017.

**Background**

The city has over 718 miles of paved arterial, collector, and residential roadways, which represents an investment of over \$1 billion in the street network based on replacement costs in today's economy. With the exception of minor street and concrete repairs (potholes, small paving projects, curb, and sidewalk) the city contracts for all other preventative maintenance and reconstructive roadway projects.

Holbrook Asphalt, LLC was awarded a bid by the City of Goodyear to provide high density mineral bond/slurry seal. Staff is requesting to utilize the cooperative purchase with Strategic Alliance for Volume Expenditures (SAVE). SAVE is a consortium of local municipalities, in which Glendale is a member. Contract No. CON-16-3332 for High Density Mineral Bond/Slurry Seal was awarded on November 16, 2015 and is effective through November 15, 2017.

Cooperative purchasing allows counties, municipalities, schools, colleges and universities in Arizona to use a contract that was competitively procured by another governmental entity or purchasing cooperative. Such purchasing helps reduce the cost of procurement, allows access to a multitude of competitively bid contracts, and provides the opportunity to take advantage of volume pricing. The Glendale City Code authorizes cooperative purchases when the solicitation process utilized complies with the intent of Glendale's procurement processes. This cooperative purchase is compliant with Chapter 2, Article V, Division 2, Section 2-149 of the Glendale City Code, per review by Materials Management.

**Analysis**

The HA5 Surface Preservation project for the Pavement Management Program provides for approximately 2.5 miles of surface preservation on various residential streets in the city. Specifically this project includes: HA5 High Density Mineral Bonding surface treatment of existing roadway sections in the vicinity of 72nd Avenue and Colter Drive.

This is a pilot project. The cost per square yard for application of the HA5 High Density Mineral Bonding surface treatment is less expensive than traditional slurry seal applications for road surfaces of this type. If successful, the product may be incorporated into the Pavement Management Program with expanded use throughout the city.

**Community Benefit/Public Involvement**

Well maintained infrastructure is an important element of strong neighborhoods and business corridors and is critical for the attraction of quality economic development.

**Budget and Financial Impacts**

Funding is available in the Fiscal Year 2016-17 Capital Improvement Plan budget. Expenditures with Holbrook Asphalt, LLC are not to exceed \$84,382.84 (base contract plus contingency).

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$84,382.84</b>	<b>2000-68917-550800, Pavement Management-HURF</b>

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?



**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
HOLBROOK ASPHALT, LLC**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Glendale, an Arizona municipal corporation (the "City"), and Holbrook Asphalt, LLC, a Utah limited liability company authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On November 15, 2015, under the S.A.V.E. Cooperative Purchasing Agreement, the City of Goodyear entered into a contract with Contractor to purchase the goods and services described in the High Density Mineral Bond/Slurry Seal Contract (Contract No. CON-16-3332) ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was November 16, 2015, until the date the contract expires on November 15, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond November 15, 2020. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until

November 15, 2017. The City Manager or designee, however, may renew the term of this Agreement for three (3) one-year periods until the Cooperative Purchasing Agreement expires on November 15, 2020. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed seventy-six thousand, seven hundred eleven and 67/100 dollars (\$76,711.67) annually for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale  
 c/o Wade Ansell  
 5850 West Glendale Avenue, Suite 315  
 Glendale, Arizona 85301  
 623-930-3630

and

Holbrook Asphalt, LLC  
 c/o Cory Galbraith  
 3806 South 16<sup>th</sup> Street  
 Phoenix, Arizona 85040

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

“City”

“Contractor”

City of Glendale, an Arizona  
 municipal corporation

Holbrook Asphalt, LLC,  
 a Utah corporation

By: \_\_\_\_\_  
 Kevin R. Phelps  
 City Manager

By:   
 Name: ~~Cory Galbraith~~ LONDON MLINK  
 Title: ~~Vice President~~ CFO

ATTEST:

\_\_\_\_\_  
 Julie K. Bower (SEAL)  
 City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
 Michael D. Bailey  
 City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
HOLBROOK ASPHALT, LLC**

**EXHIBIT A**

Job Order Contract No. CON-16-3332 High Density Mineral Bond/Slurry Seal  
Acceptance of Offer and Contract Award November 16, 2015  
Contract Amendment No. 1 to extend term to November 15, 2017

# CONTRACT COVER SHEET

# LINKED



For Contract Review - please route Contract through Fernando Camacho in Finance, Ext. # 7844.

A contract number will be assigned when it starts the review process.

NOTE: Contract Numbers will not be issued via email or over the telephone.

*Please fill out this form completely or it will be returned to you prior to review, approval, or filing in LaserFiche. If a response is not applicable, please use "N/A" - Do Not Leave Any Blanks.*

Date Submitted for Review: 10/4/16

Type (check one):

- Construction
- IGA
- Easement
- Contract
- Development Agreement
- Lease/Property Acquisition
- Change Order/Modification
- Amendment
- Other  (please specify):
- #NA Drop Down
- #1 Drop Down

### IDENTIFYING INFORMATION: (Please fill in each field)

Requesting Dept., Contact Name, Ext. #:

**Luke Albert, Engineering, x: 7519**

Contractor Name, Address, Tel. No.:

**Holbrook Asphalt**

**3806 S. 16th Street**

**Phoenix, AZ 85040**

**Cory Galbraith, AZ Vice President Operations**

**602-307-0425, cory@holbrookasphalt.com**

Brief Summary of the Services to be provided:

**High Density Mineral Bond / Slurry Seal**

Terms:

Start: **11/16/16** Expire: **11/15/17**

Contract Amount: **\$ 973,451.**

Council Date: **10/26/15** COAC # **15-5683** N/A

City Clerk's Office Use - Retention Date: 01/02/2024

Assigned Contract Number: CON - 16-3332-A1

Link to: \_\_\_\_\_

### REVIEWED AND APPROVED:

- Procurement: \_\_\_\_\_ Date: 10/5/16 Contracts/Procured Services
- Legal: LMM Date: 10/6/16 All documents
- City Manager: \_\_\_\_\_ Date: \_\_\_\_\_ When required

### CONTRACT REVIEW REQUIREMENTS

**PROCUREMENT PROCESS - NOTE:** IGAs, Easements, Lease/Property Acquisition and Development Agreements do not require Procurement Review. However, they must still be seen by Legal Services. All Contracts must be reviewed and signed off by Procurement or the City Manager & Legal Services prior to going to Council.

Designate what method you used to arrive at this contract and whether the item is budgeted for:

- Less than \$5000  \$5,000 to \$50,000 - 3 written quotes  Cooperative Agreement  On-Call /Task Order
- Formal Solicitation, Incl. Solicitation Number: OP- 16-3332
- Other - please name (e.g., sole source, demo, etc. & attach RAP (Request for Alternate Procurement) approved by Procurement Manager.

Budgeted:  Yes  No Requires Council Action: Yes  No  If yes, Council Date: \_\_\_\_\_ Attach COAC

Additional Funding Source?  Federal - Identify: \_\_\_\_\_  State - Identify: \_\_\_\_\_


Grant/Other - Identify: \_\_\_\_\_

\*Attach all supporting documentation for funding source.

ADDITIONAL COMMENTS? \_\_\_\_\_

### INSURANCE & BONDS (To be completed by Procurement Specialist)

- Insurance Certificate:  Attached RW Initial Date: 10/4/16
- Bid Bond:  Attached \_\_\_\_\_ Initial Date: \_\_\_\_\_
- Performance Bond:  Attached \_\_\_\_\_ Initial Date: \_\_\_\_\_
- Payment Bond:  Attached \_\_\_\_\_ Initial Date: \_\_\_\_\_

	<b>Contract Amendment</b> <b>No. 1</b> <b>Contract Number: CON-16-3332-A1</b>	<b>Office of Procurement</b> 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7879
---	---	--

**High Density Mineral Bond / Slurry Seal**

**CONTRACT EXTENSION**

Contract CON-16-3332 is hereby mutually extended from 11/16/2016 through 11/15/2017 unless terminated, cancelled or extended as otherwise provided in the contract.

There are three (3) extensions remaining on the contract.

***No other terms, conditions, or performance standards written or implied are changed.***

Procurement Specialist: Russ Welborn, CPPB

<b>City of Goodyear</b> By: <u><i>Jacqueline Behrens</i></u> Jacquie Behrens, CPPB Date: <u>10/5/16</u>	<b>Holbrook Asphalt</b> By: <u><i>[Signature]</i></u> Signature Date: <u>9-29-16</u>
Title: <u>Procurement Manager</u>	<u><i>Cory Coalbrough VP</i></u> Typed Name and Title
<b>Attested By:</b> <u><i>Maureen Scott</i></u> Maureen Scott, City Clerk	<b>Approved as to Form By:</b> <u><i>Roric Massey</i></u> FOR FOR Roric Massey, City Attorney



HOLBASP-1

HOWENS

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/4/2016

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

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

<b>PRODUCER</b> The Presidio Group, Inc. 6967 South River Gate Drive, #200 Salt Lake City, UT 84047	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): <b>(801) 924-1400</b>		FAX (A/C, No): <b>(801) 924-1441</b>
	E-MAIL ADDRESS: <b>reception@presidio-group.com</b>		
<b>INSURED</b>  <b>Holbrook Asphalt LLC</b> 3828 S. 1700 E. St. George, UT 84790	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A : Employers Mutual Casualty</b>		<b>21415</b>
	<b>INSURER B : Advantage Workers Compensation</b>		<b>40517</b>
	<b>INSURER C :</b>		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
<b>INSURER F :</b>			

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EBL</b>  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			4D7669017	06/15/2016	06/15/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			4D7669017	06/15/2016	06/15/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			4D7669017	06/15/2016	06/15/2017	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	3144794	06/15/2016	06/15/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.I. EACH ACCIDENT \$ 1,000,000 E.I. DISEASE - EA EMPLOYEE \$ 1,000,000 E.I. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Verification of Insurance subject to the terms and conditions of the policy.

City of Goodyear is additional Insured with respect to General Liability.

**CERTIFICATE HOLDER**                      **CANCELLATION**

City of Goodyear Engineering Division 190 N. Litchfield Rd. Goodyear, AZ 85338	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
---	---

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION CONTRACT OR  
AGREEMENT INCLUDING COMPLETED OPERATIONS – PRIMARY AND  
NONCONTRIBUTORY**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured under your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of:

- a. your ongoing operations for the additional insured; or
- b. "Your work" for the additional insured and included in the "products – completed operations hazard".

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury," "property damage" and "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports,

surveys, field orders, change orders or drawings and specifications; or

- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by the insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

D. The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

**Primary and Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

E. All other terms and conditions of this policy remain unchanged.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## COMMERCIAL AUTO AMENDMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

The BUSINESS AUTO COVERAGE FORM is amended to include the following clarifications and extensions of coverage. With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### A. BLANKET ADDITIONAL INSURED

**SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by adding the following:

- d. Any person or organization who is a party to a written agreement or contract with you in which you agree to provide the type of insurance afforded under this Business Auto Coverage Form.

This provision applies to claims for "bodily injury" or "property damage" which occur after the execution of any written agreement or contract.

#### B. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

**SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by adding the following:

- e. Any organization which you acquire or form after the effective date of this policy in which you maintain ownership or majority interest. However:

(1) Coverage under this provision is afforded only up to 180 days after you acquire or form the organization, or to the end of the policy period, whichever is earlier.

(2) Any organization you acquire or form will not be considered an "insured" if:

- A. The organization is a partnership or a joint venture; or  
B. That organization is covered under other similar insurance.

(3) Coverage under this provision does not apply to any claim for "bodily injury" or "property damage" resulting from an "accident" that occurred before you formed or acquired the organization.

#### C. SUBSIDIARIES AS INSUREDS

**SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by adding the following:

- f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, "insured" does not include any subsidiary that is an "insured" under any other automobile liability policy or was an "insured" under such a policy but for termination of that policy or the exhaustion of the policy's limits of liability.

#### D. COVERAGE EXTENSIONS – SUPPLEMENTARY PAYMENTS

**SECTION II – LIABILITY COVERAGE, A.2.a. Coverage Extensions, Supplementary Payments (2) and (4)** are replaced by the following:

(2) Up to \$3,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$350 a day because of time off from work.

#### E. PHYSICAL DAMAGE – TOWING

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.2. Towing** is replaced with the following:

We will pay for towing and labor costs incurred, subject to the following:

- a. Up to \$100 each time a covered "auto" of the private passenger type is disabled; or  
b. Up to \$500 each time a covered "auto" other than the private passenger type is disabled.

However, the labor must be performed at the place of disablement.

#### F. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions subparagraph a. Transportation Expenses** is replaced by the following:

- (1) We will pay up to \$75 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expirations, when the covered "auto" is returned to use or we pay for its "loss."

- (2) If the temporary transportation expenses you incur arise from your rental of an "auto" of the private passenger type, the most we will pay is the amount it costs to rent an "auto" of the private passenger type which is of the same like kind and quality as the stolen covered "auto."

**G. HIRED AUTO PHYSICAL DAMAGE**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**

**A.4. Coverage Extensions** is amended by adding the following:

- c. If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you hire, subject to the following limit and deductible:

- (1) The most we will pay for loss to any hired "auto" is the lesser of \$50,000 or Actual Cash Value or Cost of Repair, minus the deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning.
- (3) Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

The insurance provided under this provision is excess over any other collectible insurance.

**H. PERSONAL PROPERTY OF OTHERS**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**

**A.4. Coverage Extensions** is amended by adding the following:

- d. We will pay up to \$500 for loss to personal property of others in or on your covered "auto."

This coverage applies only in the event of "loss" to your covered "auto" caused by fire, lightning, explosion, theft, mischief or vandalism, the covered "auto's" collision with another object, or the covered "auto's" overturn.

No deductibles apply to this coverage.

**I. AIRBAG COVERAGE**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**

**B.3.a. Exclusions** is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**J. LOSS TO TWO OR MORE COVERED AUTOS FROM ONE ACCIDENT**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**

**D. Deductible** is amended by adding the following:

If a Comprehensive, Specified Causes of Loss or Collision Coverage "loss" from one "accident" involves two or more covered "autos", only the highest deductible applicable to those coverages will be applied to the "accident".

This provision only applies if you carry Comprehensive, Collision or Specified Causes of Loss Coverage for those vehicles, and does not extend coverage to any covered "autos" for which you do not carry such coverage.

**K. WAIVER OF DEDUCTIBLE – GLASS REPAIR OR REPLACEMENT**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**

**D. Deductible** is amended by adding the following:

If a Comprehensive Coverage deductible is shown in the Declarations it does not apply to the cost of repairing or replacing damaged glass.

**L. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS**

**SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties in the Event of Accident, Claim, Suit or Loss** is amended by adding the following:

- d. Your obligation to notify us promptly of an "accident," claim, "suit" or "loss" is satisfied if you send us the required notice as soon as practicable after your Insurance Administrator or anyone else designated by you to be responsible for insurance matters is notified, or in any manner made aware, of an "accident," claim, "suit" or "loss."

**M. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES**

**SECTION IV – BUSINESS AUTO CONDITIONS,**

**B.2. Concealment, Misrepresentation, or Fraud** is amended by adding the following:

If you unintentionally fail to disclose any exposures existing at the inception date of this policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**N. MENTAL ANGUISH**

**SECTION V – DEFINITIONS, C.** is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

**O. LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.



**CITY OF GOODYEAR**

**Offer and Acceptance  
CONTRACT NO. CON-16-3332**

Office of Procurement  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, AZ 85338  
Phone: 623-882-7893

DESCRIPTION OF SERVICES: High Density Mineral Bond / Slurry Seal

**OFFER**

To the City of Goodyear: The undersigned Contractor hereby offers and agrees to furnish the Services and/or material(s) in compliance with this Contract, as the term Contract is defined in this document.

By signing and submitting this Offer, Contractor certifies and warrants that Contractor: has read, understands and agrees to comply with the Contract as defined here; has no known, undisclosed conflict of interest; has not made an offer of any gift(s), payment(s) or other consideration to any City employee, elected official who has or may have had a role in the procurement process for this Contract; v) pursuant to A.R.S. § 41-4401, Contractor and its subcontractors will comply with all immigration laws and regulations that relate to its employees and A.R.S. § 23-214; and the signatory is an officer or duly authorized agent of the Contractor with full power and authority to submit binding offers for the goods and/or services as specified herein.

Arizona Transaction (Sales):

Arizona Contractor License Number:

Privilege Tax License #

City of Goodyear Business Registration No.:

For clarification of this offer contact:

Name:

Telephone:

E-Mail Address:

Sign:

Authorized Signature for Offer

Justin Hallbrook

Printed Name

HOLBROOK ASPHALT

Company Name

3806 South 16th Street

Address

PHOENIX AZ 85040

City

State

Zip Code

AZ President

Title

Date

9/3/15

**ACCEPTANCE OF OFFER AND CONTRACT AWARDED (For City of Goodyear Only)**

Contractor's Offer is hereby accepted and a Contract awarded by the City. Contractor is now bound to provide the materials and/or services as specified in Scope of Work of this Contract. Contractor shall not start any billable work or provide any material/services until the Contractor receives an executed purchase order or written notice to proceed.

N/A

City Manager, City of Goodyear (if applicable)

Attested by:

Maurice Scott

Maurice Scott, City Clerk



Official File

City of Goodyear, Arizona.

Eff. Date: 11/16/15

Awarded on

11/16/15

Approved as to form:

Lise S. Wahl for

Roric Massey, City Attorney

Jacqueline Behrens

Jacqueline Behrens, CPPB, Procurement Manager



# CITY OF GOODYEAR

Office of Procurement  
 190 N. Litchfield Road  
 P.O. Box 5100  
 Goodyear, AZ 85338  
 Phone: 623-882-7893

## Fee Schedule

Prices offered shall not include applicable state and local taxes. The City will pay all applicable taxes. For the purposes of determining the lowest cost, the City will not take tax into consideration.

Taxes must be listed as a separate item on all invoices. Applicable tax rate: 10.80 %

### 1.0 High Density Mineral Bond

Location	Classification	SQ. Yards.	Treatment Type	Cost Per SQ. Yard	Total Cost
Kingall Way - 1335	Residential	22,056	HDMB	\$ 1.48	\$ 32,642.88
Atherton Commons - 1045	Residential	17,679	HDMB	\$ 1.48	\$ 26,164.92
Palmetto Passage-1405	Residential	27,348	HDMB	\$ 1.48	\$ 40,475.04
Coquito Trails-1130	Residential	11,754	HDMB	\$ 1.48	\$ 17,395.92
Calappa Place - 1080	Residential	39,894	HDMB	\$ 1.48	\$ 59,043.12
Cabada Corners-1075	Residential	23,712	HDMB	\$ 1.48	\$ 35,093.76
Darian Court-1190	Residential	17,756	HDMB	\$ 1.48	\$ 26,278.88
Mazarri Cove -1380	Residential	29,606	HDMB	\$ 1.48	\$ 43,816.88
Trianda Terrace-1660	Residential	37,610	HDMB	\$ 1.48	\$ 55,662.80
Eligancia-1250	Residential	39,843	HDMB	\$ 1.48	\$ 58,967.64
Floriana - 1305	Residential	21,152	HDMB	\$ 1.48	\$ 31,304.96
Pueblo Verde E 1440	Residential	45,576	HDMB	\$ 1.54	\$ 70,187.04
Pueblo Verde NW 1445	Residential	17,890	HDMB	\$ 1.48	\$ 26,477.20
Pueblo Verde SW 1450	Residential	14,069	HDMB	\$ 1.48	\$ 20,822.12
Stallion Pass 1545	Residential	25,786	HDMB	\$ 1.48	\$ 38,163.28
Palomino Pass 1415	Residential	32,363	HDMB	\$ 1.48	\$ 47,897.24
Hesper Knowll 1320	Residential	24,504	HDMB	\$ 1.48	\$ 36,265.92
Total Sq. Yards		448,598		Sub Total	\$ 666,659.60
				TAX (%)	\$ 10.80%
				Totals	\$ 697,079.28



# CITY OF GOODYEAR

Office of Procurement  
 190 N. Litchfield Road  
 P.O. Box 5100  
 Goodyear, AZ 85338  
 Phone: 623-882-7893

## Fee Schedule

### SLURRY SEAL

Location	Classification	SQ. Yards.	Treatment Type	Cost Per SQ. Yard	Total Cost
Hesper Knowl 1320	Residential	5939	Slurry	\$ 1.82	10,808.98
Coquito Trails 1130	Residential	12283	Slurry	\$ 1.82	22,355.06
Mazasri Cove 1380	Residential	7687	Slurry	\$ 1.82	13,990.34
Atherton Commons 1045	Residential	4985	Slurry	\$ 1.82	9,072.70
Trianda Terrace 1660	Residential	6334	Slurry	\$ 1.82	11,527.88
Total Sq. Yards		37,228			SUBTOTAL \$ 67,754.96
					TAX (%) 10.80%
					TOTAL \$ 70,846.62

### 2.0 Striping

STRIPING	ESTIMATED QTY	UNIT PRICE	TOTAL COST
Traffic paint, 4" yellow/white	23,296	\$ 0.19	\$ 4,426.24
Traffic Thermoplastic 12"	1,920	\$ 1.50	\$ 2,880.00
Bicycle symbols, paint			
Traffic thermoplastic 18"	600	\$ 3.00	\$ 1,800.00
Turn Arrow symbols, thermoplastic	28	\$ 90.00	\$ 2,520.00
"Only" Symbol Thermoplastic	14	\$ 90.00	\$ 1,260.00
Raised Pavement Markers (RPM), oil colors	1500	\$ 4.00	\$ 6,000.00
SUBTOTAL			\$ 18,886.24
TAX			10.80%
TOTAL			\$ 19,748.02

### 3.0 Crack Seal

Striping	Square Yards	Cost per SQ.YD.	Total Cost
Crack Repair	485,826	\$ 0.39	\$ 189,472.14
SUBTOTAL			\$ 189,472.14
TAX			\$ 10.80%
TOTAL			\$ 198,117.75



# CITY OF GOODYEAR

Office of Procurement  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, AZ 85338  
Phone: 623-882-7893

## Fee Schedule

**4. Contractor Licensing Requirements:**

Bid shall comply with all statutes and rules of the State of Arizona and Registrar of Contractors. In accordance with A.R.S. § 32-1151, and unless otherwise exempted by A.R.S. § 32-1151, Bidder should have the correct class of license as required by the Registrar of Contractors for the work specified, prior to submission of a bid. The Bidder certifies possession of the following license:


Licensed Contractor's Name: HOLBROOK ASPHALT LLC

Class: K-69 Type: ASPHALT PAVING

License Number: 200-261715 Expiration: 1-31-2016

**5. Delivery:**

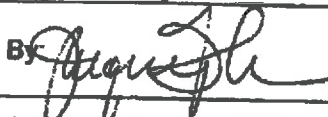
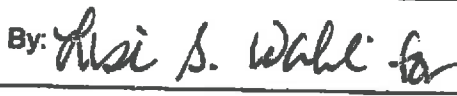
Bidder states that products and service will be delivered within \_\_\_\_\_ calendar days after receiving an order.

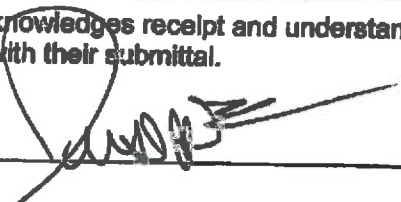
	<b>Solicitation Amendment No. 2</b>	Office of Procurement 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7893
	<b>Solicitation No. 16-3332</b> <b>Solicitation Due Date: September 3, 2015</b> <b>Time: 3:00 pm</b>	


6C. Question: Will the manufacturer be required to provide Certificates of Compliance?  
Answer: Per section 1.3.F of the solicitation, if requested, submit a quality control inspections and testing report describing source and field quality control activities performed by Contractor and its Suppliers.

*No other terms, conditions, or performance standards written or implied are changed.*

Procurement Manager: Jacque Behrens, CPPB

City of Goodyear	Approved as to form
By: 	By: 
Jacque Behrens, CPPB	Roric Massey, City Attorney

<b><u>Acknowledgement by Contractor</u></b>	
Contractor hereby acknowledges receipt and understanding of the above amendment. Contractor shall sign and return with their submittal.	
Contractor Signature: 	Date: 9/13/15

	<b>Solicitation Amendment No. 2</b>	Office of Procurement 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7883
	<b>Solicitation No. 16-3332</b> <b>Solicitation Due Date: September 3, 2015</b> <b>Time: 3:00 pm</b>	

**High Density Mineral Bond / Slurry Seal**

The following is a clarification on questions received on IFB 16-3332:

**1. Question:** Part 1, 1.3 Quality Assurance, Part A

This section states: "Acceptable performance after 5 year period is no less than 70% residual coverage in the treated surface area."

**1. Will this percentage be applied to the entire project, or to each individual location as listed in the fee schedule, section 1.0?**

For example, if location Kingall Way-1335 had only 65% residual remaining, but all other locations had 100% remaining, would that be considered a warranty situation; as there would still be 98% residual remaining over the entire "treated surface area"?

**Answer:** The percentage will be applied on a street by street basis.

**2. Question:** Will any prorated warranties be accepted?

**Answer:** Warranties will not be prorated.

**3. Question:** If it is determined that a warranty situation exists, what is an acceptable resolution? For example: Is a 1 coat retreat required, or are 2 coats required?

**Answer:** A one coat treatment is required.

**4. Question:** Can only the areas of loss be retreated, or must the entire location (Fee Schedule, Part 1) be retreated?

**Answer:** Any treatment will be curb to curb. Failures will be considered on a street by street basis. A Contractor will not be asked to retreat an entire neighborhood for part of one street failing.

**5. Question:** Will re-striping be required in the re-treated area?

**Answer:** If there is striping on a roadway that has a warranty repair, then road would need to be restriped.

**6. This section also states: "The surface treatment material must carry a warranty from both the contractor and the manufacturer."**

**6A. Question:** Is the manufacturer portion of the warranty still a requirement?

**Answer:** The warranty will need to be provided by the contractor.

**6B. Question:** Will the manufacturer be required to provide a physical address of their location?

**Answer:** The Manufacturer will be required to provide an address of where the Product was produced.





# Solicitation Amendment No. 1

Solicitation No. 16-3332

Solicitation Due Date:

September 3, 2015 Time: 3:00 pm

Office of Procurement  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, AZ 85338  
Phone: 623-882-7893

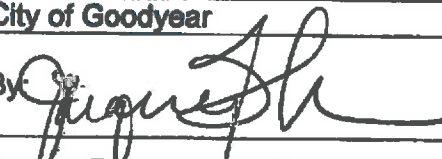

## High Density Mineral Bond / Slurry Seal

The following pages are replacing the current pages found in the Scope of Work for IFB 16-3332.

Page 25 – 33 have been revised. Replacement pages are attached

*No other terms, conditions, or performance standards written or implied are changed.*

Procurement Manager: Jacque Behrens, CPPB

City of Goodyear	Approved as to form
By:  8/25/15	By:  for
Jacque Behrens, CPPB	Roric Massey, City Attorney


### Acknowledgement by Contractor

Contractor hereby acknowledges receipt and understanding of the above amendment. Contractor shall sign and return with their submittal.

Contractor Signature: 

Date:

9/3/15

	<b>CITY OF GOODYEAR</b>	Office of Procurement 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7893
	<b>Invitation For Bid</b>	

**Solicitation Number:** 16-3332

**Materials and/or Service:** High Density Mineral Bond / Slurry Seal

**Solicitation Due Date:** September 3, 2015      **Time:** 3:00 pm (Arizona Time)

**Mailing Address:** City of Goodyear, City Hall Front Desk  
190 North Litchfield Road  
P.O. Box 5100  
Goodyear, AZ 85338

**Procurement Manager:** Jacque Behrens, CPPB  
**Phone:** 623/882-7893  
**Email:** Jacque.behrens@goodyearaz.gov

All bids must be received by the City of Goodyear, City Hall Front Desk, at the specified location by the date and time cited above. Late bids will not be considered. Bids received by the correct date and time shall be publicly opened and read. Bidders are advised to carefully read the entire Solicitation Package. Bids that do not comply with all Instructions to Bidders may be disqualified.

Bidders must register as a vendor with the City of Goodyear at <https://procurement.goodyearaz.gov/bso/> to obtain a solicitation packet. Solicitation packages can be obtained by downloading from the City of Goodyear's website: [www.goodyearaz.gov](http://www.goodyearaz.gov) and following these instructions: Enter City website, click on BUSINESS, click on Vendor Services/Procurement, click on Solicitations for Bids/Proposals, click on IFB 16-3332. Should you experience problems downloading the solicitation, contact Jacque Behrens, CPPB at the above email address.

Attendance at the Pre-Bid Conference is not mandatory; however, Bidders are strongly encouraged to attend. Offerors are also strongly encouraged to read entire solicitation prior to Pre-Bid Conference. Copies of the solicitation will not be handed out at the Pre-Bid.

**Pre-Bid Conference:** August 25, 2015 @ 10:00 a.m. – 11:00 a.m.

**Pre-Bid Location:** Goodyear City Hall  
190 N. Litchfield Road, Room 125 & 126  
Goodyear, AZ 85338

All communications concerning this solicitation must be directed to responsible Procurement Specialist identified above, via email only. Communications with other city staff may disqualify you from the evaluation process.

**OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION**

Published in the Arizona Republic Southwest Section on: 8/12/15, and 8/14/15



**CITY OF GOODYEAR**

Office of Procurement  
190 N. Litchfield Road  
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**ATTACHMENTS**

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Map B – 2105/2016 Pavement Preservation (HDMB & Slurry)



## CITY OF GOODYEAR

### Instructions to Bidders

Office of Procurement  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, AZ 85338  
Phone: 623-882-7893

#### 1. PREPARATION OF OFFER

- a. It is the responsibility of all Bidders to examine the entire solicitation package and seek clarification from the responsible Procurement Specialist of any item or requirement that may not be clear, and to check all responses for accuracy before submitting a bid.
- b. All offers shall be on the forms provided in the solicitation package. It is permissible to copy these forms if required. Telegraphic (facsimile) or email bids will not be considered
- c. The Offer and Acceptance document shall be returned with the submittal with an original blue ink signature by a person authorized to sign the Offer. Pricing documents and other documents which require information to be filled in must be done in ink, typewritten or computer printed. No bids will be accepted if pencil is used. Erasures, interlineations, or other modifications in the bid shall be initialed in original blue ink by the authorized person signing the bid.
- d. It is the Bidder's responsibility to obtain a copy of any addenda relevant to this solicitation. Failure to submit addenda with the solicitation response may be grounds for deeming a bid non-responsive.
- e. Bids shall be submitted in a sealed envelope provided by the Bidder, and should include the Bidder's name, address and solicitation number on outside of the sealed envelope/package.
- f. Periods of time, stated as a number of days, shall be calendar days.
- g. It is the responsibility of the Bidder to submit the bid at the place and by the time provided in the solicitation.
- h. Negligence in preparing a bid confers no right of withdrawal after the due date and time of the bid. No bid shall be altered, amended, or withdrawn after the specified offer due date and time.
- i. Offers shall include all costs as described and indicated by the specifications. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.
- j. If price is a consideration, and in case of error in the extension of prices in the bid, the unit price shall govern.
- k. The City shall not reimburse the cost of developing, presenting, or providing any responses to this solicitation. Bids submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- l. Bidder shall submit one (1) original, marked "original" and three (3) copies of their bid with their submittal. Bid shall be submitted single-sided and one (1) CD-ROM of the proposal containing all original documents.



# CITY OF GOODYEAR

## Instructions to Bidders

Office of Procurement  
190 N. Litchfield Road  
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### 2. SERIAL NUMBERS

Bids shall be for equipment on which the original manufacturer's serial number, if applicable, has not been altered in any way. Throughout the contract term, the City reserves the right to reject any altered equipment.

### 3. BRAND NAMES

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purposes of describing and establishing the quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other vendors, but are intended to establish the quality, design or performance which is desired. Any Bidder which proposes equal or greater quality, design or performance may be considered. The city has the sole authority to accept or reject any like items.

### 4. SUBSTITUTIONS OR EXCEPTIONS

The City reserves the option to not consider bids for award if the Bidder: i) takes any exception to the specifications and the City does not agree or accept the proposed changes; or ii) proposes a unit which does not meet the City's specifications exactly and the Bidder does not additionally propose the specified unit prior to bid opening, and the City rejects the alternative identified.

### 5. DESCRIPTIVE LITERATURE

All bidders shall include complete manufacturer's descriptive literature regarding the equipment and goods they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the bid submitted. Failure to include this information may result may result in the bid being rejected.

### 6. PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

### 7. INQUIRIES

Any questions related to the solicitation shall be directed to the responsible Procurement Specialist whose name appears on the front page via email only. The Bidder shall not contact or ask questions of other City staff or the City department for which the requirement is being procured. Any correspondence related to a solicitation should refer to the solicitation number, page, and paragraph number. All questions must be submitted no later than the close of business seven (7) calendar days prior to the opening date.

### 8. PRE-BID CONFERENCE

A Pre-Bid Conference will be held. Attendance at the scheduled Pre-Bid Conferences is not mandatory. The date, time and location of the conference are indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment to the solicitation. *Oral statements or instructions will not constitute an amendment to this solicitation.*



# CITY OF GOODYEAR

## Instructions to Bidders

Office of Procurement  
190 N. Litchfield Road  
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9. **LATE BIDS/MODIFICATIONS/WITHDRAWALS**

Bids, modifications of bids, and withdrawals received *after* the due date and time specified for receipt will be rejected and returned to the Bidder unopened. A Bidder (or designated representative) may withdraw their bid via email to the responsible Procurement Specialist any time *prior* to the solicitation due date and time.

10. **PUBLIC RECORD/CONFIDENTIAL INFORMATION**

All bids submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award. If the Bidder believes that any information provided throughout the procurement process should be withheld as confidential, it is the responsibility of the Bidder to submit to the Procurement Manager a statement when the confidential information is submitted which identifies those items the Bidder believes to be confidential and the legal reason(s) why they are confidential. The Procurement Manager shall review the request for confidentiality and advise the Bidder in writing if the information will be treated as confidential by the City. If the City receives a public records request for any of the information determined to be confidential by the Procurement Manager, the City will use reasonable efforts to give notice to the Bidder prior to the release of the information.

11. **BID ACCEPTANCE PERIOD**

In order to allow for an adequate evaluation, the City requires a bid in response to this Solicitation to be valid for one hundred twenty (120) days after the opening time and date.

12. **DISCUSSIONS**


The City reserves the right to conduct discussions with Bidders for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the submittal in order to clarify a bid and assure full understanding of, and responsiveness to, solicitation requirements.

13. **PERSONNEL**

It is essential that the Bidder provide adequate experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed in this Solicitation. The Bidder agrees that those persons identified in their submittal shall not be removed or replaced without a written request to and approval from the City.

14. **AWARD OF CONTRACT**

- a. The contract will be awarded pursuant to the provisions of the City of Goodyear Procurement Code. Unless the Bidder states otherwise, or unless provided within this solicitation, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. Notwithstanding any other provision of this solicitation, the Procurement Manager further reserves the right to i) waive any immaterial defect or informality; ii) reject any or all bids, or portions thereof; iii) reissue the solicitation; or iv) modify or cancel this solicitation.
- b. A response to a solicitation is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's solicitation and the written amendments thereto, if any. If City Council approval is necessary, bids do not become contracts unless and until they are accepted by the

	<b>CITY OF GOODYEAR</b>	Office of Procurement 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7893
	<b>Instructions to Bidders</b>	

City Council. A contract is formed when written notice of award(s) is provided to the successful Bidder(s). The Contract has its inception in the award document, eliminating a formal signing of a separate contract.

- c. In the event the City should receive two or more identical bids, the awardee will be determined by lottery.

**15. BUSINESS REGISTRATION PERMIT**

Bidders awarded contracts with the City shall be required to obtain a City of Goodyear Business Registration Permit through the Goodyear Business Registration Office. For further information call Building and Safety, Myra Russell at (623) 882-7928 or [myra.russell@goodyearaz.gov](mailto:myra.russell@goodyearaz.gov).

**16. PROTESTS**


- a. Any interested party may protest a solicitation issued by the City or the proposed award or the award of a City Contract by submitting a request in writing with the Procurement Manager for the City of Goodyear, with a copy directed to the City Attorney for the City of Goodyear as follows:

Jacque Behrens, CPPB  
Procurement Manager  
City of Goodyear  
P.O. Box 5100  
190 North Litchfield Road  
Goodyear, AZ 85338

Roric Massey  
City Attorney  
City of Goodyear  
P.O. Box 5100  
190 North Litchfield Road  
Goodyear, AZ 85338

- b. Writing: All protests must be in writing and shall include the following information:
- The name, address and telephone number of the protester;
  - The signature of the protester or its representative;
  - The solicitation or contract number;
  - A detailed statement of the legal or factual grounds of the protest including copies of relevant documents; and
  - The form of relief requested. R3-4-16.01
- c. Time Frame: To be considered, protests must be filed during the time frame identified in the procurement code.
- *Protests of a solicitation* must be filed within five (5) days of the first advertising of the solicitation.
  - *Protests of an award* must be filed within ten (10) days of the issue date of the Notice of Award or Notice of Intent to Negotiate and Award.
- d. The Procurement Manager is required to notify all interested parties that a protest has been filed.

**END OF INSTRUCTIONS TO OFFERORS**

	<b>CITY OF GOODYEAR</b>	Office of Procurement 190 N. Litchfield Road P.O. Box 5100 Goodyear, AZ 85338 Phone: 623-882-7893
	<b>Standard Terms and Conditions</b>	

**SECTION 1. DEFINITIONS**

- 1.1 "City" means the City of Goodyear.
- 1.2 "City Manager" means the manager of the City of Goodyear or designee.
- 1.3 "Contract" means this Goods/Services Contract and any attachments referenced herein, fully completed and executed between the City of Goodyear and the Contractor.
- 1.4 "Contractor" means the individual, partnership, entity or corporation who, as a result of the competitive process, is awarded a contract by the City of Goodyear to provide goods and/or services.
- 1.5 "Days" means calendar days unless otherwise specified herein.
- 1.6 "Litigation Expense" means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Contract, including, without limitation, in each case, attorneys' fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.
- 1.7 "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.
- 1.8 "Project" "Services" or "Work" means the subject matter of this Contract as more fully set forth in the attached Scope of Work, which may include delivery of goods and/or services.
- 1.9 "Subcontractor" means any individual, corporation, company, or other entity who contracts to perform work or render services or provide goods to a Contractor or to another subcontractor as part of this Contract with the City.

**SECTION 2. TERM OF CONTRACT**

- 2.1 The term of the contract may be automatically extended to include the warranty period.
- 2.2 Contractor shall not commence work until Contractor receives a purchase order signed by the City procurement manager or designee.

**SECTION 3. COMPENSATION AND PAYMENTS**

- 3.1 **COMPENSATION:** Total compensation to be paid under this Contract shall not exceed the purchase order amount.
- 3.2 Contractor shall invoice City on or before the 10th day of each month for goods and/or services provided under this contract during the prior month. All invoices shall contain itemized hourly fees, unit cost, extended cost of goods and supporting documentation for all invoiced amounts. All invoices to the City





# CITY OF GOODYEAR

## Standard Terms and Conditions

Office of Procurement  
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shall identify the specific item(s) being billed and the Purchase Order number. Items are to be identified by the name, model number, and/or serial number most applicable.

- 3.3 City shall make every effort to process payments to Contractor within thirty (30) calendar days after the receipt of a correct and approved invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the invoice or account.
- 3.4 **PRICE ADJUSTMENT/CONTRACT EXTENSION:** The City's Office of Procurement will review fully documented requests for price increase after any contract has been in effect for one (1) year. Any price increase adjustment will only be made at the time of contract extension and will be a factor in the extension review process. The Office of Procurement will determine whether the requested price increase or alternate option is in the best interest of the City. Any price adjustment will be effective upon the effective date of the contract extension.
- 3.5 **PRICE REDUCTION:** A price reduction may be offered at any time during the term of the contract and shall become effective upon notice.
- 3.6 **LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.
- 3.7 **ESTIMATED QUANTITIES:** Quantities identified in the Solicitation are the City's best estimate and do not obligate the City to order or accept more than the City's actual requirements during the period of this Contract as determined by actual needs and availability of appropriate funds. It is expressly understood and agreed that Contractor is to supply the City with its complete and actual requirements for the contract period.
- 3.8 **PRODUCT DISCONTINUANCE:** In the event that a product or model identified in the offer is subsequently discontinued by the manufacturer, the City at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request permission to substitute a new product or model and provide all of the following:
1. A formal announcement from the manufacturer that the product or model has been discontinued;
  2. Documentation from the manufacturer that names the replacement product or model;
  3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation;
  4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model; and
  5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.
- 3.9 **USAGE REPORT:** The Contractor may be required to provide a usage report to the Procurement Manager.
- 3.10 **DISCOUNTS:** Payment discounts will be computed from the date receiving acceptable goods, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 3.11 **NO ADVANCE PAYMENT:** Advance payments will not be authorized; payment will be made only for actual goods or services that have been received.



## CITY OF GOODYEAR

### Standard Terms and Conditions

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- 3.12 **FUND APPROPRIATION CONTINGENCY:** The Parties recognize that the continuation of any contract after the close of any given fiscal year of the City of Goodyear, which fiscal year ends on June 30 of each year, shall be subject to appropriation and allocation of funds by the Goodyear City Council.
- 3.13 **F.O.B. POINT:** All prices are to be quoted F.O.B final destination, unless otherwise specified elsewhere in the solicitation.
- 3.14 **TAXES:** Contractor shall be solely responsible for any and all tax obligations that may result from Contractor's performance of this Contract.

#### SECTION 4. TERMINATION

- 4.1 **TERMINATION FOR CONVENIENCE:** City at any time and for any reason and without cause may terminate, suspend or abandon any portion, or all, of this Contract at City's convenience. In the event that the City terminates, suspends or abandons any part of the services, the City shall provide notice to the Contractor. Upon receipt of notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue further services and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

The Contractor shall appraise the services completed prior to receiving notice of the termination, abandonment or suspension and deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Contractor under the contract, entirely or partially completed, together with all unused materials supplied by the City.

In the event of termination, abandonment or suspension, Contractor shall be paid for services satisfactorily performed prior to receipt of such notice including reimbursable expenses then incurred. However, in no event shall the fee exceed that set forth in Section 4 of this Contract. Contractor shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

The City shall make final payment within thirty (30) days after the Contractor has fully complied with the provisions of Section 5 and Contractor submits a correct and approved final invoice for the fee that has been agreed to by the Parties.

- 4.2 Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Goodyear is a violation of the contract and the City of Goodyear Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

#### SECTION 5. RISK OF LOSS AND LIABILITY

- 5.1 **INDEMNIFICATION:** Unless a federal and state statute that expressly prohibits such indemnification, Contractor shall defend, indemnify, save and hold harmless the City of Goodyear, its officials, directors, officers, employees, agents, and representatives (hereinafter referred to as "Indemnitee") at all times after the date of this Contract from and against any and all Claims, caused by, relating to, arising out of, or alleged to have resulted from, in whole or in part, any negligent, reckless or intentional acts, errors, fault,



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mistakes, omissions, work, goods or service of the Contractor, its directors, officers, employees, agents, representatives, or any tier of subcontractors or any other person for whose acts, errors, fault, mistakes omissions, work, goods or service the Contractor may be legally liable in the performance of this Contract. The Indemnification provided hereunder shall extend to Claims arising out of, or recovered under, Arizona's Workers' Compensation Law or the failure of Contractor to conform to any applicable and appropriate federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

In consideration of the award of this contract, Contractor agrees to waive all rights of subrogation against Indemnitee for Claims arising from the work performed by Contractor, its directors, officers, employees, agents, representatives, or any tier of subcontractors pursuant to this Contract. This indemnification provision shall survive the expiration or earlier termination of this Contract.

For purposes of this Indemnification provision the term Claims shall mean claims, suits, actions, demands, proceedings, losses, settlement payments, disbursements, expenses, and damages of every kind and description (including but not limited to costs, interest, awards, judgments, diminution in value, fines, penalties or other charges, reasonable attorneys' fees, other professionals' fees, court filing fees and costs, arbitration fees, witness fees, and each other fee and cost of investigating and defending, negotiating, appealing or asserting any claim for indemnification under this Contract) (collectively referred to "Litigation Expenses").

- 5.2 **INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK:** The Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, copyright or trademark or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or Services performed under this Contract. The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any claim, suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including courts costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in such suit or proceedings, it is so desires. It is expressly agreed by the Contractor that these covenants are irrevocable and perpetual.
- 5.3 **TITLE AND RISK OF LOSS:** The title and risk of loss of material or services shall not pass to the City until the City actually receives and accepts the materials or services at the point of delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder.
- 5.4 **ACCEPTANCE:** All materials or services are subject to final inspection and acceptance by the City. Materials or services failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. The City may elect to do any or all of the following: a) Waive the non-conformance; b) Stop the work




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immediately; c) Bring materials into compliance; and/or d) Terminate the Contract and seek all remedies available in law and in equity. This shall be accomplished by a written determination by the City.

- 5.5 **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for the loss of materials, from the execution of this Contract until the final acceptance of the work by the City.
- 5.6 **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials and/or services. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
- 5.7 **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship goods or perform services under reservation, and no tender of an invoice or bill of lading will operate as a tender of the goods or services.
- 5.8 **WORK PERFORMED AT CONTRACTOR'S RISK:** Contractor shall take all precautions reasonably necessary and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall utilize all protections reasonably necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- 5.9 **SAFETY STANDARDS:** All items supplied pursuant to this Contract shall comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
- 5.10 **PROJECT STAFFING:** Prior to the start of any Services under this Contract, the Contractor shall submit to the City detailed resumes of key personnel that will be involved in performing Services prescribed in the Contract for review and approval. At any time hereafter that the Contractor desires to change key personnel while performing under the Scope, the Contractor shall submit the qualifications of the new personnel to the City for prior approval. Key personnel include but are not limited to the Contractor's principal-in-charge, project manager, project designer, project architect, system architect, system manager and system engineer.
- The Contractor will maintain an adequate and competent staff of qualified persons throughout the performance of this Contract as necessary for acceptable and timely completion of the services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor shall take prompt corrective action and, if required, remove such personnel from the Project and replace them with the new personnel agreed to by the City.
- 5.11 **SUBCONTRACTORS:** Prior to beginning the work, the Contractor shall furnish the City for approval the names of subcontractors to be used on this Project. Any subsequent changes are subject to the approval of the City.
- 5.12 **DAMAGE TO CITY PROPERTY:** Contractor shall perform all work so that no damage to any City buildings or property results. Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City. Contractor shall take care to avoid damage to adjacent finished materials that are to

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remain. If finished materials are damaged, Contractor shall repair and finish in a manner which matches existing material as approved by the City at the Contractor's expense.

- 5.13 **FORCE MAJEURE:** Neither Party shall be in default by reason of any failure in performance of this Contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable Acts of God; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions.

If either Party is delayed at any time in the progress of the Work by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

## **SECTION 6. CONTRACT INTERPRETATION**

- 6.1 **DISPUTES, GOVERNING LAW, ATTORNEY FEES:** Should any dispute, misunderstanding or conflict arise as to the terms or provisions contained in this Contract, the matter shall first be referred to the City, and the City shall determine the term or provision's true intent and meaning.

This Contract shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Contract shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. The prevailing Party shall be reimbursed by the other Party for all attorney fees and all costs and expenses, including but not limited to all service of process, filing fees, court and court report costs, investigative costs, and expert witness fees which are incurred in any legal proceeding whatsoever arising out of this Contract, including, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing.

- 6.2 **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by federal, state or local law to be in this Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.
- 6.3 **PAROL EVIDENCE:** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in trade shall be relevant to contradict, supplement or explain any term used in this Contract.
- 6.4 **SEVERABILITY:** If any provision in this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.



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- 6.5 **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:
1. Special Terms and Conditions
  2. Standard Terms and Conditions
  3. Specifications
  4. Fee Schedule
  5. Attachments
  6. Exhibits
  7. Invitation to Bid, Instructions to Bidders and other documents referenced or included.
- 6.6 **INTEGRATION:** This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.
- 6.7 **INDEPENDENT CONTRACTOR:** Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
- 6.8 **NON-WAIVER MONIES DUE:** The City of Goodyear as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- 6.9 **AMBIGUITIES NOT HELD AGAINST DRAFTER:** This Contract having been freely and voluntarily negotiated by all parties and the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Contract.
- 6.10 **NON-WAIVER CONTRACT PROVISION:** The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other Party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Contract or any part thereof, or the right of either Party to thereafter enforce each and every provision.
- 6.11 **COOPERATION AND FURTHER DOCUMENTATION:** The Contractor agrees to provide the City all duly executed documents as shall be reasonably requested by the City to implement the intent of this Contract.

#### **SECTION 7 CONTRACT ADMINISTRATION AND OPERATION**

- 7.1 **WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this Contract are considered the sole property of the City and must be delivered to the City upon termination, abandonment of the Contract or final payment to the Contractor and shall not be used or released by the Contractor without prior authorization from the City. Work product includes, but is not limited to, plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar



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drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to City all rights and interest Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the materials. Contractor shall place the professional seal of Contractor on all plans and documents prepared in the performance of this Contract.

- 7.2 **CONFIDENTIALITY AND ENCRYPTION:** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Contract are confidential, proprietary information owned by the City. Except as specifically provided in this Contract, the Contractor shall not disclose data generated in the performance of the Service to any third person without the prior written consent of the City Manager.

Personal identifying information, financial account information or restricted City information, whether electronic format or hard copy, are considered confidential information and must be secured and protected at all times to avoid unauthorized access. At a minimum Contractor shall ensure that all electronic transmissions of confidential data are encrypted and any cryptographic algorithm implementations used must have been validated by the National Institute of Standards and Technology (NIST). The use of proprietary encryption algorithms will not be allowed for any purpose. The export of encryption technologies is restricted by the U.S. Government.

In the event that data collected or obtained by Contractor in connection with this Contract is believed to have been compromised, Contractor shall notify the City Attorney immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this section shall be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this section shall be deemed to cause irreparable harm and justifies injunctive relief in court. A violation of this section may result in immediate termination of this Contract without further notice. The obligations of Contractor under this section shall survive the termination of this Contract.

- 7.3 **CONFLICT OF INTEREST/THIRD PARTIES:** Contractor shall provide written notice to the City as set forth in this section, of any work or Services performed by the Contractor for third parties that, to the extent that the Contractor is aware, involves or is associated with any real property or personal property owned or leased by the City or which may be adverse to the City. Notice shall be given seven (7) days prior to commencement of the Services by the Contractor for a third party. Written notice and disclosure shall be sent to:

Roric Massey, City Attorney  
City of Goodyear  
190 N. Litchfield Rd  
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Actions that are considered to be adverse to the City include but are not limited to:

1. Using data acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;



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2. Testifying or providing evidence on behalf of any third party in connection with an administrative or judicial action against the City; and
3. Using data to produce income for the Contractor, its subcontractors or employees independently of performing the services under this Contract, without the prior written consent of the City.

The Contractor represents that except for those persons, entities and projects identified to the City, the Services to be performed by the Contractor under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City. The Contractor's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of Contract.

- 7.4 **CONFLICT AUDIT:** Within thirty (30) days of being requested to do so, Contractor agrees to provide the City an itemized summary of any and all gifts a Contractor, its directors, officers, managers, employees, agents and/or representatives have made to any City employee during the year prior to the date of the Contract through the date of the request. The summary shall include the date the gift was made, a description of the gift, the City employee(s) that received the gift, and the value of the gift. The summary shall be signed and its truthfulness certified by Contractor. For purposes of this section the terms "Gift" means anything of value that is provided to the employee and includes, by way of example, but not limitation, meals, free use of vacation homes, low interest or no interest loans, tickets to sporting events, tickets to charitable events, entertainment expenses, travel expenses, drinks, and the like. The failure to comply with any request made pursuant to this section and/or the submission of a summary that contains material misrepresentations constitutes grounds for debarment and the refusal to allow Contractor to participate in any future contracts with the City.
- 7.5 **AUDIT OF RECORDS:** Contractor shall retain, and shall contractually require each and every subcontractor that performs any Work under this Contract to retain all books, accounts, reports, files and any and all other records relating to the contract (hereinafter referred to as "Contract Documents") for six (6) years after completion of the Contract. City, upon written request and at reasonable times, shall have the right to review, inspect, audit and copy all Contract Documents of the Contractor and any subcontractors. Contractor shall produce the original Contract Documents at City Hall, currently located at 190 N. Litchfield Road, Goodyear, Arizona, or at such other City facility within the City as designated by the City in writing. If approved by City Attorney in writing, photographs, microphotographs, or other authentic reproductions may be maintained instead of original Contract Documents.
- 7.6 **AUDIT/BILLING AND EXPENSES:** The City reserves the right to request supporting documentation for all hourly amounts, cost of goods and reimbursable expenses charged to the City. Such records will be subject to audit at any time during the term of this Contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, the Contractor will furnish to the City original invoices to support all charges and complete payroll records to support such hourly labor charges. The City reserves the right to audit any other supporting evidence necessary to substantiate charges related to this Contract, both direct and indirect costs, including overhead allocations if they apply to hourly costs associated with this Contract. If requested by the City, the Contractor will provide supporting records electronically in addition to a hard copy.

If the audit reveals overcharge, the Contractor will reimburse the City upon demand for the amount of such overcharges plus interest thereon from the date paid by the City through the date of reimbursement. If the





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overcharges exceed 5% of Contractor's compensation, then Contractor shall also reimburse the City for the cost of the audit.

The Contractor shall include a similar provision in all of its agreements with subcontractor providing goods and/or services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontractor records to verify the accuracy of any similar amounts charged to the City.

- 7.7 **ADVERTISING**: Contractor and all subcontractors shall not advertise or publish new releases concerning this Contract, goods or services provided to the City without prior written consent of the City Attorney.
- 7.8 **CITY MARKS**: The Contractor and all subcontractors shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
- 7.9 **LICENSES AND PERMITS**: Contractor and all subcontractors shall keep current federal, state, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
- 7.10 **E-VERIFY**: Contractor and all subcontractors warrant compliance with the e-verify statute, A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this contract, and shall subject this contract to penalties up to and including termination of the contract. The City retains the right to inspect the papers and records of any of Contractor's employees or any subcontractor employees working on the contract to ensure compliance with this requirement. For this section, Contractor shall have the meaning of Contractor as found in A.R.S. § 41-4401, and subcontractor has the same meaning as found in A.R.S. § 41-4401.
- 7.11 **NON-DISCRIMINATION**: Contractor and all subcontractors will not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354.
- 7.12 **COMPLIANCE**: The Contractor and all subcontractors understand and agree to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 as amended. The Contractor agrees to comply with these laws and Arizona Executive Order 2009-09 in performing this Contract and to permit the City to verify such compliance.
- 7.13 **CONTINUATION DURING DISPUTES**: Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor shall continue to perform the obligations required of the Contractor during the continuation of any such dispute unless enjoined or prohibited by the City or an Arizona Court of competent jurisdiction.
- 7.14 **COOPERATIVE STATEMENT**: This contract shall be for the use of the City of Goodyear. In addition, specific eligible specific political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. Any eligible agency may elect to participate (piggyback) on this contract if the Contractor agrees to do so.



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- 7.15 **CAPTIONS:** The captions used herein are for convenience only and are not a part of this Contract and do not in any way limit or amplify the terms and provisions hereof.
- 7.16 **BANKRUPTCY:** This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of the Contractor.

#### SECTION 8 CONTRACT CHANGES

- 8.1 **MODIFICATION:** No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the Parties with authority to do so. This section does not prohibit the City from unilaterally extending the contract term.
- 8.2 **SUCCESSORS AND ASSIGNS:** This Contract is binding on the parties' respective partners, successors, assigns, and legal representatives. Contractor will not assign, sublet, or transfer its right or interest in this Contract nor monies due, in whole or in part, or delegation any duty of Contractor without the prior written consent of the City. Any assignment or delegation made in violation of this section shall be void. In no event does this Contract create any contractual relationship between the City and any third party.
- 8.3 **THIRD PARTY BENEFICIARY:** Nothing under this Contract shall be construed to give any rights or benefits in the Contract to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and the Contractor, and not for the benefit of any other Party.
- 8.4 **AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: (i) specifications; (ii) methods of shipment or packing; (iii) place of delivery; (iv) time of delivery; and/or (v) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or deliver schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Prior increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the City.
- 8.5 **SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the goods, Service or Work specified herein without the advance written approval of the City.
- 8.6 **CONTINGENT FEES:** Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Goodyear has any interest, financially, or otherwise, in the Contractor's business/firm. For breach or violation of this warranty, the City of Goodyear shall have the right to annul this Contract without liability, or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 8.7 **LIENS:** Contractor shall hold the City harmless from claimants supplying labor or materials to the contractor or subcontractors in the performance of the work required under this Contract.

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**SECTION 9 WARRANTY**

- 9.1 **GUARANTEE:** Unless otherwise specified, all items shall be guaranteed for a minimum period of one (1) year from the date of acceptance by the City against defects in material and workmanship. At any time during that period, if a defect should occur in any item that item shall be replaced or repaired by the Contractor at no obligation to the City except where it is shown that the defect was caused solely by misuse of the City.
- 9.2 **QUALITY:** Contractor expressly warrants that all goods and services furnished under this Contract shall conform to the specifications, appropriate standards, and will be new and free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods and services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that goods and services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to City, its successors and assigns.
- 9.3 **RESPONSIBILITY FOR CORRECTION:** Any defects of design, workmanship, or materials that would result in non-compliance with the contract specification shall be fully corrected by the Contractor (including parts, labor, shipping or freight) without cost to the City. This includes any necessary labor to remove, repair, install, or to ship or transport any item to a point of repair and return. It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within 30 calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.
- 9.4 **INVESTIGATION OF CONDITIONS:** The Contractor warrants and agrees familiarity of the work that is required, is satisfied as to the conditions under which it is to perform and enters into this Contract based upon the Contractor's own investigation.
- 9.5 **WORKMANSHIP:** Where not more specifically described in any of the various sections of the specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved and shall include all items of fabrication, construction or installation regularly furnished or required for completion of the services or goods. All goods and services shall be provided and executed by personnel skilled in their respective lines of work. Contractor warrants that all goods and services delivered under this contract shall conform to the specifications of this contract. Additional warranty requirements may be set forth in the Solicitation.
- 9.6 **RIGHT TO INSPECT PLANT:** The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded.



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- 9.7 **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
- 9.8 **SURVIVAL:** Sections 6, 7, 8, 9, 10 and 11 will survive the completion, termination and/or abandonment of this Contract.
- 9.9 **COMPLIANCE WITH APPLICABLE LAW:** Contractor shall comply with all applicable federal, state and local laws, codes and regulations; including all applicable building regulations, license and permits requirements.

### SECTION 10 CITY CONTRACTUAL RIGHTS

- 10.1 **RIGHT OF ASSURANCE:** Whenever the City in good faith has a reason to question the Contractor's intent or ability to perform, the City may demand that the Contractor give written assurance of the intent and ability to perform. In the event that a demand is made and no written assurance is given within five (5) work days, the City may treat this failure as an anticipatory repudiation of this contract.
- 10.2 **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- 10.3 **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of this Contract is dependent on every other installment or lot and a delivery of non-conforming goods or services or a default of any nature under one installment or lot will impair the value of the whole Contract and constitutes a breach of the Contract as a whole.
- 10.4 **TIME IS OF THE ESSENCE:** Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence. The City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 10.5 **NON-EXCLUSIVE CONTRACT:** The City reserves the right to purchase goods or services from another source only when necessary and determined appropriate by the City's Procurement Manager.
- 10.6 **STRICT PERFORMANCE:** Failure of either Party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of the Contract.
- 10.7 **CONFLICT OF INTEREST:** This Contract is subject to the provisions of A.R.S. § 38-511 and may be canceled by the City, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City is, or becomes, an employee, consultant, or agent of Contractor in any capacity with respect to the subject matter of the Contract while the Contract or any extension or amendment thereof, is in effect.

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10.8 **DEFAULT:** In the case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (i) deduction from an unpaid balance due; (ii) collection against the bid and/or performance bond, or (iii) a combination of the aforementioned remedies or other remedies as provided by law.

10.9 **NOTICES:** Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally delivered to the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified postage prepaid and properly addressed as follows:

To City:

Brian Harvel, Pavement Manager  
Engineering Department  
14455 W Van Buren St, Suite D101  
Goodyear, AZ 85338

To Contractor:

Copy to:

Roric Massey  
City of Goodyear, City Attorney  
190 N. Litchfield Road  
Goodyear, AZ 85338

10.10 This Contract shall be in full force and effect only when it has executed by duly authorized City officials and the duly authorized agent of the Contractor.

**SECTION 11. CERTIFICATION**

11.1 By signing on the offer and acceptance page, the individual certifies that they are authorized to sign on behalf of Contractor and further certifies that (a) No collusion or other anti-competitive practices were engaged in to arrive at the terms of this Contract, and that this Contract is subject to the provisions of A.R.S. Section 38-511; (b) The Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with this Contract. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resultant contract, and the Contractor may be debarred.

**SECTION 12. LICENSING, DEBARMENT AND SUSPENSION**

12.1 **Licensing/Permits:** Contractor warrants and certifies that Contractor and its Subcontractors will maintain valid licenses, registrations, permits, and other approvals necessary to perform the Services required under this Contract ("Approvals"). Contractor shall immediately advise the City in writing of any change in information provided by Contractor or its subcontractors as it relates to any Approvals. Noncompliance with this provision is a material breach of Contract.

12.2 **Debarment/Suspension:** Contractor warrants and certifies neither Contractor nor any of its subcontractor:




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- a. Are presently debarred, suspended, proposed for debarment, declared ineligible or otherwise legally excluded from contracting with any federal, state or local government entity; and
  - b. Have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property within a three (3) year period preceding this Contract;
  - c. Are not, or have not been, indicted of or otherwise criminally charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing any public transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and
  - d. Have not had one or more public transaction (federal, state or local) terminated for cause or default.
- 12.3 City has no affirmative duty or obligation to confirm or deny the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.

**END OF STANDARD TERMS AND CONDITIONS**


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**SECTION 1. TERM OF CONTRACT**

1. The term of this Contract shall be one (1) year commencing on the effective date, which is the date last signed by both Parties, and may be extended or renewed for consecutive additional one (1) year periods, not to exceed a total of five (5) years, subject to appropriations and mutual agreement of the Parties. The City has no obligation to extend or renew this contract, and any decision to do so is at the sole discretion of the City.

**SECTION 2 INSURANCE**


- 2.1 Minimum Scope and Limits of Insurance. Contractors shall obtain and maintain in full force and effect during the life of this Contract, and any warranty period, all of the following minimum scope of insurance coverages with an insurance company duly licensed by the State of Arizona with a current A.M. Best Company, Inc rating of not less than A- or above and a category rating of not less than "VIII" with policies and forms satisfactory to the City. Use of alternative insurers requires prior written approval from City.
- 2.2 Commercial General Liability. Commercial General Liability insurance with a limit of not less than \$1,000,000, per occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products-completed operations, contractual liability, bodily injury, and property damage, but shall not be limited to the liability assumed under the indemnification provisions of this Contract. Coverage shall be at least as broad as Insurance Service Office policy form CG 00 01 07 98 or any replacement thereof, and shall be an occurrence-based policy. The Certificate of Insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations required by this Contract. These limits may be met through a combination of primary and excess liability coverage.
- 2.3 Automobile Liability. Commercial and Business Automobile Liability insurance for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than \$1,000,000, combined single limits, per occurrence for bodily injury and property damage. Coverage shall be at least as broad as coverage Code 1 "any auto" under Insurance Service Office policy form CA 00 01 10 01 or any replacement thereof.
- 2.4 Workers' Compensation. Workers' Compensation as required by State and federal law statutes having jurisdiction over its employees engaged in the performance of any Services herein. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- 2.5 Umbrella/Excess Liability. Contractor and Subcontractor shall maintain Umbrella and Excess Liability insurance with an limit of not less than \$2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.
- 2.6 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- 2.7 Notice of Cancellation. Each certificate for each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in

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coverage by endorsement to limits lower than those required by this Contract, except after prior written consent from the City. Notice will be sent as required herein.

- 2.8 **Additional Insureds.** The Commercial General Liability and Business Automobile Liability policies shall contain or be endorsed to contain the following provision: "The City of Goodyear and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to liability arising out of, or related to, activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor."
- 2.8.1 **Additional Insured – Goodyear Ballpark and Recreational Complex.** Any Contracts addressing, or related to, the Goodyear Ballpark and Recreational Complex shall also identify the Cleveland Indians Baseball Company, and the Cincinnati Reds, LLC as additional insured and endorse the same.
- 2.9 **Primacy of Coverage.** Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of insurer's liability. Contractor's policy shall be primary and non-contributory.
- 2.10 **Certificates of Insurance/Endorsements.** Contractor shall provide City with Certificates of Insurance and proper additional insured endorsements as required by this Contract and as described above, in a form and content approved by City, prior to performing any services under this Contract. The Certificates of Insurance shall be attached hereto and incorporated hereby by this reference.
- 2.11 **No Representation of Coverage Adequacy.** The insurance requirements herein are *minimum requirements*. The City in no way warrants that the minimum requirements are sufficient to protect Contractor from liabilities that might arise out of the performance of the Work under this Contract by Contractor, and the Contractor is free to purchase additional insurance. Any insurance coverage carried by the City or its employees is excess coverage and not contributory coverage to that provided by the Contractor. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this Contract.
- 2.12 **Non-Waiver.** The City reserves the right to review any and all insurance policies and/or an endorsement required by this Contract, but has no obligation to do so. Failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract. Any failure of Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers.
- 2.13 **Notice of Cancellation.** Each certificate for each insurance policy required by this Section shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage by endorsement to limits lower than those required by this Contract except after prior written consent from the City.
- 2.14 **Claim Reporting.** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.



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Other Contractors or Vendors. Contractor shall ensure its subcontractors and any vendors that may be contracted with in connection with the Project procure and maintain insurance coverage as is appropriate for their particular contract and properly endorse the City as required in this Section 9.

3. **BONDING**

3.1 A bid bond for ten (10%) of the bid price is required to be submitted with the bid.

3.2 A performance bond for one hundred (100%) of the Contract price is required at the time of execution of the Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

3.3 A payment bond for one hundred (100%) of the Contract price is required at the time of execution of this Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

**END OF SPECIAL TERMS AND CONDITIONS**



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## Scope of Work

### HIGH DENSITY MINERAL BOND

#### **PART 1-GENERAL**

##### **1.0 Location of Work:**

All work to be located within the City of Goodyear, Maricopa County, Arizona

##### **Proposed Work:**

- A. The contract work consists of all necessary labor, material, transportation services and equipment, to perform High Density Mineral Bond Application on City streets per contract specifications. Mineral aggregate and asphalt binder slurry spread as a high density mineral bond seal coat over a roadway surface.

**Anticipated Start date: October 2015**

##### **1.1 REFERENCES**

###### **A. AASHTO Standards**

R 9: Standard Recommended Practice for Acceptance Sampling Plans for Highway Construction.

###### **B. ANSI Standards**

B74.8: Procedure for Ball Mill Test for Friability of Abrasive Grain.

###### **C. ASTM Standards**

ASTM C 114: Standard Test Methods for Analysis of Hydraulic Cement.

ASTM C 117: Standard Test Method for Materials Finer Than 0.075mm (No. 22) Sieve in Mineral Aggregates by Washing.

ASTM C 128: Standard Test Method for Density, Relative Density (Specific Gravity), and Absorption of Fine Aggregate.

ASTM C 136: Standard Method for Sieve Analysis of Fine and Coarse Aggregates.

ASTM C 170: Standard Test Method for Compressive Strength of Dimension Stone.

ASTM C 604: Standard Test Method for True Specific Gravity of Refractory Materials by Gas Comparison Pycnometer.

ASTM C 1326: Standard Test Method for Knoop Indentation Hardness of Advanced Ceramics.

ASTM D 217: Standard Test Method for Cone Penetration of Lubricating Grease

ASTM D 721: Standard Test Method for Oil Content of petroleum Waxes.

ASTM D 1644: Standard Test Method for Nonvolatile Content (Solids by weight).

ASTM D 2170: Standard Test Method for Kinematic Viscosity of Asphalts (Bitumens).

ASTM D 2172: Standard Test Methods for Quantitative Extraction of Bitumen from Bituminous Paving Mixtures.

ASTM D 2196: Standard Test Method for Rheological Properties of Non-Newtonian materials by Rotational (Brookfield type) Viscometer.

ASTM D 2216: Standard Test Methods for laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass.



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### Scope of Work

ASTM D 2486: Standard Test Method for determining wear resistance in cycles.

ASTM D 2697: Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings. ASTM D 2939: Standard Test Method for Emulsified Bitumens used as Protective Coatings.

ASTM D 3960: Standard Practice for Determining Volatile Organic Compound Content of Paints and Related Coatings.

ASTM E 70: Standard Test Method for pH of Aqueous solutions with the Glass Electrode.

#### 1.2 SUBMITTALS

- A. Results of wear resistance test current within one calendar year (Article 2.3).
- B. Traffic control and notification plan.
- C. Mix Design: 10 days prior to use, submit proportions of aggregate, filler, water, polymer, and emulsion in the mix.
- D. Equipment: List of construction equipment to be used.
- E. Certification from emulsion manufacturer that states the emulsion meets the requirements described in Article 2.1 of this Section.

#### 1.3 QUALITY ASSURANCE


- A. Contractor has successfully completed at least five (5) projects of similar size and nature, using the same mix design as described in this section. Upon request, provide a list of five (5) projects which have demonstrated a five year minimum proven performance on a bituminous surface. Acceptable performance after five year period is no less than 70% residual coverage in the treated surface area.
- B. Foreman of the crew has completed at least three (3) projects of similar size and nature.
- C. Do not change the source of the emulsified asphalt or aggregate without supporting changes in the mix design.
- D. Reject asphalt emulsion that does not meet requirements of this contract.
- E. Remove product found defective after installation and install acceptable product at no additional cost to City.
- F. If requested, submit a quality control inspections and testing report describing source and field quality control activities performed by Contractor and its Suppliers.

#### 1.4 WEATHER

- A. Temperature:
  1. Apply surface treatment material when air and roadbed temperatures in the shade are 55 deg F. and rising.
  2. Do not apply surface treatment material if pavement or air temperature is below 60 deg F. and falling or if the finished product will freeze before 48 hours.
- B. Moisture: Do not apply surface treatment materials during rain, unsuitable weather, or 24 hours prior to forecast rain.

#### 1.5 NOTICE

- A. Follow laws and regulations concerning when and to whom notices are to be given. Give written notices at least 2 days prior to applying surface treatment material.
- B. Indicate application time and when the surface can be used. Include a map signifying the specific area to be closed providing detailed directions.

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- C. Provide a minimum of two contacts that represent the Contractor with phone numbers which can be reached at any time during the project.
- D. Warn of potential vehicle tow away and other construction issues affecting neighborhood.
- E. Should work not occur on specified day, send a new notice 48 hours prior to when it is rescheduled.

**1.6 ACCEPTANCE**

**A. General:**

- 1. Acceptance is by Lot.
- 2. If non-complying material has been installed and no price for the material is specified, apply price adjustment against cost of work requiring complying material as part of its installation, Section 01 29 00.
- 3. Opening flexible paving surface treatment to vehicular traffic does not constitute acceptance.
- 4. Observation of Contractor's field quality control testing does not constitute acceptance. Such testing; however, may be used by Engineer for acceptance if requirements of Section 01 35 10 are met.
- 5. Dispute resolution, Section 01 35 10.

**B. Surface Treatment Material:**

- 1. Paving Asphalt: Acceptance is not specified in this Section. Refer to Section 32 12 03 and the material requirements in this Section for acceptance.
- 2. Aggregate Source: Verify suitability of aggregate source.
- 3. Mixture, Ready to Install: Lot size is one days' production with 10,000 gallons sub-lots. Collect samples randomly and test for density, ASTM D2939.

**C. Placement**

- 1. Lot size is 1 lane mile. Sub-lot size is 0.1 lane mile.
- 2. Mat Appearance:
  - a. No runoff onto concrete curbs and shoulders.
  - b. No streaking.
  - c. No light spots.
  - d. No de-bonding due to road contaminants.

- D. Price Adjustment: Mat appearance defects may be accepted if a 2.5 percent price reduction is applied against the Lot for each condition not met. Maximum price reduction for the Lot is 5 percent. Engineer may waive price adjustment if Contractor corrects deficiencies at no additional cost to City.

**1.7 WARRANTY**

The surface treatment material must carry a warranty from both the Contractor and the manufacturer for a period of five (5) years when applied to pavement in appropriate condition. The warranty includes coverage for peeling and pre-mature wear. Acceptable performance after five year period is no less than 70% residual coverage in the treated surface area.



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### PART 2 - MATERIALS

#### 2.1 EMULSIFIED ASPHALT

A. Non-ionic thixotropic mineral colloid at 77 Deg. F. meeting requirements of Section 32 12 03 and the following.

Criterion	ASTM	Min	Max
Brookfield Viscosity, cPs	D2196	8,000	20,000
Acidity, pH	E70	6.5	7.5
Weight, lbs/gal	D2939	8.7	9.1
Solids, percent	D2939	47	53

#### 2.2. AGGREGATE

A. Refined Corundum:

Physical Properties			
Criterion	Standard	Min	Max
Specific Gravity	ASTM C 1326	--	3.92
Knoop 100 Hardness	ASTM D 721	--	2,050
Ball Mill Fiability (14 grit)	ANSI B74.8	--	50
Color	ASTM C 604	Brown	
Shape	ASTM D 2216	Blocky with sharp edges	
Gradation			
Sieve	ASTM	Target	Tolerance
No. 35	C 136	99	+1 and - 2
No. 45		85	+/- 2
No. 50		35	+/- 2
No. 60		7	+/- 2
<b>NOTES</b>			
(a) Gradation analyzed according to ASTM C 136 on a dry weight and percent passing basis.			



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**2.3 MIX DESIGN**

A. Use the following table as a guide for HDMB in LOADED Form (Ready to Install).

<b>Table 3 – Selection Guide for LOADED (Ready to Install)</b>			
<b>Asphalt Emulsion</b>			
<b>Criterion</b>	<b>ASTM</b>	<b>Min</b>	<b>Max</b>
Asphalt content by weight, percent	D 2172	14	
Residual asphalt by weight, percent	D 2939		30
Viscosity, Centipoise	D 2196	850cPs	
Weight per gallon, pounds	D 2939	9.0	
pH	E 70	6.1	7.9
Solids weight by percent, percent	D 1644	38	
<b>Aggregate</b>			
<b>Criterion</b>	<b>ASTM</b>	<b>Min</b>	<b>Max</b>
Bentonite and attapulgitic clay, percent	--		1.8
Refined corundum / slate content, percent	--	30.5	
Sand or other round aggregate, percent	--		6
Maximum VOC:, g/l	--		10
Wear resistance @ 10,000 cycles (70 mils wet), percent	D 2486*		9.5
Pinholes on glass	--	No grazing on film	
Resistance to re-emulsification	--	Very good	

\*Modified version of D2486: Modified brass brush 1000 grams attached on top, glass substrate panels air dried three days at room temperature, then soaked 24 hours prior to testing. Report in percentage of dry film loss at 10,000 cycles



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B. Use the following table as a guide for HDMB in CONCENTRATE Form.

Table 4 - Selection Guide for CONCENTRATE			
Asphalt Emulsion			
Criterion	ASTM	Min	Max
Asphalt content by weight, percent	D 2172	17	
Residual asphalt by weight, percent	D 2939		30
Cone penetration viscosity, cST/sec	D 217	350	450
Weight per gallon, pounds	D 2939	11	
Solids volume by percent, percent	D 2697	55	65
Solids weight by percent, percent	D 1644	60	
VOC, g/l	D 3960		10
Aggregate			
Criterion	ASTM	Min	Max
Bentonite and attapulgitic clay, percent	--		1.8
Refined corundum / slate content, percent	--	34.5	
Sand or other round aggregate, percent	--		6
Maximum VOC:, g/l	--		10
Wear resistance @ 12,000 cycles (70 mils wet), percent	D 2486		9.5
Pinholes on glass	--	No grazing on film	
Resistance to re-emulsification	--	Very good	

\*Modified version of D2486: Modified brass brush 1000 grams attached on top, glass substrate panels air dried three days at room temperature. Then soaked 24 hours prior to testing. Report in percentage of dry film loss at 10,000 cycles.

### PART 3 - EXECUTION

#### 3.1 CONSTRUCTION EQUIPMENT

- A. Asphalt Distributor: Continuous flow mixing unit.
  - A. Capable of applying at least 15,000 square yards of material per day.
  - B. Equipped with full sweep helical mixer to assure proper suspension of fine aggregates.
  - C. Equipped with two separate filters. The primary filter should be at least 200 square inches with a filter face of 3/8 inch. The secondary filter needs to be at least 1500 square inches with a filter face of 1/8 inch.
  - D. Has a retractable spray bar with spacing of 16 inches between each discharge orifice. The bar should be positioned minimum of 20 inches from the surface, no more than 23 inches from the surface.
  - E. The contractor shall have a minimum of two fully operational mixing units at the project site at all times.
- B. Asphalt Distributor Calibration: On a test strip at least 300 feet long, determine the correct pump settings on the application equipment. Apply material with pump settings at 80% of maximum output at a ground speed of 352 feet per minute.
  - A. These distributors shall be available for inspection by the City at least 48 hours prior to commencing work.



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### 3.2 PREPARATION

#### A. General:

- A. Severely raveled or porous pavements may require tack coat.
- B. Asphalt concrete inlay may be required in rut deformations.

#### B. Surface Repair: Patch any holes, raveled areas, and low areas with asphalt concrete.

#### C. Crack Repair: Section 32 01 17.

- A. Remove plant materials from cracks, edges, gutter lines and joints.
- B. Clean cracks with compressed air and vacuum unit.

#### C. Seal cracks with hot pour crack sealant. Material shall be squeegeed into the cracks removing excess material.

#### D. Allow crack seal to cure before applying surface treatment material.

#### E. Cracks larger than 3/4" are to be sealed with Crafcro Poly Patch or approved equivalent.

#### D. Traffic markings: Grind off existing pavement markings and lane striping that may prevent the adhesion of the material to the asphalt surface. Use reflective tabs to mark striping location before applying surface treatment material.

#### E. Cleaning:

- A. Remove loose material, mud spots, sand, dust, oil, vegetation and other objectionable material.
- B. Do not flush water over cracks or apply pressurized water to cracked pavement.
- C. Clean the surface immediately prior to installation.

#### F. Tack Coat:

- A. Apply tack coat to high absorbent, polished, oxidized, or raveled asphalt surfaces or to concrete or brick surfaces.
- B. Tack coat should consist of one part emulsified asphalt, three parts water and should be SS or CSS grade.

### 3.3 PROTECTION

#### A. Implement the traffic control plan requirements. Provide safe passage for pedestrians and vehicles. Do not proceed without flaggers.

#### B. Protect trees, plants, and other ground cover from damage.

#### C. Prune trees to allow equipment passage underneath, Section 32 01 93. Repair tree damage at no additional cost to City.

#### D. Install invert covers, Section 01 71 13.

#### E. Mask off end of streets and intersection to provide straight lines:

#### A. Make straight lines along lip of gutters and shoulders. Keep same thickness in these areas. No runoff on these areas will be permitted.

#### B. Vary edge lines no more than 1/2 inch per 100 feet.

#### F. Protect curb, gutter, and sidewalk from spatter, mar, or overcoat.

#### G. Protect surface treatment materials from traffic until it has cured.

### 3.4 APPLICATION

#### A. Application Rate: Two separate applications coats are required. The first application must be thoroughly dry and free of any damp areas before the second application begins. Machine settings must match the following application rates.

- A. 0.20 gallons per square yard minimum.
- B. 0.16 gallons per square yard minimum.

#### B. Spreading:

#### A. Keep constant delivery rate of material per square yard of surface, even if the forward speed of





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the machine varies.

- B. Do not reduce application rate along edges or around manhole covers.
- C. Apply both applications right to the edge of the pavement. Do not back away from curbs, manhole covers, and edges on either application.

### 3.5 AFTER APPLICATION

- A. Leave no streaks caused by plugged nozzle or improper spray bar height.
- B. Leave no holes, bare spots, or cracks.
- C. Expose and clean Manholes, valve boxes, inlets and other service entrances and Street Fixtures.
- D. Raise reflective tabs that were covered over. This will aid roadway users in finding lane delineation after installation and before permanent striping.
- E. Do not permit traffic on product until surface has cured (minimum 8 hours).
- F. Do not apply permanent lane marking or paint until placement has aged at least 10 days and layout has been verified with Engineer.

### 3.6 FIELD QUALITY CONTROL


- A. Testing: If density tests (ASTM D2939) show non-compliance, remove the product and halt operations until new material arrives and is shown to be in compliance. Measure the total amounts of material installed, and verify it meets the application rate.
- B. Protect surface treatment material from traffic until it has cured.

### 3.7 REPAIR

- A. Remove spatter and mar from curb and gutter, sidewalk, guard rails and guide posts at no additional cost to the City.
- B. Remove surface treatment material from Street Fixtures
- C. Make correction lines straight. Provide good appearance.
- D. Leave no streaks, holes, bare spots, or cracks through which liquids or foreign matter could penetrate to the underlying pavement.
- E. Repair collateral damage caused by construction.

### 3.8 Traffic Control

- A. Traffic Control: All traffic affected by this construction shall be regulated in accordance with the City of Phoenix "Traffic Barricade Manual," and these Special Provisions. The following traffic restrictions are minimum requirements throughout the construction period: For the purpose of this project the contractor will be strategically closing segments of roadway in order to limit the impact to the residents. The contractor will be responsible for preparing a notice for each location that includes a full description of the project and color map with instructions of what roadways will be closed on what day and where residents can park. Contact information for the contractor's representatives that will be on site at all times shall be included on the notice. A sample notice will be provided to the bidder upon request. A representative shall be on site at all times equipped with a golf cart to transport residents to and from their houses if needed do to disabilities or workloads. Advanced meetings with the neighborhoods may be necessary to provide adequate communication.
- B. Traffic Control and Project Schedule
- C. Contractor shall submit all traffic control plans and neighborhood notices five (5) days in advance of the project pre-construction meeting.
- D. The Project Manager will review and approve no later than three (3) days before the project pre-

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construction meeting.


- E. Final traffic control plans, approved neighborhood notices and the project schedule shall be submitted to the City one day before the scheduled project pre-construction meeting.
- F. The Project Manager shall send the notice to proceed immediately after the project pre-construction meeting. Work may not commence until the notice to proceed has been approved and the notice has been sent.

**3.9 MEASUREMENT**

- A. High Density Mineral Bond seal will be measured and paid for by the square yard for the actual surface areas covered.
- B. The Contractor shall be responsible for verifying the measurement for each area and to provide this area measurements to the City prior to bidding the project.

**3.10 PAYMENT**

- A. The contract price paid per square yard for High Density Mineral Bond seal shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals and for doing all the work involved in the furnishing and placing of the High Density Mineral Bond complete in place, based on quantity bid, traffic control, including cleaning the surface and protecting the High Density Mineral Bond seal until it has set, all as shown on the plans, as specified in these specifications and as directed by the Project Manager. Alternative bids will be per the additional table listed below.

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## ASPHALT RUBBER SLURRY SURFACING

Polymer modified slurry seal is used in the same applications as a standard slurry seal however polymer slurry seal has higher binder cohesion that leads to improvements in resistance to raveling, especially in cul-de-sacs. Polymer modified slurry seals are more abrasion resistant and can be laid at higher application rates without bleeding or deformation.

### 1. SCOPE

Slurry Seal shall consist of mixing asphalt emulsion, aggregate, and water and spreading the mixture on a surface or pavement where shown on the plans, as specified in these specifications and the special provisions, and as directed by the Engineer.

#### 1.1 PREPARATION

The Scrub Seal layer shall be allowed to age and cure under traffic for at least 48 hours before placing the slurry mixture. A longer curing period shall be required if, in the opinion of the Engineer, the asphaltic emulsion used for the chip course has not achieved a reasonable set which could result in damage to the finished product if prematurely covered by the slurry mix.

Before placing the slurry course, the pavement surface shall be cleaned by sweeping, flushing or other means necessary to remove all loose particles of paving, all dirt, loose chips, and all other extraneous material.

Before commencing the slurry operations, all surface metal utility covers which were uncovered shall be covered by thoroughly covering the surface with an appropriate adhesive and oiled or plastic paper. No adhesive material shall be permitted to cover, seal or fill the joint between the frame and cover of the structure. Covers are to be uncovered and cleaned by the end of the same work day. Ridges or bumps in the finished surface will not be permitted.

### 2. MATERIALS

The materials for slurry seal immediately prior to mixing shall conform to the following requirements:

#### 2.1 (a) LMCQS-TR MS, Tire Modified Asphalt Emulsion

The base Latex Modified emulsified asphalt shall be a quick traffic, quick cure (QT-QC) type, shall be a homogeneous brown color throughout and show no separation after thorough mixing, shall break and set on the aggregate within five (5) minutes and shall be ready for cross-traffic within fifteen (15) to forty five (45) minutes. The latex modified asphalt emulsion, upon standing undisturbed for a period of twenty-four (24) hours, shall show no white or milky colored substance on its surface and conform to the requirements in Table I.



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<b>TABLE I</b>			
<b>TEST DESCRIPTION</b>	<b>AASHTO/ASTM METHOD</b>	<b>TYPICAL ANALYSIS</b>	<b>SPECS</b>
<b>Characteristics of Base Asphalt:</b>			
Solubility in TCE %	T-44/D-2042	98+	97.5Min
% digested tire rubber	Report	5+	5 Min
<b>TEST ON EMULSION:</b>			
Viscosity @ 122 F, SFS	T-59/D-7496	54	20-100
Particle Charge Test (Cationic)	T-59/D-244	+	Positive
Sieve Test, WT%	T-59/D-6933	0.01	0.10 Max
Latex Solids, %		3.0+	3.0 Max
Storage Stability 24 Hrs %	T-59/D-6930	0.01	3.0 Max
Residue by Distillation	D-244/D6997	63	58 Min
VOC, % @ 500 F	Rule 340& 301	1.0	3.0 Max
<b>Test on Residue from D 244</b>			
Penetration, 25° C., 100g, 5s, dmm	T-49/D-5	55	40-110
Elastic Recovery 10° C	T-49/D-6084	50 +	45 Min.
10cm elongation, 5 min hold, %	ASTM D113	25 Min.	
Solubility in TCE*, %			

\* Whole Scrap Tire Rubber must be fully digested into the asphalt prior to emulsification and meet ASTM D2042 solubility specifications.

Carbon black dispersion compatible with the emulsion shall be added by suitable blending (in line or propeller mixing) to the emulsion at the plant before use. The carbon black at 30% solids by weight shall be added at 6-8% on emulsion total weight.

A dispersion of asphalt rubber - RG-1 or equivalent - shall be blended in line with the emulsion at the plant and the emulsion remixed before use.

This shall be added at 5-8% based on emulsion total weight.

The emulsion shall be mixed by circulation or other method before pumping into the slurry truck.

### 2.1 (b) WATER

Water shall be potable, free of harmful soluble salts and shall be of such quality that the asphalt will not separate from the emulsion before the slurry seal is in place in the work.



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### 2.1 (c) AGGREGATE

Aggregate shall consist of sound, durable, crushed stone or crushed gravel and approved mineral filler. The material shall be free from vegetable matter and other deleterious substances. Aggregates shall be 100% crushed with no rounded particles. The percentage composition by weight of the aggregate shall conform to the following grading in Table II:

Class	Percentage Passing Sieves					
	Type I		Type II		Type III	
	Min.	Max.	Min.	Max.	Min.	Max.
Sieve Size						
3/8 in (9.5 mm)	100	---	100	---	100	---
No. 4 (4.74 mm)	100	---	90	100	70	90
No. 8 (2.36 mm)	90	100	65	90	45	70
No. 16 (1.18 mm)	65	90	45	70	28	50
No. 30 (600 μm)	40	60	30	50	19	34
No. 50 (300 μm)	25	42	18	36	12	25
No. 100 (150 μm)	15	30	10	24	7	18
No. 200 (75 μm)	10	20	5	15	5	15
Residual Asphalt % of Dry Aggregate Weight	10 min		7.5 min		6.5 min	

Emulsified asphalt % of dry aggregate weight must meet residual asphalt requirement.


The aggregate shall also conform to the following quality requirements:

Test	ASTM Method of Test	Requirement
Sand Equivalent	C 2419	55% Min.
Percentage Wear 500 Revolutions <sup>1</sup>	C 131	40% Max.
Soundness (5 Cycles) <sup>1</sup>	C 88	15% Max.

<sup>1</sup> ASTM C 131 to be run on plus four graded material before final crushing.

### 2.01 (d) POLYMER

Styrene Butadiene Rubber latex polymer shall be added to the water/soap phase by injection prior to the mill manufacture of the asphalt emulsion by the emulsion producer. The polymer shall be BASF NX 1118 or approved equal. The amount of polymer solids shall be between 3 and 4 percent of the asphalt residual content and shall be certified by the emulsion producer on each load of emulsion delivered to the job site. No post or field addition of polymer will be allowed. Samples of polymer shall be provided and shall conform to the following requirements.

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Test	Requirement
Total Solids, min %	60
Bound Styrene %	24 - 60
pH at 25 Degrees C	4.2 - 5.2
Brookfield Viscosity RVT	1000 - 4000
Residual Monomer %	0.08 max.

**2.1 (e) MINERAL FILLER**

The mineral filler shall be either Portland Cement or other approved mineral fillers, if required. Portland Cement if used, shall be commercially available Type I-II and shall be free of lumps and clods.

**2.2 MIX DESIGN**

At least 7 working day before slurry seal placement commences, the Contractor shall submit to the Engineer for approval a laboratory report of tests and proposed mix design covering the specific materials to be used on the project. The percentage of asphalt emulsion proposed in the mix design shall be within the percentage range specified in Section 2.04 "Proportioning."


**2.3 PROPORTIONING**

Asphalt emulsion shall be added at a rate determined by the mix design and in the range of the Table III below.

	Minimum	Maximum
Type I	4.3 kg/m <sup>2</sup> (10lbs/yd <sup>2</sup> )	5.4 kg/m <sup>2</sup> (10 lbs/yd <sup>2</sup> )
Type II	6.5 kg/m <sup>2</sup> (18 lbs/yd <sup>2</sup> )	8.1 kg/m <sup>2</sup> (18 lbs/yd <sup>2</sup> )
Type III	8.7 kg/m <sup>2</sup> (25lbs/yd <sup>2</sup> )	10.8 kg/m <sup>2</sup> (25 lbs/yd <sup>2</sup> )

A job mix design shall be submitted by the Contractor for approval by the Engineer that conforms to the specification limits, and that is suitable for the traffic, climate conditions, curing conditions and final use. This will include recommended application rate of slurry to suit the job conditions.

The slurry seal mixture shall be proportioned by the operation of a single start/stop switch or lever which automatically sequences the introduction of aggregate, emulsified asphalt, admixtures, if used, and water to the pug mill.

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Calibrated flow meters shall be provided to measure both the addition of water and liquid additives to the pug mill. If necessary for workability, a retarding agent, that will not adversely affect the seal, may be used.

Water, and retarder if used, shall be added to ensure proper workability and (a) permit uncontrolled traffic on the slurry seal no more than three (3) hours after placement without the occurrence of bleeding, ravelling, separation or other distress; and (b) prevent development of bleeding, ravelling, separation or other distress within fifteen (15) days after placing the slurry seal.

#### **2.4 MIXING AND SPREADING EQUIPMENT**

The slurry seal shall be mixed in a self-propelled mixing machine equipped with a continuous flow pug mill capable of accurately delivering and automatically proportioning the aggregate, emulsified asphalt, water and additives to a double shafted, multi-blade pug mill mixer capable of minimum speeds of 200 revolutions per minute.

A minimum of two operational mixing machines of 10 cubic yard capacity, or larger, shall be maintained on the project. The mixed slurry seal retention time in the pug mill shall be less than three seconds. No retention of mixed slurry seal shall be allowed within the pug mill by gate shut-off or other mechanical means. Any machines with pug mill retention or shut-off gates shall have them removed prior to being used on this project. The mixing machine shall have sufficient storage capacity of aggregate, emulsified asphalt, and water to maintain an adequate supply to the proportioning controls.

The mixing machine shall be equipped with hydraulic controls for proportioning the material by volume to the mix. Each material control device shall be calibrated, properly marked, pre-set and lockable at the direction of the Engineer. The mixing machine shall be equipped with a water pressure system and nozzle type spray bars to provide a water spray immediately ahead of the spreader box.


The mixing machine shall be equipped with an approved fines feeder that provides a uniform, positive, accurately metered, pre-determined amount of a mineral filler, if used, at the same time and location that the aggregate is fed.

The slurry mixture shall be uniformly spread by means of a controlled spreader box conforming to the following requirements:

The spreader shall be capable of spreading a traffic lane width and shall have strips of flexible rubber belting or similar material on each side of the spreader box and in contact with the pavement to prevent loss of slurry from the box. The box shall have baffles, or other suitable devices, to insure uniform application on super-elevated sections and shoulder slopes. Spreader boxes shall be maintained in such a manner as to prevent chatter (wash boarding) or other surface defects that will affect the aesthetic value of the finished slurry seal mat.

The rear flexible strike-off blade shall make close contact with the pavement and shall be capable of being adjusted to the various crown shapes so as to apply a uniform slurry seal.

Slurry mixture, to be spread in areas inaccessible to the controlled spreader box, may be spread by other approved methods.

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## 2.5 PLACING

The slurry seal shall not be placed if either the pavement or the air temperature is below 55 degrees F (13C) and falling, but may be applied when both the air and pavement temperature is 45 degrees F (7C) or above and rising. The mixture shall not be applied if high relative humidity prolongs the curing beyond a reasonable time.

The maximum speed of the slurry machine shall not exceed 80 meters per minute (270 feet per minute).

Before placing the slurry seal, the pavement surface shall be cleaned by sweeping, flushing or other means necessary to remove all loose particles of paving, all dirt and all other extraneous material. Immediately ahead of the mixer, the pavement shall be pre-wetted by a pressure water distribution system equipped with a fog-type spray bar which will completely fog the surface of the pavement. The need for application and the rate of application will be determined by the Engineer.

Evidence of solidification of the asphalt, balling or lumping of the aggregates, or the presence of uncoated aggregate will be cause for rejection of the slurry.

Slurry shall be applied in such a manner that no ridges shall remain.

The Contractor shall prevent slurry from being deposited on other than asphalt concrete surfaces and shall remove slurry from surfaces not designated to be sealed at no cost to the Agency. The method of slurry removal shall be approved by the Engineer.

At the direction of the Engineer, the Contractor shall repair and reseal all areas of the streets which have not been sealed properly or completely, at no cost to the Agency.

Where the completed slurry is not uniform in color, the street shall be treated to eliminate the color variation at the Contractor's expense. The method of treatment shall be approved by the Engineer.

Immediately before commencing the slurry seal operations, all surface metal utility covers (including survey monuments) shall be protected by thoroughly covering the surface with an appropriate adhesive and paper or plastic. No adhesive material shall be permitted to cover, seal or fill the joint between the frame and cover of the structure. Covers are to be uncovered and cleaned of slurry material by the end of the same work day.


Hand squeegees and other hand equipment shall be provided to remove spillage and spread slurry in areas inaccessible to the spreader box. Ridges or bumps in the finished surface will not be permitted. The mixture shall be uniform and homogeneous after spreading on the existing surface and shall not show separation of the emulsion and aggregate after setting.

Adequate means shall be provided to protect the slurry seal from damage from traffic until such time that the mixture has cured sufficiently so that the slurry seal will not adhere to and be picked up by the tires of the vehicles.

### Rollers:

- a. Rollers shall be self-propelled rubber tired rollers (9-12 ton). The roller shall be equipped with an operating water spray system. The resurfaced area shall be subjected to a minimum of 3 full coverage's



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by the roller. Rolling shall not commence until slurry has cured enough so the slurry will not pick up when rolled. It shall be rolled until all ridges have been ironed out and a uniform surface is obtained.

- b. Rollers shall have an operating strobe light or rotating beacon.

The Contractor shall have two (2) fully operational mixers for use at the project site at all times.

**Calibration:** Each slurry mixing unit to be used in performance of the work shall be calibrated specifically for the contract prior to construction. Previous calibration documentation covering the exact materials to be used will not be accepted. The documentation shall include an individual calibration of each material at various setting, which shall be related to the machine metering device(s).

These mixers shall be available for inspection by the City at least 48 hours prior to commencing work.


For the purpose of this project, the construction zone is defined to include all stockpile staging areas and travel routes to/from streets where the slurry seal is to be applied.

Any deviations shall not be made without prior written approval from the Engineer. The sites for stockpiling and batching materials shall be clean and free from objectionable materials. Arrangements for these sites shall be the responsibility of the Contractor.

**Traffic Control:** All traffic affected by this construction shall be regulated in accordance with the City of Phoenix "Traffic Barricade Manual," and these Special Provisions. The following traffic restrictions are minimum requirements throughout the construction period: For the purpose of this project the contractor will be strategically closing one lane at time throughout the neighbourhoods in order to limit the impact to the residents. The contractor will be responsible for preparing a notice for each location that includes a full description of the project and color map with instructions of what roadways will be closed on what day and where residents can park. Contact information for the contractor's representatives that will be on site at all times shall be included on the notice. A sample notice will be provided to the bidder upon request. A representative shall be on site at all times equipped with a golf cart to transport residents to and from their houses if needed do to disabilities or workloads. Advanced meetings with the neighbourhood's may be necessary to provide adequate communication.

#### Traffic Control and Project Schedule

- a. Contractor shall submit all traffic control plans and neighbourhood notices five (5) days in advance of the project pre-construction meeting.
- b. The Project Manager will review and approve no later than three (3) days before the project pre-construction meeting.
- c. Final traffic control plans, approved neighbourhood notices and the project schedule shall be submitted to the City one day before the scheduled project pre-construction meeting.
- e. The Project Manager shall send the notice to proceed immediately after the project pre-construction meeting. Work may not commence until the notice to proceed has been approved and the notice has been sent.

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**2.6 MEASUREMENT**

Slurry seal will be measured and paid for by the square yard for the actual surface areas covered.

The Contractor shall be responsible for verifying the measurement for each area and to provide this area measurements to the City prior to bidding the project.

**2.7 PAYMENT**

The Slurry Seal shall be paid by the square. The price shall be full compensation for furnishing, mixing and applying all materials; and for all labor, equipment, tools, design tests, traffic control and incidentals necessary to complete the job as specified herein. The contractor shall be required to submit information on the weight of the aggregate and weight of emulsified asphalt, as shown on certified weight tickets from the supplies delivered to the project, less weigh backs. This includes all traffic control and incidentals to complete the project. Contractor will be responsible to verify quantities prior to bid submittal as bid sheet quantities are only estimates.

**END OF SCOPE OF WORK**



**CITY OF GOODYEAR**

**Attachment A  
Map B**

Office of Procurement  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, AZ 85338  
Phone: 623-882-7893

Map B – 2015/2016 Pavement Preservation (HDMB / Slurry) is attached on the City's website



# CERTIFICATE OF LIABILITY INSURANCE

HOLBASPH-1

JOPDAHL

DATE (MM/DD/YYYY)  
8/26/2015

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

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

<b>PRODUCER</b> The Presidio Group, Inc. 6967 South River Gate Drive, #200 Salt Lake City, UT 84047	<b>CONTACT NAME:</b> Heather Owens <b>PHONE (A/C, No. Ext):</b> (801) 924-1400 <b>FAX (A/C, No.):</b> (801) 924-1441 <b>E-MAIL ADDRESS:</b> reception@presidio-group.com
	<b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b>  Holbrook Asphalt LLC 3828 S. 1700 E. St. George, UT 84790	<b>INSURER A:</b> Employers Mutual Casualty <b>NAIC #</b> 21415
	<b>INSURER B:</b> Workers Compensation Fund <b>NAIC #</b> 10033
	<b>INSURER C:</b>
	<b>INSURER D:</b>
	<b>INSURER E:</b>
	<b>INSURER F:</b>

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INBR LTR	TYPE OF INSURANCE	ADD'L INSR (INSR) WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	4D7669016	06/15/2015	06/15/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	4D7669016	06/15/2015	06/15/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		4D7669016	06/15/2015	06/15/2016	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	2078524	06/15/2015	06/15/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Equipment Floater		4D7669016	06/15/2015	06/15/2015	Limit 25,000
A	Equipment Floater		4C76690	06/15/2014	06/15/2015	Debt 1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Verification of insurance is subject to the policy terms & conditions.

The Cleveland Indians Baseball Company, The Cincinnati Reds, LLC, The City of Goodyear and its elected and appointed boards, officers, officials, agents, employees, and volunteers are included as Additional insureds per written contract, per attached form. This insurance is primary and non-contributory.

**CERTIFICATE HOLDER****CANCELLATION**

City of Goodyear  
 190 No. Litchfield Rd  
 Goodyear, AZ 85338

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION CONTRACT OR  
AGREEMENT INCLUDING COMPLETED OPERATIONS – PRIMARY AND  
NONCONTRIBUTORY**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

A. Section II – Who is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of:

- a. your ongoing operations for the additional insured; or
- b. "Your work" for the additional insured and included in the "products – completed operations hazard".

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury," "property damage" and "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports,

surveys, field orders, change orders or drawings and specifications; or

- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by the insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of insurance shown in the Declarations.

D. The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

**Primary and Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

E. All other terms and conditions of this policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## COMMERCIAL AUTO AMENDMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

The BUSINESS AUTO COVERAGE FORM is amended to include the following clarifications and extensions of coverage. With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### A. BLANKET ADDITIONAL INSURED

**SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by adding the following:

- d. Any person or organization who is a party to a written agreement or contract with you in which you agree to provide the type of insurance afforded under this Business Auto Coverage Form.

This provision applies to claims for "bodily injury" or "property damage" which occur after the execution of any written agreement or contract.

#### B. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

**SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by adding the following:

- e. Any organization which you acquire or form after the effective date of this policy in which you maintain ownership or majority interest. However:

(1) Coverage under this provision is afforded only up to 180 days after you acquire or form the organization, or to the end of the policy period, whichever is earlier.

(2) Any organization you acquire or form will not be considered an "insured" if:

A. The organization is a partnership or a joint venture; or

B. That organization is covered under other similar insurance.

(3) Coverage under this provision does not apply to any claim for "bodily injury" or "property damage" resulting from an "accident" that occurred before you formed or acquired the organization.

#### C. SUBSIDIARIES AS INSUREDS

**SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured** is amended by adding the following:

- f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, "insured" does not include any subsidiary that is an "insured" under any other automobile liability policy or was an "insured" under such a policy but for termination of that policy or the exhaustion of the policy's limits of liability.

#### D. COVERAGE EXTENSIONS – SUPPLEMENTARY PAYMENTS

**SECTION II – LIABILITY COVERAGE, A.2.a. Coverage Extensions, Supplementary Payments (2) and (4)** are replaced by the following:

(2) Up to \$3,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$350 a day because of time off from work.

#### E. PHYSICAL DAMAGE – TOWING

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.2. Towing** is replaced with the following:

We will pay for towing and labor costs incurred, subject to the following:

a. Up to \$100 each time a covered "auto" of the private passenger type is disabled; or

b. Up to \$500 each time a covered "auto" other than the private passenger type is disabled.

However, the labor must be performed at the place of disablement.

#### F. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions subparagraph a. Transportation Expenses** is replaced by the following:

(1) We will pay up to \$75 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expirations, when the covered "auto" is returned to use or we pay for its "loss."

- (2) If the temporary transportation expenses you incur arise from your rental of an "auto" of the private passenger type, the most we will pay is the amount it costs to rent an "auto" of the private passenger type which is of the same like kind and quality as the stolen covered "auto."

**G. HIRED AUTO PHYSICAL DAMAGE**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions** is amended by adding the following:

- c. If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you hire, subject to the following limit and deductible:

- (1) The most we will pay for loss to any hired "auto" is the lesser of \$50,000 or Actual Cash Value or Cost of Repair, minus the deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning.
- (3) Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

The insurance provided under this provision is excess over any other collectible insurance.

**H. PERSONAL PROPERTY OF OTHERS**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions** is amended by adding the following:

- d. We will pay up to \$500 for loss to personal property of others in or on your covered "auto."

This coverage applies only in the event of "loss" to your covered "auto" caused by fire, lightning, explosion, theft, mischief or vandalism, the covered "auto's" collision with another object, or the covered "auto's" overturn.

No deductibles apply to this coverage.

**I. AIRBAG COVERAGE**

**SECTION III – PHYSICAL DAMAGE COVERAGE, B.3.a. Exclusions** is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**J. LOSS TO TWO OR MORE COVERED AUTOS FROM ONE ACCIDENT**

**SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

If a Comprehensive, Specified Causes of Loss or Collision Coverage "loss" from one "accident" involves two or more covered "autos", only the highest deductible applicable to those coverages will be applied to the "accident".

This provision only applies if you carry Comprehensive, Collision or Specified Causes of Loss Coverage for those vehicles, and does not extend coverage to any covered "autos" for which you do not carry such coverage.

**K. WAIVER OF DEDUCTIBLE – GLASS REPAIR OR REPLACEMENT**

**SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

If a Comprehensive Coverage deductible is shown in the Declarations it does not apply to the cost of repairing or replacing damaged glass.

**L. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS**

**SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties In the Event of Accident, Claim, Suit or Loss** is amended by adding the following:

- d. Your obligation to notify us promptly of an "accident," claim, "suit" or "loss" is satisfied if you send us the required notice as soon as practicable after your Insurance Administrator or anyone else designated by you to be responsible for insurance matters is notified, or in any manner made aware, of an "accident," claim, "suit" or "loss."

**M. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES**

**SECTION IV – BUSINESS AUTO CONDITIONS, B.2. Concealment, Misrepresentation, or Fraud** is amended by adding the following:

If you unintentionally fail to disclose any exposures existing at the inception date of this policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**N. MENTAL ANGUISH**

**SECTION V – DEFINITIONS, C.** is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

**O. LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.



BID BOND

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That we, Holbrook Asphalt Co.  
 \_\_\_\_\_ as Principal, and The Guarantee Company of North  
 America USA, a corporation duly organized under the laws of the State of Michigan, as Surety, are held and firmly  
 bound unto City of Goodyear  
 as Oblige, in the sum of ten percent of bid  
 (\$ 10% of bid ) Dollars for the payment of which Principal and Surety bind ourselves, our heirs,  
 executors, administrators, successors and assigns, jointly and severally.  
 WHEREAS, Principal has submitted a bid for Solicitation #16-3332 - High Density Mineral Bond/Slurry Seal  
 \_\_\_\_\_, the  
 Project.

NOW, THEREFORE, if the Oblige accepts the bid of the Principal and the Principal enters into a Contract with the  
 Oblige for the Project; or, if the Principal pays the Oblige the amount of this Bond or the difference between  
 Principal's bid and the next lowest bid for the Project, whichever is less: this obligation is null and void, otherwise to  
 remain in full force and effect.

Signed and sealed this 3rd day of September, 2015

Holbrook Asphalt Co.

Shannon Greut  
 Witness

BY:

[Signature]  
 Principal

ITS:

[Signature] AZ President

The Guarantee Company of North America USA

Kim Payton  
 Witness Kim Payton  
 Bid Bond - Rev. 2/20/13

BY:

[Signature]  
 Attorney-In-Fact John Schlichte





**THE GUARANTEE™**

**The Guarantee Company of North America USA**  
Southfield, Michigan

**POWER OF ATTORNEY**

**KNOW ALL BY THESE PRESENTS:** That **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Michael Wade, Kim Payton, Delis Zeeh, Alan Lord, John Schlichte  
Presidio Group, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon **THE GUARANTEE COMPANY OF NORTH AMERICA USA** as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of **THE GUARANTEE COMPANY OF NORTH AMERICA USA** at a meeting held on the 31<sup>st</sup> day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

**RESOLVED** that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, **THE GUARANTEE COMPANY OF NORTH AMERICA USA** has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

**THE GUARANTEE COMPANY OF NORTH AMERICA USA**

STATE OF MICHIGAN  
County of Oakland

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of



Cynthia A. Takai  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires February 27, 2018  
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

I, Randall Musselman, Secretary of **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, which is still in full force and effect.

IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 3<sup>rd</sup> day of September 2015



Randall Musselman, Secretary

# Payment Bond

Bond No.:

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Holbrook Asphalt, Inc.  
3828 S. 1700 E.  
St. George, UT 84790

**OWNER (Name and Address):**

City of Goodyear  
190 N. Litchfield Rd.  
Goodyear, AZ 85338

**SURETY (Name and Principal Place of Business):**

The Guarantee Company of North America, USA  
14676 S. Heritage Crest Way, Ste. 1  
Bluffdale, UT 84065

**CONSTRUCTION CONTRACT**

Date: November 10, 2015

Amount: \$942,772.94

Description (Name and Location): High Density Mineral Bond / Slurry Seal

**BOND**

Date (Not earlier than Construction Contract Date): November 10, 2015

Amount: \$942,772.94

Modifications to this Bond: None

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)  
Holbrook Asphalt, Inc.

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

Name and Title:  
(Any additional signatures appear on page 4.)

FOR INFORMATION ONLY – Name, Address and Telephone)

**AGENT or BROKER:**

The Presidio Group  
5295 S. 300 W. Ste. 550  
Salt Lake City, UT 84157  
(801)924-1400

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)  
The Guarantee Company of North America, USA

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

Name and Title: John Schlichte, Attorney in Fact

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

**4** The Surety shall have no obligation to Claimants under this Bond until:

**4.1** Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

**4.2** Claimants who do not have a direct contract with the Contractor:

**.1** Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

**.2** Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

**.3** Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

**5** If a notice required by paragraph 4 is given by Owner to the Contractor or to the Surety, that is sufficient compliance.

**6** The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**7** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**8** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

**9** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

SURETY 5026 (6-92)

**10** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**11** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

**12** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**13** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### **14 DEFINITIONS**

**14.1 Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**14.2 Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**14.3 Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall respond within a reasonable time (1) after the Claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has reviewed all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety's or the Contractor's defenses under this Bond or their right to dispute such claim. However, in such event the Claimant may bring suit against the Surety as provided under this Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**  
Company:

**SURETY**  
Company:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

# Performance Bond

Bond No.:

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Holbrook Asphalt, Inc.  
3828 S. 1700 E.  
St. George, UT 84790

**OWNER (Name and Address):**

City of Goodyear  
190 N. Litchfield Rd.  
Goodyear, AZ 85338

**SURETY (Name and Principal Place of Business):**

The Guarantee Company of North America, USA  
14676 S. Heritage Crest Way, Ste. 1  
Bluffdale, UT 84065

**CONSTRUCTION CONTRACT**

Date: November 10, 2015  
Amount: \$942,772.94

Description (Name and Location): High Density Mineral Bond / Slurry Seal

**BOND**

Date (Not earlier than Construction Contract Date): November 10, 2015  
Amount: \$942,772.94

Modifications to this Bond: None

**CONTRACTOR AS PRINCIPAL**

Company: Holbrook Asphalt, Inc. (Corporate Seal)

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

Name and Title:

(Any additional signatures appear on page 2.)

FOR INFORMATION ONLY -- Name, Address and Telephone)

**AGENT or BROKER:**

The Presidio Group  
5295 S. 300 W. Ste. 550  
Salt Lake City, UT 84157  
(801)924-1400

**SURETY**

Company: The Guarantee Company of North America, USA (Corporate Seal)

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

Name and Title: John Schlichte, Attorney in Fact

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be

declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the

Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have

been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**12.2 Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**12.3 Contractor Default:** Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**12.4 Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

none

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:

Signature: \_\_\_\_\_  
Name and Title:



The Guarantee Company of North America USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Michael Wade, Kim Payton, Debra Zeeh, Alan Lord, John Schlichte
Presidio Group, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

- 1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

[Signature of Stephen C. Ruschak]

[Signature of Randall Musselman]

STATE OF MICHIGAN
County of Oakland

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of



Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

[Signature of Cynthia A. Takai]

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect.



IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 10th day of November, 2015

[Signature of Randall Musselman]

Randall Musselman, Secretary



**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
HOLBROOK ASPHALT, LLC**

**EXHIBIT B  
Scope of Work**

**PROJECT**

Project will apply a HA5 high density mineral bond surface preservation treatment to approximately 56,000 square yards of City streets.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
HOLBROOK ASPHALT, LLC**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

Compensation per Job Order Contract No. CON-16-3332, not to exceed \$76,711.67

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$76,711.67 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

See attached



**Utah Office**  
 3828 South 1700 East  
 St. George, UT 84790  
 P: 435.652.4427  
 F: 435.656.3943

**Nevada Office**  
 2900 Meade Ave, Ste 7  
 Las Vegas, NV 89118  
 P: 702.823.3902  
 F: 702.777.7575

**Arizona Office**  
 3806 S 16th Street  
 Phoenix, AZ 85040  
 P: 602.307.0425  
 F: 435.656.3943

# PROPOSAL

Date Estimate  
 10/10/2016 32854

www.HolbrookAsphalt.com

<b>Client</b>	<b>Project Description</b>	<b>Project Location</b>
City of Glendale Wade B. Ansell Ansell 5850 West Glendale Avenue, Suite 315 Glendale, Arizona 85301	2016 HDMB	Roadways Near 73rd & W. Missouri (see map)

<b>P.O. Number</b>	<b>Terms</b>	<b>Advisor</b>	<b>Region</b>	<b>State License #</b>
		Aaron	AZ, Southern	AZ-ROC261715

<b>Description</b>	<b>Quantity</b>	<b>U/M</b>	<b>Rate</b>	<b>Total</b>
TRAFFIC CONTROL	1	Each	1,506.00	1,506.00

- Midblock on 72nd Avenue = \$654/day
- Midblock on Colter Drive = \$522/day
- Sandbags, flags & traffic plans = \$330 (one time fee)

INCLUDES:  
 \* Labor, mobilization, temporary advance warning signs, and stands.

HA5 HIGH DENSITY MINERAL BOND: (48,084 SQ YARDS)	48,084	SqYd	1.48	71,164.32
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- Clean & prepare surface using high pressure air & wire bristle brooms.
- Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment.
- No guarantee surface treatments will adhere to areas saturated with motor oil.
- HA5 meets demands of APWA (American Public Works Association) specification (Section 32 01 13.68 High Density Mineral Bond).

INCLUDES THE FOLLOWING AREAS:

- \* Minor Collectors: 14,434 sq yards
- \* Residential Roadways: 33,650 sq yards

If necessary, a payment and/or performance bond cost will be adjusted to the total price of this proposal at a rate of 1.2 percent.			872.04	872.04
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PRIVILEGE TAX			3,169.31	3,169.31
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- City's Tax Rate: 2.90%
- State & County's Tax Rate: 7.30%
- Combined Tax Rate: 10.20%

The Following Items Can Be Added Upon Request:

- Striping

**Total** \$76,711.67

Proposal void 30 days from date listed on proposal. By signing this proposal (contract), I agree that Holbrook Asphalt Co. may not be held liable for delays, conditions, or Acts of God beyond their control, which situations may delay or cause cancellation partially or entirely on any project. Delays include project demand and material supply. Holbrook Asphalt Co. is not liable for any ADA compliance, if needed, Client should consult with an ADA compliance professional prior to specific project approval.

**PAYMENT TERMS:** Due Upon Completion (Completion by line item 'Progress Billing' and/or completion of project core)

There may be concerns from Client following completion. Upon request, post-project walk-throughs may be scheduled to review concerns. Payment will still remain due upon invoice. Holbrook Asphalt Co. is committed to client satisfaction and resolving concerns, though at times, this may be delayed.

As the Client, I agree to not withhold payment due to walk-through requests, cleaning, touch-up, or warranty concerns. I understand and agree that I will be billed for towing as incurred and will be due on receipt. I agree that if I demand to retain payment until warranty work or touch up is completed, the retainer will be a fixed amount of 5% of invoice, up to \$750.00. I agree that I may be billed as each line item is completed and each item may become their own respective invoice.

I understand that interest accrues on all past-due amounts at 24% per annum from invoice date, until paid in full; and may be billed collection fee's of up to 40%, and Client agrees to pay all fees accrued by collection efforts. These terms apply to all amount(s) incurred by me and for whom I have committed management responsibility, regardless of timing. Total Proposal price includes one mobilization. Additional mobilizations may be billed up to \$3,500 per additional mobilization. This agreement provides Client written Notice to Right to Lien.

**INSURANCE:** These insurance limits are listed by Holbrook Asphalt to inform Client of such. Any premiums above the following to be paid by Client. This disclosure overrules any other contract language wherein Holbrook Asphalt agrees to differing limits. Certificates available upon request.

GENERAL LIABILITY: \$1m (inc.), \$2m (agg.) AUTO: \$1m UMBRELLA: \$2m (inc.), \$2m (agg.) PERSONAL INJ: \$1m WORKERS COMP: \$1m

Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_ Holbrook Asphalt Co. \_\_\_\_\_



## Legislation Description

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**File #: 16-634, Version: 1**

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**AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH CALIENTE CONSTRUCTION, INC., FOR GENERAL MAINTENANCE AND REPAIR SERVICES**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Linking Agreement with Caliente Construction, Inc., for general maintenance and repair services in an amount not to exceed \$300,000 for the entire term of the Agreement, and to authorize the City Manager to renew the Agreement, at the City Manager's discretion, for an additional two, one-year renewals. The initial term of the Agreement is effective until June 24, 2017.

**Background**

The Agreement with Caliente Construction, Inc. will be used for general maintenance and repairs at City of Glendale facilities on an as-needed basis.

Caliente Construction, Inc. was awarded a bid by Maricopa County as described in the Job Order Contractor for Facilities Management Contract and staff is requesting to utilize the cooperative purchase with Strategic Alliance for Volume Expenditures (SAVE). SAVE is a consortium of local municipalities in which Glendale is a member. Contract No. 14007-JOC was awarded on June 25, 2014 and is effective through June 24, 2017, and includes an option to renew the contract an additional two, one-year renewals, allowing the contract to be extended through June 24, 2019.

Cooperative purchasing allows counties, municipalities, schools, colleges and universities in Arizona to use a contract that was competitively procured by another governmental entity or purchasing cooperative. Such purchasing helps reduce the cost of procurement, allows access to a multitude of competitively bid contracts, and provides the opportunity to take advantage of volume pricing. The Glendale City Code authorizes cooperative purchases when the solicitation process utilized complies with the intent of Glendale's procurement processes. This cooperative purchase is compliant with Chapter 2, Article V, Division 2, Section 2-149 of the Glendale City Code, per review by Materials Management.

**Analysis**

Facilities Management staff oversees 3.5 million square feet of city facilities dispersed over 55 square miles throughout the city. This Agreement will allow Facilities Management to continue to provide general maintenance and repairs on an as-needed basis to its tenants in city facilities, without interruption of service.

**Previous Related Council Action**

On April 12, 2016, Council authorized entering into a Construction Agreement with Caliente Construction, Inc., Contract No. 10781, for the replacement of the cooling tower at City Hall, in an amount not to exceed \$1,048,007.

**Community Benefit/Public Involvement**

By ensuring facility maintenance and repair issues are performed in a timely manner, the life of city facilities are extended and further damage, decay and/or repairs are minimized.

Cooperative purchasing typically produces the lowest possible volume prices and allows for the most effective use of available funding. The bids are publicly advertised and all Arizona firms have an opportunity to participate.

**Budget and Financial Impacts**

Funding is available in the Fiscal Year 2016-17 Operating and Maintenance budgets for the various city departments. Expenditures with Caliente Construction, Inc. are not to exceed \$300,000 for the entire term of the Agreement, contingent upon Council budget approval.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$300,000</b>	<b>Varies</b>

Capital Expense? Yes

Budgeted? No

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALIENTE CONSTRUCTION, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Glendale, an Arizona municipal corporation (the "City"), and Caliente Construction, Inc., an Arizona corporation ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On June 25, 2014, under the S.A.V.E. Cooperative Purchasing Agreement, Maricopa County entered into a contract with Contractor to purchase the goods and services described in the Job Order Contractor for Facilities Management, Contract No. 14007-JOC ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was June 25, 2014, until the date the contract expires on June 24, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond June 24, 2019. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until June 24, 2017. The City Manager or designee, however, may renew the term of this Agreement for 2 one-year periods until the Cooperative Purchasing Agreement expires on June 24, 2019. Renewals are not automatic

and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed three hundred thousand dollars (\$300,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale  
c/o Vern Baker  
6210 W. Myrtle Avenue, Suite 111  
Glendale, Arizona 85301  
623-930-2679

and

Caliente Construction, Inc.  
c/o ~~Vanessa Singleton~~ **LORRAINE BERGMAN**  
485 W. Vaughn St.  
Tempe, AZ 85283  
480-894-5500

JB  
11/14

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

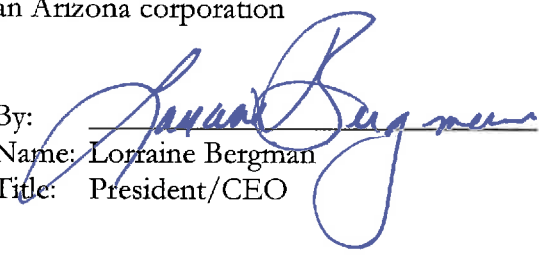
“City”

“Contractor”

City of Glendale, an Arizona  
municipal corporation

Caliente Construction, Inc.,  
an Arizona corporation

By: \_\_\_\_\_  
Kevin R. Phelps  
City Manager

By:   
Name: Lorraine Bergman  
Title: President/CEO

ATTEST:

\_\_\_\_\_  
Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney



**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALIENTE CONSTRUCTION, INC.**

**EXHIBIT A  
MARICOPA COUNTY CONTRACT NO. 14007-JOC  
JOB ORDER CONTRACTOR FOR FACILITIES MANAGEMENT  
FULL CONTRACT AVAILABLE UPON REQUEST**



**JOB ORDER CONTRACTOR (JOC) CONTRACT**

**MARICOPA COUNTY, ARIZONA**

**JOB ORDER CONTRACTOR FOR FACILITIES MANAGEMENT**

**Office of Procurement Services**

**Serial # 14007-JOC**

**C-73-14-066-5-00**

**Facilities Management, Maricopa County Arizona**

**Division 0 - Bidding & Contract Requirements**

<u>Section</u>	<u>Description</u>	<u>Number of Pages</u>
00005	Table of Contents .....	1
00500	Construction Contract.....	4
00610	Payment Bond and Performance Bond.....	3
00700	General Conditions Table of Contents .....	6
<b>00700</b>	<b>General Conditions to the Construction Contract.....</b>	<b>43</b>
	Exhibit A – Definitions to the General Conditions .....	3
	Exhibit B – Alternate Dispute Resolution .....	5
	Exhibit C – Legal Worker Certification .....	1
	Exhibit D – Request for Proposal for Task Order .....	1
	Exhibit E – Performance Bond and Payment Bond Forms .....	2
	Exhibit F – SBE Reporting Document .....	1
	Exhibit G – Request for Qualifications dated February 13, 2014 .....	102
	Exhibit H – Statement of Qualifications dated March 7, 2014 .....	39
	Exhibit I – Certificate of Insurance for Job Order Contract .....	2
	Exhibit J – General Requirements for the Job Order Contracts .....	109

All of the exhibits above are incorporated by reference as though fully set forth herein whether or not physically attached to this contract.

**END OF SECTION**

**SECTION 00500**

**JOB ORDER CONTRACT**

**A. EFFECTIVE DATE:**

This CONTRACT is entered into by and between the Owner and the Job Order Contractor as Contract No. 14007-JOC, and shall be effective as of June 25, 2014.

**B. OWNER:**

MARICOPA COUNTY  
c/o Facilities Management Department  
401 West Jefferson Street  
Phoenix, Arizona 85003

**C. JOB ORDER CONTRACTOR:**

Caliente Construction Inc.  
242 South El Dorado Circle  
Mesa, AZ 85202

Office: (480) 894-5500; Fax: (480) 894-2323; E-Mail: lbergman@calienteconstruction.com.

*485 W Vaughn St Tempe, AZ 85283*

**D. RECITALS:**

The scope of work and specifications for a broad range of services will be identified in individual Task Orders which will be issued by the Owner from time to time. See EXHIBIT D hereto.

NOW THEREFORE, intending to be legally bound and for valuable consideration, the receipt and sufficiency of which are acknowledged, the Owner and Job Order Contractor agree as follows:

**E. AGREEMENT:**

**Article I. THE CONTRACT**

- 1.1 The Task Order and other Contract Documents explained in Section 7.1 below and the definitions which are contained Section 00700, Exhibit A, govern this Job Order Contract.

**Article II. THE WORK**

- 2.1 The Job Order Contractor shall execute the entire Work described by each Task Order, including work which is reasonably inferable and necessary to produce the results intended by the Contract and the Task Order.

**Article III. CONTRACT TIME**

- 3.1 The Job Order Contractor shall have access to the area of the Work effective from the date of the Notice to Proceed for the assigned Task and shall achieve Substantial Completion and Final Completion of the Work no later than the performance period specified in each Task Order issued. The length of this Contract for services will be for a period of three (3) years with two one-year options to extend the contract, but in no event will this Contract's Term

continue longer than five (5) years from the date of the Contract. The term of this Contract shall not be extended. All Work issued hereunder must be completed in full by the final expiration date of this Contract. Extensions to this Contract for years 4 and 5 may only be made by an amendment signed by both parties. A permission to complete a Task Order that extends into Year 4 or Year 5 does not extend the Contract in its entirety for the additional year.

- 3.2 The Job Order Contractor shall achieve Substantial Completion of the Work (as defined in Section 00700, Article 9.8 herein, and evidenced by a Certificate of Substantial Completion) not later than as specified in each Task Order.
- 3.3 The Job Order Contractor shall achieve (as defined in Section 00700, Article 9.9 herein, and evidenced by a Certificate of Final Completion) no later than as specified in each Task Order.

#### **Article IV. CONTRACT SUM**

- 4.1 The Owner shall pay the Job Order Contractor in current funds for the Job Order Contractor's performance of individual Task Orders in an aggregate amount not to exceed Fifteen Million Dollars (\$15,000,000.00) in total, and not to exceed Five Million Dollars (\$5,000,000.00) per Fiscal Year, which Fiscal Year shall be designated by the Owner as beginning on July 1st and ending on June 30<sup>th</sup> of the next calendar year. The single maximum value of a task issued shall not exceed \$1,000,000.00. The Owner does not guarantee a minimum Contract Sum under this Contract, and Job Order Contractor, in accepting this Contract, does not expect a minimum Contract Sum. Payments will be made in accordance with the sum negotiated for each specific Task Order.

Maricopa County, at its sole discretion, may require the Job Order Contractor to purchase from a specified or designated County supplier (i.e. Home Depot) any and/or all available materials applied or installed by the Job Order Contractor or its subcontractors for a Task Order. The materials purchased by the Job Order Contractor(s), or its subcontractor(s), shall be purchased by the Job Order Contractor(s), or its subcontractor's, using their own funds and/or credit. Any discounts offered to the JOC by the County's material supplier shall be passed through to the County without markup. The County is not a party to these transactions and any issue/disputes shall be resolved without the involvement of the County.

#### **4.2 LABOR PRICE ADJUSTMENTS:**

Any requests for reasonable price adjustments must be submitted sixty (60) days prior to the Contract renewal. Requests for adjustment in cost of labor must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey. This section covers the positions of Project Manager, Superintendent and Engineer/Coordinator.

#### **4.3 FEE AND OVERHEAD CALCULATIONS FOR CONSTRUCTION COSTS UP TO \$250,000.00**

Overhead must be all inclusive and include all "costs of doing business". The County will not pay separately for items such as, but not limited to warranty, project closeout, home office expense, personal safety equipment, safety personnel, unless safety personnel is specifically required for the Work being performed and approved by the Owner. The Job

Order Contractor agrees the overhead shall be no more than 8% and the fee shall be capped at 5%.

**4.4 FEE AND OVERHEAD CALCULATIONS FOR CONSTRUCTION OVER \$250,000.00**

Overhead must be all inclusive and include all “costs of doing business”. The County will not pay separately for items such as, but not limited to warranty, project closeout, home office expense, personal safety equipment, safety personnel, unless safety personnel is specifically required for the Work being performed and approved by the Owner. Overhead cost and percentages in addition to Job Order Contractor fee(s) shall be negotiated between the Job Order Contractor and the County for any projects exceeding \$250,000.00.

**Article V. PROGRESS PAYMENTS**

**5.1** Progress payments will be made in accordance with Article 9 of the General Conditions to the Job Order Contract.

**Article VI. FINAL PAYMENT**

**6.1** Final Payment will be made in accordance with Article 9 of the General Conditions to the Job Order Contract.

**Article VII. CONTRACT DOCUMENTS**

**7.1** The Contract consists of the following documents incorporated herein by this reference:

**7.1.1** The Job Order Contract – Section 00500.

**7.1.2** The General Conditions to the Job Order Contract – Section 00700.

**7.1.3** Permits, Change Orders, Change Directives, amendments or modifications to the Contract.

**7.1.4** Any and all documents issued during the procurement process for this Contract.

**7.1.5** Task Order documents including, but not limited to, Task Orders, associated plans and specifications.

**7.1.6** Any addenda to any issued Task Orders or other Contract documents.

**7.1.7** Exhibits to **Section 00700**:

Exhibit A – Definitions to the General Conditions

Exhibit B – Alternate Dispute Resolution

Exhibit C – Legal Worker Certification

Exhibit D – Request for Proposal for Task Order

Exhibit E – Performance Bond and Payment Bond Forms

Exhibit F – SBE Reporting Document

Exhibit G – Request for Qualifications dated February 13, 2014

Exhibit H – Statement of Qualifications dated March 07, 2014

Exhibit I – Certificate of Insurance for Job Order Contract.

Exhibit J – General Requirements for the Job Order Contracts

All of the exhibits listed above are incorporated by reference as though fully set forth, whether or not they are physically attached to this Contract.

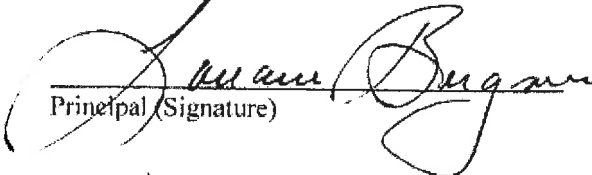
- 7.1.8 All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Office of Procurement Services shall be responsible for approving all amendments for Maricopa County.

F. **STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE):**

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County.

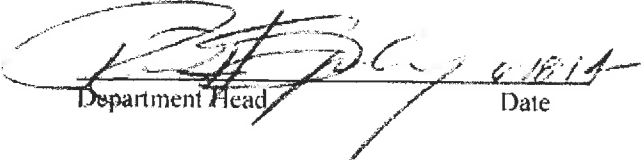
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.

JOB ORDER CONTRACTOR FOR FACILITIES MANAGEMENT  
14007-JOC


 Principal (Signature)	<u>6/9/14</u> Date
Lorraine Bergman Printed Name	86-0697201 Federal Tax Identification Number
President / CEO Title	ROC B-01 091625 License Number
Net 30 Vendor Terms	914-84 NIGP Commodity Code (Advantage)

COUNTY OF MARICOPA, ARIZONA


RECOMMENDED BY:

  
Department Head \_\_\_\_\_ Date \_\_\_\_\_

ACCEPTED AND APPROVED:

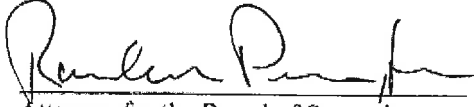
  
Chairman, Board of Supervisors \_\_\_\_\_ Date JUN 25 2014

ATTEST:

  
Clerk of the Board \_\_\_\_\_ Date JUN 25 2014

LEGAL REVIEW

Approved as to form and within the powers and authority granted under the laws of the State of Arizona to Maricopa County.

By:   
Attorney for the Board of Supervisors

Date: 16 June 2014



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**SECTION 00700**

**GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT**

**ARTICLE 1: GENERAL PROVISIONS**

**1.1 DEFINITIONS, CORRELATION AND INTENT**

- 1.1.1 Definitions. Unless otherwise provided herein, capitalized terms used in this Contract, and not otherwise defined herein, have the respective meanings set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.
- 1.1.2 Entire Agreement. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.
- 1.1.3 Contractual Relationship. The Contract shall not be construed to create a contractual relationship of any kind (1) between the Design Professional and the Job Order Contractor, (2) between any Authorized Agent and the Job Order Contractor, (3) between the Owner and a Subcontractor or (4) between any persons or entities other than the Owner and Job Order Contractor. The Job Order Contractor is not a third party beneficiary to any agreement between the Owner and the Design Professional. Performance by the Design Professional of duties under such agreements is solely for the benefit of parties identified as beneficiaries under such agreements.
- 1.1.4 Intent. The intent of the Contract is to include all items necessary for the proper execution and completion of the Work by the Job Order Contractor.
- 1.1.5 Design Professional's Supplemental Instruction. Written interpretations necessary for the proper execution of the Work in the form of a Design Professional's Supplemental Instruction will be issued with reasonable promptness by the Design Professional. Supplemental Instructions may either be instructions, drawings or additional information but shall not change the Contract Sum or Contract Time unless there is a subsequently executed Change Order.
- 1.1.6 Request for Information/Interpretation. The Job Order Contractor shall submit requests for information and/or interpretation of the Contract to the Design Professional or to the Owner's designee, as may be requested by the Owner.
- 1.1.7 Contract Document Order of Precedence. The Drawings, Specifications, Task Orders, and other Contract Documents will govern the Work. The Contract Documents are intended to be complementary and cooperative and to describe and provide for a complete Project. Anything in the Specifications and not on the Drawings, or on the Drawings and not in the Specifications shall be as though shown or mentioned in both.
  - 1.1.7.1 If there is a conflict among Contract Documents, the document highest in precedence shall control. The precedence for the Contract Documents shall be from the most restrictive to the lesser restrictive in the following order:
    - 1.1.7.1.1 The Contract.
    - 1.1.7.1.2 General Conditions.

- 1.1.7.1.3 General Requirements.
  - 1.1.7.1.4 All applicable codes including, but not limited to Building Codes and Permits from agencies required by law.
  - 1.1.7.1.5 Change Orders.
  - 1.1.7.1.6 Contract Specifications.
  - 1.1.7.1.7 Contract Drawings - Material/Equipment Schedules.
  - 1.1.7.1.8 Contract Drawings - Detailed Plans, elevations, sections and isometrics.
  - 1.1.7.1.9 Contract Drawings - General Plans, elevations, sections and isometrics.
  - 1.1.7.1.10 Standard Plans, i.e. standard structural details, devices or instructions referred to on the Plans or Specifications by title or number.
  - 1.1.7.1.11 Reference Specifications, i.e. Test References, etc.
- 1.1.7.2 The Job Order Contractor shall, upon discovering any error or omission in the Drawings or Specifications, immediately notify the Owner in writing.
- 1.1.8 Discrepancies in Contract. If there is any discrepancy, inconsistency, or ambiguity in the quality or quantity of the Work or materials required under the Contract, the Job Order Contractor shall (1) immediately bring such discrepancy, inconsistency, or ambiguity to the attention of the Owner, and (2) provide the better quality of and/or greater quantity of the Work or materials, without an increase in the Task Order Sum, unless otherwise directed in writing by the Owner. If the Owner accepts the lower quality or quantity of Work or materials, the Job Order Contractor shall remit to the Owner the difference in cost between the better quality or greater quantity and such lower quality or lesser quantity. Such remittance shall be in the form of a deductive Change Order as identified in Article 7.1.1.
- 1.1.9 Organization of Specifications and Drawings Not to Control Division of Work. Organization of the Specifications into divisions and sections, and arrangement of Drawings, shall not control the Job Order Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- 1.1.10 Job Order Contractor Solely Responsible for Division of Work. The Job Order Contractor is solely responsible for the division of the Work among Subcontractors. The Owner will not act as arbiter as to which trade or Subcontractor is to furnish or install the various items indicated or required to complete the Work. The Job Order Contractor shall make necessary arrangements to reconcile any and all labor conflicts without delay, damage, or cost to the Owner and without recourse to the Owner. Nothing in this section shall preclude the Owner from specifying that work be done by a specific Sub-Contractor to comply with the Owner's internal policies or requirements.

**1.1.11** Technical and Industry Meanings. Unless otherwise stated in the Contract, words which have well-known technical or construction industry meanings are used in the Contract in accordance with such recognized meanings.

**1.1.12** Current Standards. Where a reference in the Contract to an American Society for Testing and Materials Standard (ASTM), American National Standards Institute Standard (ANSI), federal specification, or other recognized standard does not include the date of the standard, the edition current as of the date of the Contract Documents shall apply. No consideration will be given to claimed ignorance as to what a cited standard contains, since the Job Order Contractor and each Subcontractor is considered to be experienced and familiar with the generally accepted, published standards of quality and workmanship for its own trade. Requirements of such referenced standards form a part of the Specifications to the extent indicated by the references thereto.

**1.2 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**1.2.1** Minor Design Services May Be Required For Some Task Orders. For those Task Orders that may require design services the Job Order Contractor shall consult with the Owner who may retain the services of a registered professional or request Job Order Contractor to retain a Design Professional. This section does not apply to fire protections or pre-fabricated metal structures, or any other exceptions as required by the Owner.

**1.2.2** All Drawings, Specifications, and copies thereof furnished by or to the Job Order Contractor are and shall remain the property of the Owner. The Drawings and Specifications and the design reflected therein shall be kept strictly confidential and shall not be disclosed or released except as necessary for the performance of the Work. Neither the Job Order Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, or other documents. The Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright. The Drawings, Specifications, and other documents prepared by the Job Order Contractor are for use solely with respect to this Project. They are not to be used by the Job Order Contractor or any Subcontractor on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner. The Job Order Contractor and its Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents necessary for execution the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights. Owner hereby releases Job Order Contractor from any and all liability that may arise in connection with the subsequent use of such Drawings and Specifications by the Owner and others. Job Order Contractor and Subcontractors shall not take or disseminate any photographs or videography of parts of the Project or the Project itself without first obtaining written permission of the Owner. This section shall not apply in the instance of the Job Order Contractor or Subcontractors utilizing pictures or videography internally in order to perform the Work.

## **ARTICLE 2: OWNER**

### **2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

- 2.1.1 The Owner shall furnish, for information purposes only, a copy of existing site information and conditions and shall also furnish any Plans and Specifications needed to construct the Project, if such have been prepared.
- 2.1.2 Communication with Job Order Contractor. The Owner shall forward all communications to the Job Order Contractor.
- 2.1.3 Aesthetic Decisions. The Owner's decisions on matters relating to aesthetic effect will be final.

### **2.2 OWNER'S RIGHT TO STOP THE WORK**

- 2.2.1 If the Job Order Contractor fails to perform or correct Work which is not in accordance with the requirements of the Contract, or does not allow other contractors to timely perform their work, the Owner may order the Job Order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Job Order Contractor or any other person or entity.

### **2.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

- 2.3.1 The Owner shall have the right to contact the Job Order Contractor's Surety if the Owner determines that the Job Order Contractor is not performing in accordance with the Contract. If the Job Order Contractor defaults or neglects to carry out the Work in accordance with the Contract, or fails to commence and continue correction of such default or neglect with diligence or promptness, the Owner may, after forty eight (48) hours written notice to the Job Order Contractor and its Surety, require the Surety to promptly assume the obligations of the Contract. Should the Surety fail to assume the obligations within five (5) days after receipt of the written notices then Owner, without prejudice to any other remedy it may have, may correct such nonconforming Work. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Job Order Contractor or the Surety all costs of correcting such nonconforming Work, including but not limited to, compensation for additional services made necessary by such default, neglect, or failure. If the payments then or thereafter due the Job Order Contractor or its Surety are not sufficient to cover such amount, the Job Order Contractor or its Surety shall pay the difference to the Owner within thirty (30) days after receipt of the Owner's invoice.

## **ARTICLE 3 JOB ORDER CONTRACTOR**

### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY JOB ORDER CONTRACTOR**

- 3.1.1 Notice of Errors. The Job Order Contractor warrants that he has carefully reviewed the Contract, and all documents pertaining to the Work, and that he is satisfied as to the feasibility and correctness of the Contract to perform the Work within the Contract Time. The Job Order Contractor shall immediately report to the Owner any errors,

inconsistencies, or omissions discovered in the Contract Documents prior to submitting its Proposal. Any error, inconsistency, or omission which could have been discovered prior to submitting its Proposal are waived unless reported in written form to the Owner before submitting its Proposal. If the Job Order Contractor performs any construction activity containing an error, inconsistency, or omission that the Job Order Contractor recognized or should have recognized through the exercise of reasonable diligence, without reporting such error, inconsistency, or omission to the Owner, the Job Order Contractor shall assume responsibility for such performance and shall bear the costs for correction.

- 3.1.2** Examination of Site. The Job Order Contractor warrants that he has visited and examined the character of the Site and any existing structures and has satisfied himself as to the nature of the Work and all matters which could in any way affect the Work. The Job Order Contractor warrants that he has reviewed the geotechnical report, if any, included in the Proposal Documents. The Job Order Contractor shall take field measurements and verify field conditions and shall compare such field measurements and conditions and other information known to the Job Order Contractor with the Contract before commencing the Work. Errors, inconsistencies, or omissions discovered shall be reported to the Owner prior to submitting its Proposal. Any error, inconsistency, or omission which could have been discovered by the Job Order Contractor prior to submitting its Proposal are waived unless reported in written form to the Owner before submitting its Proposal. The accuracy of grades, elevations, dimensions, or locations on work installed by other contractors is not guaranteed by the Owner. The Job Order Contractor shall verify the accuracy of all grades, elevations, dimensions, and locations relating to the Work. In cases of interconnection of the Job Order Contractor's Work with other work, it shall verify at the Site all dimensions relating to such other work. Any error due to the Job Order Contractor's failure to verify the accuracy of such grades, elevations, location, or dimensions shall be promptly rectified by the Job Order Contractor without any additional cost to the Owner.
- 3.1.3** Job Order Contractor License. The Job Order Contractor warrants (1) that it is licensed under the laws of the State of Arizona to perform the Work at the time of Proposal submission, and (2) that it is familiar with and will comply with all applicable laws, statutes, ordinances, building codes, rules and regulations, and lawful orders of public authorities in performing the Work, including, but not limited to, environmental laws and A.R.S. Title 34, as amended.
- 3.1.4** Contract Compliance with Law. If the Job Order Contractor observes that portions of the Contract are at variance with applicable laws, statutes, ordinances, building codes, or rules and regulations, the Job Order Contractor shall promptly notify the Owner in writing, and necessary changes shall be accomplished by appropriate modification of the Work. If the Job Order Contractor performs Work it knows or should know to be contrary to laws, statutes, ordinances, building codes, or rules and regulations without such notice to the Owner, the Job Order Contractor shall assume full responsibility for such Work and shall bear all damages, losses, costs, and expenses attributable thereto.
- 3.1.5** Job Order Contractor Compliance with Contract. The Job Order Contractor shall perform the Work in accordance with the Contract and in a first class and workmanlike manner. In the event that the Job Order Contractor fails to do so, the Owner may withhold payments to protect the Owner from loss, regardless of whether payment has previously been made for the Work in question.



### 3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.2.1 Job Order Contractor to Supervise Work. The Job Order Contractor shall supervise and direct the Work using the Job Order Contractor's best skill and attention. The Job Order Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, safety, and procedures associated with its Work and for coordinating all portions of the Work under this Contract.
- 3.2.2 Acts and Omissions. The Job Order Contractor shall be responsible to the Owner for acts and omissions of the Job Order Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Job Order Contractor.
- 3.2.3 Duty to Perform. The Job Order Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract either by activities or duties of the Owner in their administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Job Order Contractor.
- 3.2.4 Duty to Inspect. The Job Order Contractor shall inspect portions of the Project related to the Job Order Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.
- 3.2.5 Limitation on Liability. Job Order Contractor acknowledges that neither the Owner nor any of their respective agents, employees, successors, or assigns shall control the day-to-day operations of the Job Order Contractor and shall not determine construction means, methods, techniques or procedures, or safety precautions and programs in connection with the Work. Job Order Contractor agrees that neither the Owner nor any of their respective agents, employees, successors, or assigns shall be responsible for the failure of the Job Order Contractor to perform the Work in accordance with the Contract or with the laws, ordinances, rules, permit conditions, regulations, or lawful orders of any governmental agency having regulatory authority over the manner, methods, or means of performance of the Work.
- 3.2.6 Site Protection. The Job Order Contractor shall be responsible for all site protection and security needed during construction.

### 3.3 COST PROPOSALS AND SCHEDULE OF VALUES

- 3.3.1 The Job Order Contractor shall submit to and have accepted by the Owner, a schedule detailing values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. (See JOC Cost Proposal and Schedule of Values form, attached hereto as an Exhibit).
- 3.3.2 The following costs are not eligible for reimbursement pursuant to this Contract and shall not be included in any JOC cost proposal, unless otherwise authorized by the Owner in writing in advance.
  - 3.3.2.1 Cellular telephones
  - 3.3.2.2 Work vehicles
  - 3.3.2.3 Mileage
  - 3.3.2.4 Team building exercises
  - 3.3.2.5 Safety rewards

3.3.2.6 Meals/entertainment

3.3.2.7 Travel expenses,

3.3.3 For all CSI division on the JOC Cost Proposal and Schedule of Values, the following scale shall be used when receiving Sub-Contractor quotes for work:

\$0 - \$18,000 - 1 Subcontractor Quote Required

\$18,001 - \$50,000 - 2 Subcontractor Quotes Required

\$50,001 - \$999,999 - 3 Subcontractor Quotes Required

3.3.4 For self-performed work over \$18,001, one additional Subcontractor Quote will be required. For self-performed work over \$50,001, two additional Subcontractor Quotes will be required.

3.3.5 The Task Order consists of both the Notice to Proceed and the Purchase Order. No Work is to begin on any Project unless both documents have been issued.

### 3.4 LABOR AND MATERIALS

3.4.1 Job Order Contractor to Provide.

3.4.1.1 The Job Order Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, storage, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.1.2 The Job Order Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities specified in the Task Order for which it is issued a Task Order Notice to Proceed in accordance with this Agreement. The County may determine it is in its best interest to furnish materials and equipment for a specific Task Order in accordance with the Task Order.

3.4.2 Skilled Labor. The Job Order Contractor shall enforce strict discipline and good order among the Job Order Contractor's employees and other persons carrying out the Contract. The Job Order Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. At the sole discretion and opinion of the Owner, the Job Order Contractor agrees to remove from the site any employee of the Job Order Contractor, Subcontractor, or other person performing under the scope of Work, upon notification by the Owner that any employee does not meet the requirements of this paragraph.

3.4.3 Standard of Quality. Wherever materials, products, articles, equipment, systems, or similar items are identified by reference to proprietary terms or by a similar reference, it is intended to establish the minimum standard or measure of quality that has been determined as requisite or intended for the Work.

3.4.4 Trade Names or Equals. The Job Order Contractor shall supply materials, processes, or equipment specified, or a prior approved equal. Whenever any particular material, process, or equipment is indicated by patent, proprietary or brand name, or by name of manufacturer, such wording is used for the purpose of facilitating its description and shall

be deemed to be followed by the words "or prior approved equal"; unless such material, process, or equipment is specifically indicated as "proprietary". A listing of materials or equipment is not intended to be comprehensive, or in any order of preference.

### **3.5 SUBSTITUTION OF PRODUCTS**

- 3.5.1** Requests for Substitutions. After the Contract has been executed, the Owner may consider, but shall have no obligation to consider, a formal request for the substitution of products in place of those specified under the conditions set forth in Section 012500 of the General Requirements. The decision in the first instance on acceptance or rejection of proposed alternate, substitute or similar materials, products, equipment, or systems shall be vested with the Owner, whose decision shall be final and binding.
- 3.5.2** Conditions for Substitutions. By making requests for substitutions, the Job Order Contractor (1) represents that the Job Order Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, (2) represents that the Job Order Contractor will provide the same warranty for the substitution that the Job Order Contractor would for that specified, (3) certifies that the cost data presented is complete and includes all related costs under the Contract, and waives all claims for additional costs related to the substitution which subsequently become apparent, and (4) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- 3.5.3** Criteria for Acceptance or Rejection of Substitutes. Acceptance or rejection of proposed alternate, substitute, or similar materials, products, equipment, or systems for use may be based on the construction, design, function, type, size, capacity, performance, strength, durability, finish, aesthetic quality, schedule constraints, redesign costs, the Owner's standard for repair, replacement, and maintenance, or other characteristics or criteria approved by the Owner.
- 3.5.4** Expense for Modification. Any modification to the Contract or Work necessary as a result of the use of an approved alternate or substitute shall be paid by the Job Order Contractor proposing the substitution.
- 3.5.5** Rejection of Substitute. If any alternate or substitute is not approved, the Job Order Contractor shall use the specified material, product, equipment, or system without adjustment to the Contract Sum or Contract Time.

### **3.6 WORK HOURS**

- 3.6.1** Unless otherwise provided in the Task Order, Work shall be performed during regular working hours. Notwithstanding the foregoing, in the event of emergency or when required to complete, the Work may be performed on night shifts, overtime, weekends, or holidays, provided that permission to do so has been obtained from the Owner and confirmed in writing by the Owner twenty-four (24) hours prior to the commencement of such Work. The Job Order Contractor will not be entitled to additional compensation for Work performed outside of regular working hours, except to the extent such compensation is approved by the Owner in advance. If so approved, such compensation shall in such event cover only the direct cost of the premium portion of the time involved and not overhead and profit. In no event will Job Order Contractor be entitled to additional compensation for Work performed outside regular hours where occasioned by delays, need for repairs, or other causes attributable to Job Order Contractor or its Subcontractors, or to concurrent delay. Notwithstanding the foregoing and unless

overtime has been requested by the Owner, the Job Order Contractor shall bear all costs of standby contractors, if any. In the event the Job Order Contractor performs any of the Work on night shifts, overtime, weekends, or holidays, the Job Order Contractor shall comply with all laws, ordinances, codes, rules, and regulations applicable thereto (including, without limitation, those relating to noise).

### **3.7 WARRANTY**

- 3.7.1** Free from Defects. The Job Order Contractor warrants to the Owner that (1) materials and equipment furnished under this Contract will be of first quality and new, (2) the Work will be free from defects, and (3) the Work will conform with the requirements of the Task Order. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty is in addition to and not limited by the provisions of Article 12.2. The warranty period is one (1) year from Substantial Completion unless otherwise stated in the Contract documents.
- 3.7.2** Key System. During the warranty period in the event that any of the key systems in the Project are not functioning properly, the Job Order Contractor will repair those systems within 24 hours of written notice by the Owner. Key systems are defined in the General Requirements.
- 3.7.3** Assignment of Warranties. The Job Order Contractor shall assign to the Owner, before Substantial Completion is due, all manufacturer's warranties relating to equipment, materials, and labor used in the Work.

### **3.8 TAXES**

- 3.8.1** The Task Order Sum includes and the Job Order Contractor shall pay any and all sales, consumer, use, transaction privilege, and similar taxes on all monies owed for the Work or portions thereof provided by the Job Order Contractor.

### **3.9 PERMITS AND FEES**

- 3.9.1** Permits and Fees. The Owner shall secure and pay for the building permits, plan check fees, and development fees required from both Maricopa County and the authority having jurisdiction. The Job Order Contractor shall secure and pay for all other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work. Job Order Contractor is required to comply with all Job Order Contractor-secured permit requirements at no additional cost to Owner.
- 3.9.2** Permit Set Copies. Job Order Contractor is required to provide Owner with three (3) copies of all permit sets (hard copy and electronic pdf copy) acquired by Job Order Contractor from any issuing entity, within two (2) business days from acquisition.

### **3.10 JOB ORDER CONTRACTOR KEY PERSONNEL**

- 3.10.1** On Site. The Job Order Contractor shall employ competent key staff as indicated in other Articles who shall be in attendance at the Site during performance of the Work. The competent project representative shall represent the Job Order Contractor, and communications given to the competent project representative shall be as binding as if given to the Job Order Contractor. Important communications shall be confirmed in writing by the Job Order Contractor.

- 3.10.2** Satisfactory to Owner. The Job Order Contractor's competent project representative and staff must be satisfactory to the Owner. The Job Order Contractor, three (3) days prior to the Preconstruction Conference, shall submit to the Owner the names and resumes of the competent project representative and key staff as indicated in other Articles which Job Order Contractor proposes to use for the Work. The competent project representative and key members of the Job Order Contractor's staff shall not change without the prior consent of the Owner. However, the Job Order Contractor agrees to change any competent project representative or member of the Job Order Contractor's staff at the request of the Owner, if in the opinion of the Owner, such person's performance is unsatisfactory.
- 3.10.3** Job Order Contractors Required to Attend Meetings. The Owner will call for meetings of the Job Order Contractor and Subcontractors as it deems necessary. Such meetings shall be held at or near the Site, on regular working days during regular working hours, unless otherwise directed by the Owner. Attendance shall be mandatory for all parties notified to attend, and the Job Order Contractor and Subcontractors so notified are required to have a responsible member of their organizations with full decision making authority, in attendance.

### **3.11 JOB ORDER CONTRACTOR'S SCHEDULES**

- 3.11.1** Job Order Contractor Construction Schedule. The Job Order Contractor shall submit to the Owner, the Construction Schedule for the Work ("Job Order Contractor Construction Schedule"). Such Schedule (1) shall not exceed time limits as identified in the Task Order, (2) shall be updated and submitted as often as directed and in a format acceptable to the Owner, and (3) shall provide for expeditious and practicable execution of the Work. Pursuant to (1) above, Job Order Contractor shall make no claim for delay against the Owner for any Owner-caused delay within the Task Order Time.
- 3.11.2** Job Order Contractor shall include a total number of weather related days for the project within the final baseline construction schedule. If delay occurs due to weather related conditions, the Job Order Contractor shall submit a request for the number of days to the Owner for approval within 5 calendar days. Claims for delay due to weather will be deducted from the total number of days approved in the final baseline construction schedule.
- 3.11.3** Updated Schedules. The updated Job Order Contractor Construction Schedule shall not exceed time limits current under the Contract and shall be in accordance with and fully coordinated with all information previously supplied to the Job Order Contractor. Updated schedules shall be submitted as requested.
- 3.11.4** Scheduling Cooperation. The Job Order Contractor shall cooperate with the Owner in providing information and clarification as required to understand the Schedule and performance of the Job Order Contractor's Work to avoid conflict, delay in, or interference with the work of other contractors or the construction or operations of the Owner's own forces.
- 3.11.5** Conform to Most Recent Schedule. The Job Order Contractor shall conform to the most recent Schedule.
- 3.11.6** Selection of Products. Job Order Contractor shall, at the time of submittal of the Job Order Contractor Construction Schedule, advise the Owner of the date when the final

selection and purchase of each product or system described by an Allowance must be completed to avoid delaying the Work.

- 3.11.7** Compliance with Schedules. The Job Order Contractor shall be responsible for all costs resulting from its lack of diligence or failure to provide needed labor or materials to meet the requirements of the Task Order. Owner may withhold payments to Job Order Contractor if requested to do so by Job Order Contractor's Surety, or if otherwise necessary to protect the Owner from delay or expense occasioned by the Job Order Contractor's failure to perform under the Contract.

### **3.12 DOCUMENTS AND SAMPLES AT THE SITE**

- 3.12.1** Job Order Contractor to Maintain. The Job Order Contractor shall maintain at the Site for the use of the Owner, one copy of all Drawings, Specifications, Bulletins, Addenda, Change Orders, Field Orders, reviewed Shop Drawings, Design Professional's Supplementary Instructions, Requests for Information/Interpretation, and other Contract-related documents and their modifications, if any, in good order and marked promptly by the Job Order Contractor to record all approved changes made during construction. The Job Order Contractor shall also maintain all available catalog data, price lists, manufacturer's operating and maintenance instructions, schematics, certificates, warranties, guarantees, and other documents as noted in the Construction Documents.
- 3.12.2** Record Documents. The Job Order Contractor shall provide the Owner with Record Documents as a condition of Substantial Completion and they must be updated and finalized before Final Application for Payment. The Job Order Contractor shall stamp and sign a certification statement on each Drawing and page thereof that the Record Documents, as submitted, are true and complete. Any changes after Substantial Completion shall be provided prior to Final Payment Application. Record Documents shall be updated daily and shall include approved changes and any field changes made by the Job Order Contractor. Accurate, updated Record Documents shall be a condition of approval of monthly and final Application for Payment.
- 3.12.3** Preparation of Manuals. Before Substantial Completion, the Job Order Contractor shall furnish to the Owner two (2) sets of hard copy manuals and/or two (2) sets of electronic copy manuals in PDF format on Recorded Compact (CD) disks containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract and any additional data requested under the Specifications for each division of the Work. The manuals shall be indexed and bound or labeled in a manner acceptable to Owner. Warranties related to the Project shall be provided as required under Article 3.6 above.

### **3.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 3.13.1** Not Part of Contract. Shop drawings, product data, samples, and similar submittals are not part of the Contract. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Job Order Contractor proposes to conform to the information given and the design concept expressed in the Contract.
- 3.13.2** Prompt Submittal. The Job Order Contractor shall submit shop drawings, product data, samples, and similar submittals required by the Contract in accordance with General Requirements Sections 013216 and 013300 and with such promptness as to cause no delay in the Job Order Contractor's own Work or in that of any other contractor. The Job

Order Contractor shall cooperate with the Owner in the coordination of the Job Order Contractor's shop drawings, product data, samples and similar submittals with related documents submitted by other contractors. Submittals made by the Job Order Contractor which are not required by the Contract may be returned without action.

- 3.13.3 Review Required. The Job Order Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples, or similar submittals until the submittal has been reviewed by the Owner. Such Work shall be performed in accordance with reviewed submittals.
- 3.13.4 Representations Made by Submittals. By approving and submitting shop drawings, product data, samples, and similar submittals, the Job Order Contractor represents that the Job Order Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract.
- 3.13.5 Effect of Review. The Job Order Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Owner's or Design Professional's review of shop drawings, product data, samples, or similar submittals unless the Job Order Contractor has specifically informed Owner in writing of such deviation at the time of submittal and the Owner have given written approval to the specific deviation. The Job Order Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples, or similar submittals by the review thereof.
- 3.13.6 Revisions to Submittals. The Job Order Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data, samples, or similar submittals, to revisions other than those requested by the Owner on previous submittals.
- 3.13.7 Informational Submittals. Informational submittals upon which the Owner are not expected to take responsive action shall be so identified in the submittals.
- 3.13.8 Professional Certification. When professional certification of performance criteria of materials, systems, or equipment is required by the Contract, the Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

### 3.14 USE OF SITE

- 3.14.1 Limits on Use. The Job Order Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Owner and shall not unreasonably encumber the Site with materials or equipment. Only materials and equipment which are to be used directly in the Work shall be brought to the Site. After equipment is no longer required for the Work, it shall be promptly removed from the Site. See Articles 4.1.1, 6.1.1, and 6.2.1 for requirements governing concurrent Site use.
- 3.14.2 Owner Approval. The Job Order Contractor shall coordinate the Job Order Contractor's operations with, and secure the approval of, the Owner before using any portion of the Site.
- 3.14.3 Display of Signs. The Job Order Contractor shall not display on or about the Site any sign, trademark, or other advertisement without the consent of the Owner.

- 3.14.4 Equipment Location. The Job Order Contractor's field offices, shanties, materials, storage rooms, hoists elevators, etc., if any, will be placed in locations approved by the Owner. When it becomes necessary, due to the progress of the Project, for the Job Order Contractor to relocate the Job Order Contractor's field operations; such relocation will be approved by the Owner and be accomplished in an expeditious manner with no increase in the Contract Sum.
- 3.14.5 Security. The Job Order Contractor's use of the Site is governed by Task Order requirements, if such requirements are included in the Task Order.

### 3.15 CUTTING AND PATCHING

- 3.15.1 Job Order Contractor Responsible. The Job Order Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly with other work.
- 3.15.2 Consent Required. The Job Order Contractor shall not damage or endanger work performed by the Owner or other contractors by cutting, patching, excavating, or otherwise altering such construction. The Job Order Contractor shall not cut or otherwise alter work performed by the Owner or other contractors except with written consent of the Owner, and such other contractors; such consent shall not be unreasonably withheld. The Job Order Contractor shall not unreasonably withhold from the other contractors or the Owner the Job Order Contractor's consent to cutting or otherwise altering the Work.

### 3.16 CLEAN UP

- 3.16.1 Daily Clean Up. The Job Order Contractor shall, on a daily basis, clean up after its operation by removing rubbish, including old and surplus materials. The Job Order Contractor shall use its best efforts to prevent dust. All waste materials, rubbish, and debris resulting from Job Order Contractor's Work shall be removed regularly from the Site, minimum once a week, and disposed in accordance with federal, state, and local laws. The Job Order Contractor shall not allow or permit the accumulation of waste, materials, or equipment that may impede or interfere with the safe production of work or with safe access or egress to the work areas, or impede in any way the ongoing Owner operations.
- 3.16.2 Final Clean Up. At the completion of the Work, the Job Order Contractor shall remove all its waste materials and rubbish from and about the Site as well as all its tools, construction equipment, machinery, and surplus materials. The Job Order Contractor shall professionally wash and clean all surfaces and leave the Work neat and clean, ready for occupancy by the Owner, unless higher cleaning standards are required elsewhere in the Contract. The Job Order Contractor shall be responsible for the overall cleanliness and neatness of the Work.
- 3.16.3 Failure to Clean Up. If the Job Order Contractor fails to perform regular daily cleanup or to clean up at the completion of the Work as specified, the Owner may do so or cause such Work to be performed, with the cost paid for by the Job Order Contractor. The Owner shall have the right to retain such costs from payments due Job Order Contractor and reduce the Task Order Sum by Task Order Modification.
- 3.16.4 Clean Up Disputes. If a dispute arises between the Job Order Contractor and other contractors not a party to this Contract as to their responsibility for cleaning up as required by this Article 3.15, or elsewhere in the Contract, the Owner may clean up and



equitably charge the cost thereof to the several contractors. The Owner shall have the right to retain such costs from payments due Job Order Contractor and reduce the Task Order Sum by Task Order Modification.

### **3.17 ACCESS TO WORK**

**3.17.1** The Job Order Contractor shall provide the Owner access to the Work in preparation and progress wherever located. The Job Order Contractor shall provide facilities for such access so that the Owner may perform its functions under the Contract.

### **3.18 ROYALTIES AND PATENTS**

**3.18.1** Job Order Contractor Responsibility. The Job Order Contractor shall pay all royalties and license fees applicable to the Job Order Contractor's Work. The Job Order Contractor shall indemnify, defend, and hold harmless the Indemnitees from any and all suits, demands, or claims for infringement of any patent rights unless a particular design, process, or product is specified in the Contract. If such specification is made and the Job Order Contractor has reason to believe it is an infringement of a patent, the Job Order Contractor shall be responsible for any loss arising therefrom unless the Job Order Contractor promptly notifies the Owner prior to performing any portion of the Work involving the patented item.

**3.18.2** Effect of Review by Owner. The review by the Owner of any method of construction, invention, appliance, process, article, device, or material of any kind shall not constitute an approval thereof for use by the Job Order Contractor in violation of any patent or other rights of any third party.

**3.18.3** After the Contract has been executed, the Owner and Design Professional may consider, but shall have no obligation to consider, Value Engineering Proposals. The decision in the first instance on acceptance or rejection of a Value Engineering Proposal for a proposal to use similar materials, products, equipment or systems shall be vested in the Design Professional, and ultimately with the Owner, whose decision shall be final and binding. If the submission of Value Engineering Proposals will be considered under this Contract, Specific General Requirements Section 012413 will be included in the Contract Documents.

## **ARTICLE 4 ADMINISTRATION AND RESOLUTION OF DISPUTES**

### **4.1 ADMINISTRATION OF THE CONTRACT**

**4.1.1** Concurrent Site Use. The Owner will provide for coordination of the activities of other contractors and of the Owner's own forces with the Work of the Job Order Contractor, who shall cooperate with them. The Owner will schedule and coordinate all contractors with respect to their use of the Site. The Job Order Contractor shall participate with other contractors and the Owner in reviewing their construction schedules when directed to do so. The Job Order Contractor shall make any revisions to the Job Order Contractor Construction Schedule deemed necessary by the Owner.

**4.1.2** The Owner will not have control over or change of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Job Order Contractor's responsibility.

## 4.2 CLAIMS AND DISPUTES

- 4.2.1** Time Limits on Claims. Claims by the Job Order Contractor must be made within the number of days specified herein after the occurrence of the event giving rise to such Claim or after the Job Order Contractor should have recognized, in the exercise of due diligence, the condition giving rise to such Claim. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Task Modification will not be considered unless submitted in a timely manner.
- 4.2.2** Continuing Contract Performance. Pending final resolution of a Claim, including Alternative Dispute Resolution as provided for in Exhibit B of this document, the Job Order Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract other than amounts in dispute.
- 4.2.3** Claims for Concealed or Unknown Conditions. If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract, (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent at the Site, and (3) could not have been discovered by a thorough inspection and investigation of the Site by the Job Order Contractor, the Job Order Contractor shall give written notice within twenty-four (24) hours of such to the Owner. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Job Order Contractor's cost of, or time required for, performance of any part of the Work, may arrange for an equitable adjustment in the Task Order Sum or Task Order Time, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the Owner shall so notify the Job Order Contractor in writing, stating the reasons. Claims by the Job Order Contractor in opposition to such determination must be made within five (5) days after the Owner has given notice of the decision.
- 4.2.4** Claims for Additional Cost.
- 4.2.4.1** Notice Prior to Execution of Work. If the Job Order Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided in Article 4.2.4.2 shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Article 10.3. If the Job Order Contractor believes additional cost is involved for reasons including, but not limited to, (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Job Order Contractor was not at fault, (3) a written order for a minor change in the Work, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, Claim shall be filed in accordance with Article 4.2.4.2.
- 4.2.4.2** Five Days After Occurrence. If the Job Order Contractor wishes to make a Claim for an increase in the Contract Sum, the Job Order Contractor shall give the Owner written notice thereof within five (5) days after the occurrence of the event giving rise to such Claim or within fourteen (14)

days after the Job Order Contractor should have recognized, in the exercise of due diligence, the condition giving rise to such Claim. The Job Order Contractor shall provide such notice before proceeding to execute the Work. Claim with respect to an emergency shall be made not later than three (3) days after occurrence of the emergency as to which the Work was performed.

**4.2.4.3** Waiver of Claim for Additional Cost. Failure to give notice of a Claim for an increase in the Task Order Sum in strict compliance with the requirements of this Article 4.2.4 shall constitute a waiver of such Claim.

**4.2.4.4** Claims Against Owner's Authorized Agent. If the Job Order Contractor wishes to make a Claim or allegation based upon actions or omissions of the Owner's designated Authorized Agent in any way related to or touching on the activities, events, losses, or expenses set forth in a Claim presented pursuant to this Article 4, such Claim shall be set forth and reasonably described in the notice required by Article 4.2.4.1. Failure to set forth and describe such Claim or allegation in such notice shall constitute a waiver of such Claim against the Owner's Authorized Agent. Claim shall be made within fourteen (14) days after the occurrence of the event giving rise to such Claim or within fourteen (14) days after the Job Order Contractor should have recognized, in the exercise of due diligence, the condition giving rise to such Claim.

**4.2.5** Claims for Additional Time.

**4.2.5.1** Estimate of Cost and Delay. If the Job Order Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Article 4.2.5.4 shall be given. The Job Order Contractor's Claim shall include an estimate of cost, analysis of Schedule and impact on critical path, and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**4.2.5.2** Adverse Weather. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal (pursuant to NOAA) for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**4.2.5.3** Critical Path. No extension of time shall be granted to the Job Order Contractor for a delay caused by the Owner, any of the other contractors, or other causes beyond the Job Order Contractor's control, unless the delay affects the critical path of the Project, and then only to the extent that the delay affects the critical path. No extension of time shall be granted to the Job Order Contractor to the extent that, notwithstanding the existence of any such circumstance beyond the Job Order Contractor's control, delay would have resulted in any event due to a concurrent unexcused delay by the Job Order Contractor.

**4.2.5.4** Notice of Claim for Additional Time. Should the Job Order Contractor contend that it is entitled to an extension of time for completion of any portion or portions of the Work, the Job Order Contractor shall, within seven (7) days of the occurrence of the cause of the delay, notify the Owner, in writing, of its Claim, setting forth (1) the cause of the delay, (2) a description

of the portion or portions of Work affected by the delay, (3) the specific number of days of delay for which an extension of time is requested, and (4) all details pertaining thereto. Within five (5) Business Days after the expiration of any such delay, if such delay continues after the filing of the Claim pursuant to the foregoing sentence, the Job Order Contractor shall deliver to the Owner a subsequent written application for the specific number of days of extension of time requested.

**4.2.5.5** Waiver of Claim for Additional Time. Failure to give notice of a Claim for extension of time in strict compliance with the requirements of this Article 4.2.5 shall constitute a waiver of such Claim.

**4.2.6** Injury or Damage to Person or Property. If the Job Order Contractor suffers injury or damage to person or property because of an act or omission of the Owner, written notice of such injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding three (3) Business Days after first observance. The notice shall provide sufficient detail to enable the Owner to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Article 4.2.4 or 4.2.5.

**4.2.7** Correspondence Issues. If the Job Order Contractor does not agree with a statement or statements set forth in correspondence from the Owner, the Job Order Contractor must submit a written statement within seven (7) days after receipt, setting forth the facts of the issue. Otherwise, the statement will be deemed to have been accepted.

#### **4.3 ALTERNATIVE DISPUTE RESOLUTION**

**4.3.1** Notwithstanding anything to the contrary provided elsewhere in the Contract, the Alternative Dispute Resolution ("ADR") process provided for in Exhibit B attached hereto and incorporated herein by this reference shall be the exclusive means for resolution of claims or disputes arising under this Contract.

### **ARTICLE 5 SUBCONTRACTORS**

#### **5.1 CONTRACTUAL RELATIONSHIP**

**5.1.1** Nothing contained in the Contract shall create any contractual relationship between the Owner and any Subcontractor. However, the County reserves the right to reject any subcontractor proposed by the Job Order Contractor.

#### **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**5.2.1** Division of Work. The Job Order Contractor shall, prior to execution of the Contract, designate and distinguish in writing to the Owner those portions of the Work to be performed by Subcontractors and the Job Order Contractor's own forces.

**5.2.2** Proposed Subcontractors. The Job Order Contractor shall, prior to the start of the Work, furnish in writing to the Owner for review the names of person or entities (including those who are to furnish materials or equipment) proposed for the design, if any, and management portion of the Work.

### 5.3 SUBCONTRACTUAL RELATIONS

**5.3.1** Subcontractors Subject to Contract. By an appropriate written Agreement, the Job Order Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Job Order Contractor by the terms of the Contract, and to assume toward the Job Order Contractor all the obligations and responsibilities which the Job Order Contractor assumes toward the Owner, except with respect to the ADR provisions of this Contract. The Job Order Contractor shall require its Subcontractors to enter into similar agreements with their Subcontractors, except with respect to the ADR provisions of this Contract. The Job Order Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of this Contract to which the Subcontractor will be bound, except with respect to the ADR provisions of this Contract. Each Subcontractor shall similarly make copies of this Contract available to their Subcontractors.

**5.3.2** Terms to be Included in Subcontracts. All Work performed for the Job Order Contractor by a Subcontractor shall be pursuant to a written agreement between the Job Order Contractor and the Subcontractor. The Job Order Contractor will ensure that each such subcontract contains provisions requiring:

**5.3.2.1** that the Work be performed and guaranteed in accordance with the requirements of this Contract;

**5.3.2.2** submission to the Job Order Contractor of Applications for Payment under each subcontract in the manner prescribed by the Owner, and reasonable time to enable the Job Order Contractor to apply for payment in accordance with Article 9;

**5.3.2.3** that the Subcontractor pay sub-subcontractors in accordance with A.R.S. § 34-221;

**5.3.2.4** that the Subcontractor purchase and maintain insurance and comply with all insurance provisions as required by Article 11. If any subcontractor is unable to comply with this paragraph the Job Order Contractor shall request a waiver of this requirement in writing, and shall provide justification for a waiver. If the Owner grants the request it shall not constitute a waiver of the Owner's right to strict performance of this contract, including the insurance requirements for all other subcontractors. No waiver of a subcontractor's insurance requirements will be effective unless it is in writing.

**5.3.2.5** that the Subcontractor consents to an assignment of the subcontract from the Job Order Contractor to the Owner in the event of termination of the Job Order Contractor by the Owner.

**5.3.2.6** that the Subcontractor complies with all safety requirements.

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACT

**5.4.1** Each subcontract for a portion of the Work is hereby assigned by the Job Order Contractor to the Owner provided that:

- 5.4.1.1 assignment is effective only after termination of the Task Order or Contract by the Owner for cause pursuant to Article 15.1 and only for those subcontracts which the Owner accepts by notifying the Subcontractor in writing; and
- 5.4.1.2 assignment is subject to the prior rights of the Surety, if any, obligated under the bond required by the Contract.
- 5.4.2 The Job Order Contractor shall conform to the Subcontractor Plan. The Job Order Contractor's submitted subcontractor selection plan applies to all persons or firms selected to perform the construction services and requires the selection of subcontractors to be based on qualifications alone or on a combination of qualifications and price, but not based on price alone.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS**

### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS**

- 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Owner. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the Site.

### **6.2 MUTUAL RESPONSIBILITY**

- 6.2.1 Coordination with Owner's Forces. The Job Order Contractor shall afford the Owner's own forces, and other contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Job Order Contractor's construction and operations with theirs as required by the Contract.
- 6.2.2 Defects in Other Work. If part of the Job Order Contractor's Work depends upon construction or operations by the Owner's own forces or other contractors, the Job Order Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results. Failure of the Job Order Contractor to so report shall constitute an acknowledgment that the Owner's own forces or other contractors' completed or partially completed construction is fit and proper to receive the Job Order Contractor's Work, except as to defects not then reasonably discoverable.
- 6.2.3 Damage to Other Work. The Job Order Contractor shall promptly remedy damage caused by the Job Order Contractor to the completed or partially completed Project or to the property of the Owner or other contractors.

**ARTICLE 7 CHANGES IN THE WORK**

**7.1 CHANGES IN THE TASK ORDER**

**7.1.1** The Owner reserves the right to make, at any time during the progress of a Task Order, such alterations as may be found necessary or desirable.

**7.1.1.1** Such alterations and changes shall not invalidate this Contract or the Task Order nor release the surety and the Job Order Contractor agrees to perform the Task Order as altered, the same as if it has been a part of the original Task Order Documents.

**7.1.1.2** The Owner will request a proposal for a change in a Task Order from the Job Order Contractor, and an adjustment in the Task Order Price and/or Task Order Time shall be made based on a mutually agreed upon cost and time. The Job Order Contractor may proceed with the modified Work only when a revised Purchase Order and a Notice to Proceed have been issued for the revised Work.

**7.1.2** Task Order Sum. Adjustments to the Task Order Sum shall be based on actual cost, which is itemized for the purpose of preparing pricing for Task Orders and Task Order Modifications, the Job Order Contractor shall submit to the Owner a complete itemization of all costs required for the Task Order or Task Order Modification in such form and detail as requested by the Owner.

**7.1.3** Calculating Mark-Up Costs on a Modification. All markups for modifications, additive and deductive shall be calculated in the following manner. When both additive deductive activities exist within the same modification, mark-ups shall be calculated on the net amount. Each trade billing for a modification shall indicate the PCO number and the amount billed against the PCO number.

**Example:**

Direct Cost of the Work	\$1,000.00
Bond (.67%)	\$6.70
General Liability (.53%)	\$5.34
Builders Risk (.13%)	\$1.32
Subtotal	\$1,013.36
Overhead (8.00%)	\$81.07
Fee (5.00%)	\$50.67
Subtotal	\$1,145.10
Sales Tax (5.395%)	\$61.78
Total	\$1,206.88

**7.1.4** Actual Costs. Except for modifications based on unit prices included in the Contract, cost changes shall be computed by determining the actual cost enumerated in Article 7.1.2. to which the combined overhead and profit may be added, and then adding the insurance, bonds, and tax to compute the total cost.

**7.1.5** Labor Prices, General Conditions, Overhead and Profit and Fees in the Contract are in effect for the duration of the Contract not subject to further overhead and profit adjustments. The Contract Sum will be adjusted by the direct extension of the number of units and the unit prices.

**7.1.6** Final Settlement. Agreement on any Task Order Modification shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Modification, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Task Sum or the Task Time. In the event a Modification increased the Task Sum, the Job Order Contractor shall include the Work covered by such Modification in Applications for Payment as if such Work were originally part of the Contract. Agreement on any Modification releases the Owner, Design Professional and any other party in privity of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in connection with, or in any way associated with, such Modification.

## **7.2 NO DAMAGES FOR DELAY**

No claim for damages, or any claim other than for an extension of time, shall be made or asserted against OWNER by reason of any delays unless such delay is one for which the Owner is responsible, which is unreasonable under the circumstances and which was not one within the contemplation of the parties at the time of contracting. Otherwise the Job Order Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from OWNER for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, Eichleay Formula Costs, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided further, however, that this provision shall not preclude recovery of damages by the Job Order Contractor for hindrance or delays due solely to fraud, bad faith or active interference on the part of OWNER or its agents. Otherwise, the Job Order Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

## **ARTICLE 8 TIME**

### **8.1 PROGRESS AND COMPLETION**

- 8.1.1** Consent to Task Order Time. The Job Order Contractor acknowledges that the Task Order Time is a reasonable period for performing the Work, and that it is capable of properly completing the Work within the Task Order Time.
- 8.1.2** Compliance with Task Order Time. The Job Order Contractor shall carry the Work forward expeditiously with adequate forces to maintain progress in accordance with the Job Order Contractor Construction Schedule and to complete the Work within the Task Order Time.
- 8.1.3** Notice Required Before Commencing Work. The Job Order Contractor shall give timely notice before commencement of the Work, to all persons, public utility companies, Owners of property having structures or improvements in proximity to the Site, superintendents, inspectors, or those otherwise in charge of property, streets, water lines, gas lines, sewer lines, telephone cables, communication or data cables, electric cables, railroads, or others who may be affected by Job Order Contractor's operations, in order that they may remove any obstruction for which they are responsible, and have representation on the Site to see that their property is properly protected in accordance



with requirements of the Task Order. Such notice does not relieve the Job Order Contractor of responsibility for any damages, claims, or defense of all actions against the Owner resulting from performance of the Work.

- 8.1.4** Maintenance of Utilities. The Job Order Contractor shall (1) protect utilities encountered whether indicated on Drawings or not; (2) exercise care in excavation around utilities; (3) restore any damaged items to the same condition (or better) as existed prior to starting the Work; and (4) maintain utilities or other services indicated to be abandoned in service until new services are provided, tested, and ready for use. Note: In Owner campuses, use of private utility locator service is required, as Blue Stake has no record of underground utilities in these areas.

## **8.2 DELAYS AND EXTENSIONS OF TIME**

- 8.2.1** Notice of Delays. The Job Order Contractor shall provide prompt written notice to the Owner of the occurrence of any delay, and in no event shall such notice be given later than forty-eight (48) hours after commencement of the delay. The Job Order Contractor agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused or should not have been anticipated by the Job Order Contractor, and (2) could not have been limited or avoided by the Job Order Contractor's timely notice to its suppliers, Subcontractors, or Owner of the delay.
- 8.2.2** Claims for Additional Time. Claims relating to time shall be made in accordance with Article 4.2.5.
- 8.2.3** Recovery of Damages Not Precluded. This Article 8.2 does not preclude recovery of Owner's damages for delay by the Job Order Contractor, if such occurs.

## **8.3 TIME OF ESSENCE AND LIQUIDATED DAMAGES**

- 8.3.1** Time is of the essence with respect to the performance of each of the covenants, conditions, and obligations contained in this Contract.
- 8.3.2** Upon failure of Job Order Contractor to substantially complete the Task Order within the specified period of time, plus approved time extensions, Job Order Contractor shall pay to OWNER the sum identified in the Notice to Proceed for each calendar **day** after the time specified in the Task Order Notice to Proceed, plus any approved extensions for Substantial Completion. After Substantial Completion, should Job Order Contractor fail to complete the remaining work within the time specified in the Task Order Notice to Proceed, plus approved time extensions thereof, for completion and readiness for Final Completion, Job Order Contractor shall pay to OWNER the sum identified in the Notice to Proceed for each calendar **day** after the time specified in the Task Order Notice to Proceed, plus any approved extensions, for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to OWNER for its inability to obtain full beneficial occupancy of the Project.

Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility or difficulty of precisely ascertaining the amount of damages that will be sustained by OWNER as a consequence of such delay, and both parties desiring to obviate any questions of dispute concerning the amount of said damages and the cost and effect of the failure of Job Order Contractor to complete the Task Order on time. The above-stated liquidated damages shall apply separately to Substantial Completion and Final Completion.

- 8.3.3 OWNER is authorized to deduct liquidated damages from monies due to Job Order Contractor for the work under this contract or as much thereof as OWNER may, at its option, deem just and reasonable.

## ARTICLE 9 PAYMENTS AND COMPLETION

### 9.1 SCHEDULE OF VALUES

- 9.1.1 The Schedule of values, after acceptance by the Owner, shall be used as a basis for reviewing the Job Order Contractor's Applications for Payment.

### 9.2 APPLICATIONS FOR PAYMENT

- 9.2.1 Job Order Contractor shall submit to the Owner an itemized application requesting payment for Work completed, or reasonably projected to be completed by the end of the month, in accordance with the Schedule of Values, substantiating the Job Order Contractor's right to payment as Owner may require, such as copies of requisition from Subcontractors ("Application for Payment").

- 9.2.2 Submission of Applications for Payment.

- 9.2.2.1 One original of the payment invoice is to be submitted by delivering a complete invoice with all substantiating documentation electronically to: [FMD-AccountsPayable@mail.maricopa.gov](mailto:FMD-AccountsPayable@mail.maricopa.gov).

- 9.2.3 All invoices must include the following information. Failure to include this information may cause the invoice to be rejected and may result in delayed payments.

- FMD Project Name
  - FMD Project Number
  - FMD Contract Number
  - County Purchase Order Number
  - Vendor Name
  - Maricopa County Vendor Number
  - Unique Invoice Number

- 9.2.4 County shall pay Job Order Contractor within fourteen (14) days of receipt of Job Order Contractor's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Project Manager,. Payment may be withheld for failure of Job Order Contractor to comply with a term, condition, or requirement of this Agreement.

- 9.2.5 Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied, or resolved in a manner satisfactory to the Project Manager, and/or due to Job Order Contractor's failure to comply with Section 3.2.1 herein. The amount withheld shall not be subject to payment of interest by County.

- 9.2.6 Task Modification Payment. Applications for Payment may not include requests for payment for changes in the Work that have not been properly authorized by Task Modification.

**9.2.7** Identifying Task Modifications in the Schedule-of-Values. Each modification shall be listed separately in the Job Order Contractor’s Schedule-of-Values. Modifications shall be listed by Potential Change Order number, by trade or Subcontractor and include a line item for the JOC’s mark-ups associated with the change.

**Example:**

A modification occurs including three trades. The Owner issues a Potential Change Order Request #005. Another modification occurs including two trades. The Owner issues Potential Change Order Request #006.

(Schedule-of Values)	Scheduled Value	Previously Paid	This Period.....
Electrical PCO #005	\$1,000.00	0.00	0.00
Mechanical PCO #005	\$1,500.00	0.00	0.00
Framing/Drywall PCO #005	\$1,000.00	0.00	0.00
JOC Markups PCO #005	\$388.72	0.00	0.00
Electrical PCO #006	\$1,000.00	0.00	0.00
Framing/Drywall PCO #006	\$500.00	0.00	0.00
JOC Markups PCO #006	\$166.59	0.00	0.00

**9.2.8** Disputes with Subcontractors. Applications for Payment may not include requests for payment of amounts the Job Order Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

**9.2.9** Payment for Stored Materials. Unless otherwise provided in the Contract, payment may, on a limited basis, be made on account of materials and equipment delivered and suitably stored, either on or off the site, for subsequent incorporation in the Work. Approval for payment of stored materials or equipment is at the sole discretion of the Owner. All off-site materials and equipment shall be stored in a licensed and bonded warehouse. All costs associated with inspection of off-site materials and equipment, exclusive of time, shall be borne by Job Order Contractor, and Job Order Contractor shall be responsible for all arrangements.

**9.2.10** Lien Waivers. The Job Order Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Job Order Contractor also warrants that upon submittal of an Application for Payment all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances in favor of the Job Order Contractor, Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the Work. All Applications for Payment shall include lien waivers executed by the Job Order Contractor providing labor, equipment, or materials for the Work in the form set forth in A.R.S. § 33-1008. The Job Order Contractor shall indemnify, defend, and hold harmless the indemnitee (the Owner) against any lien by any Subcontractor, Sub-Subcontractor, vendor, supplier, manufacturer or other entity or person supplying labor, equipment, or materials related to the Work.

**9.2.11** Accounting. The Job Order Contractor shall keep full and detailed accounts and exercise such control as may be necessary for proper financial management under this contract; the accounting and control system shall be satisfactory to the Owner. The Job Order

Contractor shall provide access and cooperate fully in the review of all project records. At a minimum, Job Order Contractor shall afford access to Owner, its accountants, auditors, and any other designated agents, to the Job Order Contractor's records books, correspondence, instructions, drawings, payroll records, receipts, subcontracts, proposals, purchase orders, vouchers, memoranda and other data relating to this Project as required by the Owner. The Job Order Contractor shall preserve these records for a period of three (3) years after final payment, or such longer time as may be required by law.

- 9.2.12** Owner may withhold, in whole or in part, any progress payment to Job Order Contractor to such extent as may be sufficient to pay the Expenses the Owner reasonably expects to incur to correct any deficiency in the Work set forth in specific written finding by Design Professional or Owner prepared for those items in the pay application of the estimate of the Work that are not approved for payment in that pay application under the Contract. If Owner in its good faith judgment, determines that the portion of the Task Order Price then remaining unpaid will not be sufficient to complete the Work in accordance with Contract Documents as set forth in written detail and provided to Job Order Contractor pursuant to A.R.S. § 34-609, no additional payments will be due to Job Order Contractor hereunder unless and until Job Order Contractor, as its sole cost, performs a sufficient portion of the Work so that such portion of the GMP then remaining unpaid is determined by Owner to be sufficient to so complete the Work. It is the intention of this Article 9.2 to provide Owner with the maximum protection afforded an Owner under the Prompt Pay Provisions of A.R.S. § 34-609.

### **9.3 RECOMMENDATION FOR PAYMENT**

- 9.3.1** Timing for Recommendation. The Job Order Contractor's Application for Payment shall be deemed approved and certified for payment within seven (7) days from the date of submission to the Architect/Engineer (hereinafter "A/E"), if utilized, or Owner, unless within seven (7) days from the date of submission, the A/E or Owner issues a written finding to the Job Order Contractor specifying those items in the Application for Payment that will not be approved for payment. The Owner may withhold an amount from the progress payment sufficient to pay the expenses that the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. Undisputed portions of progress payments shall be paid within fourteen (14) days after approval of the Application for Payment by the Owner. If utilized, the A/E shall recommend payment to the Owner only upon their determination that the Work has progressed to the point indicated in the Job Order Contractor's Application for Payment and that to their knowledge, information, and belief, the quality of the Work is in accordance with the Contract.
- 9.3.2** Recommendation Subject to Later Evaluation. The recommendation of the Architect/Engineer, if utilized, and the decision of the Owner to make a payment is subject to later evaluation of the Work for conformance with the Contract upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract correctable prior to completion, and to specific qualifications expressed by the A/E or Owner. The issuance of a recommendation for payment will not be a representation that the A/E or Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Job Order Contractor's construction means, methods, techniques, sequences, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Job Order Contractor's right to payment, or (4) made examination to ascertain how or for what

purpose the Job Order Contractor has used money previously paid on account of the Contract Sum.

#### 9.4 DECISIONS TO WITHHOLD RECOMMENDATION

9.4.1 Criteria for Withholding Recommendation. The Owner may decide not to recommend payment and may withhold a recommendation in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required in Article 9.3.1 cannot be made. If the Owner is unable to recommend payment in the amount of the Application for Payment, the Owner will notify the Job Order Contractor as provided in Article 9.3.1. If the Job Order Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a recommendation for the amount for which the Owner is able to make such representations to the Owner. The Owner may also decide not to recommend payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a recommendation previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- 9.4.1.1 Defective Work not remedied;
- 9.4.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;
- 9.4.1.3 Failure of the Job Order Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
- 9.4.1.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Task Order Sum;
- 9.4.1.5 Damage to the Owner or another contractor or Job Order Contractor;
- 9.4.1.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 9.4.1.7 Persistent failure to carry out the Work in accordance with the Contract;
- 9.4.1.8 Unsatisfactory prosecution of the Work or failure to comply with the Contract Schedule;
- 9.4.1.9 Failure to supply shop drawings or other required submittals;
- 9.4.1.10 Erroneous estimates by the Job Order Contractor of the value of the Work performed;
- 9.4.1.11 The existence of a breach by the Job Order Contractor of any provision in the Contract;
- 9.4.1.12 Failure to execute an assignment of insurance related proceeds pursuant to Article 11.2.2.10;
- 9.4.1.13 Failure to provide or submit in a timely manner safety related documentation required by the Contract or Owner.

- 9.4.1.14 Failure to provide manuals as required by Contract;
- 9.4.1.15 Failure to submit lien waivers as required by Article 9.2.6;
- 9.4.1.16 Failure to submit Schedule updates as set forth herein;
- 9.4.1.17 Failure to submit a Safety Plan per Article 10;
- 9.4.1.18 Failure to maintain and provide Record Documents as set forth herein.

9.4.2 Recommendation Made Upon Compliance. When the above reasons for withholding recommendation are removed, recommendation will be made for amounts previously withheld.

## 9.5 PAYMENTS TO SUBCONTRACTORS

- 9.5.1 Payment to be Made Within Seven (7) Days. In accordance with A.R.S. § 34-221(E), the Job Order Contractor shall pay each Subcontractor, within seven (7) days of receipt of payment from the Owner, out of the amount paid to the Job Order Contractor on account of such portion of the Work. The amount to which each Subcontractor is entitled shall reflect payments to the Job Order Contractor on account of such Subcontractor's portion of the Work. The Job Order Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in the same manner.
- 9.5.2 No Obligation to Oversee Payments. The Owner shall have no obligation to pay or to see to the payment of money to a Subcontractor.
- 9.5.3 Payment Not Acceptance of Work. A payment recommendation, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract.

## 9.6 INTEREST

- 9.6.1 If any payment to the Job Order Contractor is delayed after the date due, the Owner shall pay interest at the rate of one and one-half percent (1½%) per month or fraction of a month on such unpaid balance as may be due, provided however, that such charge shall not apply to any disputed portion of an Application for Payment. If any periodic or Final Payment to a Subcontractor is delayed by more than seven (7) days after receipt of the periodic or Final Payment by the Job Order Contractor or Subcontractor, the Job Order Contractor or Subcontractor shall pay interest to his Subcontractor or material supplier, beginning on the eighth day, at the rate of one and one-half percent (1½%) per month or a fraction of a month on such unpaid balance as may be due.

## 9.7 FAILURE OF PAYMENT

- 9.7.1 If the Job Order Contractor, for any reason not the fault of the Job Order Contractor, is not paid any undisputed amount within fourteen (14) days after the date payment is due, the Job Order Contractor may, upon seven (7) additional days' notice to the Owner, stop the Work until payment of the amount owing has been received. Notwithstanding the preceding, the Job Order Contractor shall not stop the Work during the pendency of a dispute which has been submitted to Alternative Dispute Resolution pursuant to Exhibit

B, nor shall the Job Order Contractor stop the Work if the Owner makes payment of any amounts not in dispute within seven (7) days after the Job Order Contractor's notice of nonpayment is received by the Owner.

## 9.8 SUBSTANTIAL COMPLETION

**9.8.1** Defined. Substantial Completion is the stage of completion of the Work or area of Work when that portion of the Project or Work for which the Job Order Contractor is responsible is fully usable by the Owner for its intended purpose, without inconvenience to, or risk of harm to, the Owner or the public. The authority to determine whether the Job Order Contractor has achieved Substantial Completion is determined by the Owner, whose decision shall be final and binding.

**9.8.2** Certificate of Substantial Completion. When the Job Order Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Job Order Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected. All Owner training, Record Documents, Operation and Maintenance Manuals, warranties, guarantees, reports, and information required for the Owner to operate the facility in accordance with Article 9.8.1 shall be provided in the quantities specified. The Job Order Contractor shall, in the time frame indicated in the Contract Documents, complete and correct all items on the list, unless a longer time is granted by the Owner in writing. Failure to include an item on such list does not alter the responsibility of the Job Order Contractor to complete all Work in accordance with the Contract. Upon receipt of the list, the A/E, if utilized, assisted by the Owner, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract, the Job Order Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. The Job Order Contractor shall then submit a request for another inspection by the A/E, if utilized, assisted by the Owner, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the A/E, if utilized, will prepare a certificate which shall (1) establish the date of Substantial Completion, (2) establish responsibilities of the Owner and Job Order Contractor for security, maintenance, heat, utilities, and damage to the Work, and (3) shall fix the time within which the Job Order Contractor shall finish all items on the list accompanying the Certificate of Substantial Completion (Certificate). The Certificate shall be submitted to the Owner and Job Order Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

## 9.9 FINAL COMPLETION AND FINAL PAYMENT

**9.9.1** Final Inspection. Following the Owner's issuance of a Certificate of Substantial Completion of the Work and upon completion of the Work, the Job Order Contractor shall forward to the Owner a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Owner a final Application for Payment. The Job Order Contractor's submission of Final Completion Notice shall indicate that all times listed in Substantial Completion have been completed. When the Owner finds the Work acceptable under the Contract and the Task Order fully performed, the Owner will promptly issue a final recommendation stating that to the best of their knowledge, information, and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the Task Order and that the remaining Task Order Sum is due, including all retainage, less authorized deductions.

- 9.9.2** Conditions to Final Payment. Final Payment to the Job Order Contractor shall be made within thirty-five (35) days after compliance by the Job Order Contractor with Article 9.9.1 and Article 9.9.2. Neither Final Payment nor any remaining retainage shall become due until the Job Order Contractor submits to the Owner (1) an affidavit acknowledging that all Subcontractors, payrolls, bills for materials and equipment, and other indebtedness connected with the Work will be paid or otherwise satisfied once final payment is made, (2) a certificate evidencing that insurance required by Article 11 is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Owner, (3) a written statement that the Job Order Contractor knows of no reason that the insurance will not cover the period required by Article 11, (4) the written consent of the Surety to Final Payment, (5) a full and final release and conditional waiver of liens from the Job Order Contractor. The Job Order Contractor shall also indemnify, defend, and hold harmless the Indemnitees against liens by any Subcontractor (collectively "Final Payment"). Upon final payment for each Task Order, the Job Order Contractor shall provide an unconditional waiver. Release of retention shall not occur until all unconditional lien waivers have been received. After payment of retainage, the Job Order Contractor shall provide an unconditional lien waiver in ten (10) days.
- 9.9.3** Delay of Final Completion. If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Job Order Contractor or by issuance of Task Order Modification affecting Final Completion the Owner shall, upon application by the Job Order Contractor and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. In such case, the Owner will retain at least two times the value of the incomplete or uncorrected parts of the Work, as determined by the Owner. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Task Order the written consent of Surety to payment of the balance of due for that portion of the Work fully completed and accepted shall be submitted by the Job Order Contractor to the Owner prior to recommendation of such payment. Such payment shall be made under terms and conditions governing Final Payment.
- 9.9.4** Waiver of Claims. Acceptance of payment by the Job Order Contractor shall constitute a waiver of claims by that payee, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAM**

- 10.1.1** Job Order Contractor's Responsibility. The Job Order Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Job Order Contractor shall have a written Safety Program for the Work and shall submit two (2) copies of such Safety Program to the Owner. If the Task Order includes work not contained within the submitted safety program, the Job Order Contractor shall submit the necessary site specific safety precautions and incorporated into the Work.
- 10.1.2** Remedy for Failure to Maintain Safety. If the Job Order Contractor fails to maintain the safety precautions required by law or by the Contract, the Owner may take action as necessary and charge the Job Order Contractor therefore. However, the failure of the



Owner to take any such action shall not relieve the Job Order Contractor of its obligations set forth in Article 10.1.1. If the Job Order Contractor fails to maintain the safety precautions required by law or by the Owner, the Job Order Contractor shall, if directed by the Owner, remove all forces from the Project without cost or loss to the Owner until the Job Order Contractor complies with such safety precautions. The Job Order Contractor shall not be granted additional time for completion of the Work if the Work is stopped by the Owner due to hazards or non-compliance with these provisions.

**10.1.3** Environmental Hazards and Archeological Items. In the event the Job Order Contractor encounters on the Site material reasonably believed to contain asbestos, polychlorinated biphenyls (PCBs), petroleum based substances, or hazardous substances (as defined or regulated under any federal, state, or local law), the Job Order Contractor shall (1) immediately stop Work in the area affected and report the condition to the Owner by the fastest available means and follow up in writing; and (2) take reasonable precautions to prevent or contain the movement, spread, or disturbance of such materials. The Work in the affected area shall not thereafter be resumed except by written consent of the Owner. In no event shall the Owner have any responsibility for any substance or material that is brought to the Site by the Job Order Contractor, any Subcontractor, any material man or supplier, or any entity for whom any of them is responsible. The Job Order Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic, or comprised of any items that are hazardous or toxic. Job Order Contractor shall indemnify, defend, and hold harmless the Indemnitees from and against any and all liabilities, claims, or demands (including attorney's fees and costs) arising out of or resulting from the presence, uncovering, release of suspected or confirmed asbestos, polychlorinated biphenyls (PCBs), petroleum based substances, or hazardous substances to the extent caused by the negligence of, or failure to comply with, the terms and conditions of the Contract by the Job Order Contractor, any Subcontractor, any material man or supplier, or any entity for whom any of them is responsible. Job Order Contractor may request from the Owner any environmental reports which were completed by Owner's environmental consultant(s) for this Project.

**10.1.4** Duty to Stop Work. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the Site by the Job Order Contractor, the Job Order Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

## **10.2 PROTECTION OF PERSONS AND PROPERTY**

**10.2.1** Job Order Contractor's Duty to Protect. The Job Order Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

**10.2.1.1** Employees on the Work and other persons who may be affected thereby;

**10.2.1.2** The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the Job Order Contractor or the Job Order Contractor's Subcontractors;

**10.2.1.3** Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and

- 10.2.1.4** Construction or operations by the Owner or other contractors.
- 10.2.2** Compliance with Safety Notices and Laws. The Job Order Contractor shall comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.
- 10.2.3** Safety Precautions. The Job Order Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owners and users of adjacent sites and utilities. The Job Order Contractor shall also be responsible, at the Job Order Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Site and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Job Order Contractor. Without limiting the indemnity provisions elsewhere in the Contract, the Job Order Contractor shall indemnify, defend, and hold harmless the Indemnitees from and against any and all liabilities, claims, or demands (including attorney's fees and costs) arising out of, or resulting from, damage to such property or improvements.
- 10.2.4** Use of Explosives or Hazardous Materials. When use or storage of explosives, or other hazardous materials or equipment, or unusual methods is necessary for execution of the Work, the Job Order Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary, the Job Order Contractor shall secure the Owner's approval prior to their storage or use.
- 10.2.5** Job Order Contractor Liability. The Job Order Contractor shall promptly remedy damage and loss to any property caused in whole or in part by the Job Order Contractor or Subcontractor, or by anyone for whose acts they may be liable.
- 10.2.6** Competent Person. The Job Order Contractor shall designate a competent person or member of the Job Order Contractor's organization at the Site whose duty shall be the prevention of accidents and administration of the Job Order Contractor's written Safety Program
- 10.2.7** Accident Reports. The Job Order Contractor shall report in writing within one (1) working day of the Job Order Contractor's knowledge, to the Owner, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death or serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.
- 10.2.8** Safety Cooperation. The Job Order Contractor and its Subcontractors shall cooperate fully with the Owner and all interested parties on accident prevention and claim handling procedures.
- 10.2.9** Risk of Loss. The Job Order Contractor shall be fully responsible for, and shall bear the full risk of loss of, all the Job Order Contractor's tools, equipment, materials, and other property.

### **10.3 EMERGENCIES**

- 10.3.1** In an emergency affecting safety of persons or property, the Job Order Contractor shall act, at the Job Order Contractor's discretion, to prevent damage, injury, or loss. Additional compensation or extension of time claimed by the Job Order Contractor on account of an emergency shall be determined as provided in Article 4.2 and Article 7.

## **ARTICLE 11 INDEMNIFICATION AND INSURANCE**

### **11.1 INDEMNIFICATION**

- 11.1.1** Job Order Contractor's Duty to Indemnify and Defend. To the fullest extent permitted by law, the Job Order Contractor shall defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent, reckless, or intentionally wrongful acts, errors, omissions or mistakes of the Job Order Contractor, its agents, representatives, employees, or Subcontractors, relating to the performance of this Contract. This duty to defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage loss or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by referenced acts, errors, omissions or mistakes in the performance of this Contract, including these made by any person for whose acts, errors, omissions or mistakes, the Job Order Contractor may be legally liable.
- 11.1.2** The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

### **11.2 INSURANCE**

- 11.2.1** Job Order Contractor at its own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of Owner. The form of any insurance policies and forms must be acceptable to Owner.
- 11.2.2** All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of Owner, constitute a material breach of this Contract.
- 11.2.3** Job Order Contractor's insurance shall be primary insurance as respects Owner, and any insurance or self-insurance maintained by Owner shall not contribute to it.
- 11.2.4** Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the Owner's right to coverage afforded under the insurance policies.

- 11.2.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. Job Order Contractor shall be solely responsible for the deductible and/or self-insured retention and Owner, at its option, may require Job Order Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 11.2.6 Owner reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. Owner shall not be obligated, however, to review such policies and/or endorsements or to advise Job Order Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Job Order Contractor from, or be deemed a waiver of Owner's right to insist on strict fulfillment of Job Order Contractor's obligations under this Contract.
- 11.2.7 The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name Owner, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- 11.2.8 The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against Owner, its agents, representatives, officers, directors, officials and employees for any claims arising out of Job Order Contractor's work or service.
- 11.2.9 Job Order Contractor is required to procure and maintain the following coverage's indicated by a checkmark:
- 11.2.9.1 **Commercial General Liability.** Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
  - 11.2.9.2 **Automobile Liability.** Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to any of the Job Order Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Job Order Contractor's work or services under this Contract.
  - 11.2.9.3 **Workers' Compensation.** Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Job Order Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

- 11.2.9.4** Job Order Contractor waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Job Order Contractor pursuant to this agreement.
- 11.2.9.5 Builder's Risk (Property) Insurance.** Job Order Contractor shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance and, if necessary, Commercial Umbrella insurance in the amount of the initial Contract amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made or until no person or entity other than Owner has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of Owner, Job Order Contractor, and all subcontractors and sub-subcontractors in the work during the life of the Contract and course of construction, and shall continue until the work is completed and accepted by Owner. For new construction projects, Job Order Contractor agrees to assume full responsibility for loss or damage to the work being performed and to the structures under construction. For renovation construction projects, Job Order Contractor agrees to assume responsibility for loss or damage to the work being performed at least up to the full Contract amount, unless otherwise required by the Contract documents or amendments thereto.
- 11.2.9.6** Builders' Risk insurance shall be on a special form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs" as required by the Contract.
- 11.2.9.7** Builders' Risk insurance must provide coverage from the time any covered property comes under Job Order Contractor's control and/or responsibility, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and not contributory. If the Contract requires testing of equipment or other similar operations, at the option of Owner, Job Order Contractor will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.
- 11.2.9.8** Job Order Contractor, if it is licensed to perform and tasked to perform any design services, shall purchase Errors and Omissions Insurance in an amount stated by Owner in the Task Order.
- 11.2.10** Job Order Contractor waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained pursuant to this agreement.

### 11.3 CERTIFICATES OF INSURANCE

- 11.3.1 Prior to commencing work or services under this Contract, Job Order Contractor shall furnish Owner with Certificates of Insurance in a form acceptable to Owner, or formal endorsements as required by the Contract in the form provided by the County, issued by Job Order Contractor's insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.
- 11.3.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for one year past completion and acceptance of Job order Contractor's work or services and as evidenced by annual Certificates of Insurance.
- 11.3.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to Owner fifteen (15) days prior to the expiration date.

### 11.4 CANCELLATION AND EXPIRATION NOTICE

- 11.4.1 Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to Owner.

### 11.5 PERFORMANCE AND PAYMENT BONDS

- 11.5.1 A.R.S. § 34-222. Job Order Contractor shall obtain, at its own expense, performance and payment bonds as required by A.R.S. § 34-222 and Section 00610. Job Order Contractor warrants that its payment and performance bonds fully comply with A.R.S. § 34-222. Bonds will be required on an individual task order basis and are required to be submitted within five business days (or as otherwise approved by the Office of Procurement Services) of the successful completion of negotiations.
- 11.5.2 Copies to Potential Beneficiaries. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Job Order Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### 12.1 UNCOVERING OF WORK

- 12.1.1 Duty to Uncover Work. If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract, it must, if required in writing, be uncovered for their observation and be replaced at the Job Order Contractor's expense without change in the Contract Time.
- 12.1.2 Cost of Uncovering Work. If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Job Order Contractor. If such Work is in accordance with the Contract, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract, the Job Order Contractor shall pay such costs.

## 12.2 CORRECTION OF WORK

- 12.2.1** Duty to Correct Rejected Work. The Job Order Contractor shall promptly correct all Work rejected by the Owner as defective or failing to conform to the requirements of the Contract, whether observed before or after Substantial Completion of the Work and whether or not fabricated, installed, or completed. The Job Order Contractor shall bear costs of correcting such rejected Work, including the replacement or repair of other work affected by Job Order Contractor's performance, including additional testing and inspection and compensation for the Owner's services made necessary thereby. Work rejected before Final Completion shall be corrected prior to Final Payment.
- 12.2.2** One Year Duty to Correct Work. If within any guarantee period, repairs or changes are required in connection with the guaranteed Work, as the result of the use of materials, equipment or workmanship, which are defective, or inferior, or not in accordance with the terms of the Contract, the Job Order Contractor is to commence and continue to effect such repairs or changes to, promptly, within 48 hours after receipt of notice from the Owner, except in the case of emergencies, and without expense to the Owner:
- 12.2.3** Warranty Periods. Nothing contained in this Article 12.2 shall be construed to establish a period of limitation with respect to obligations that the Job Order Contractor has under the Contract or at law, including Article 3.6. Establishment of the time period of one year as described in Article 12.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract, relates only to the specific obligation of the Job Order Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Job Order Contractor's liability with respect to Contract obligations.
- 12.2.3.1** Four (4) hours for emergency repair work. An "emergency repair" is defined as that repair necessitated by life, safety or security issues that will jeopardize the continued operation of that facility, endanger its occupants or the general public.
- 12.2.3.2** Sixteen (16) hours for urgent repair work. An "urgent repair" is defined as that repair necessitated by issues that may jeopardize the continued operation of that facility, endanger its occupants or the general public.
- 12.2.3.3** Five (5) days for general service or repairs
- 12.2.3.3.1** place in satisfactory condition, in every particular, all of such guaranteed work and correct all defects therein;
- 12.2.3.3.2** make good all changes to the structure or site or equipment or contents thereof, which in the opinion of the Architect, Engineer or Owner, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract.
- 12.2.3.4** Notifications by the Owner of defects will stop the warranty time period. The guarantee or warranty period for that replaced or restored work is to be reinstated for the remaining time period, starting on the date of acceptance of the replaced or restored work.

- 12.2.3.5** In any case, where, in fulfilling the requirements of the Contract or of any guarantee embraced in or required thereby, the Job Order Contractor disturbs any work guaranteed under another contract, the Job Order Contractor is responsible to restore such work to a condition satisfactory to the Architect, Engineer or Owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.
- 12.2.3.6** If the Job Order Contractor after notice fails to proceed to commence and continue to comply with the terms of the guarantee and Paragraph 1, the Owner may have the defect corrected, in which case the Job Order Contractor and its Surety are liable for all expenses incurred.
- 12.2.3.7** All special guarantees or warranties applicable to definite parts of the Work that may be stipulated in the Specifications or other papers forming part of the Contract are subject to the terms of this Article during the life of such special guarantee.
- 12.2.4** **Removal of Nonconforming Work.** The Job Order Contractor shall remove from the Site, at no additional cost, portions of the Work, which are not in accordance with the requirements of the Contract and are neither corrected by the Job Order Contractor nor accepted by the Owner.
- 12.2.5** **Owner's Right to Correct Nonconforming Work.** If the Job Order Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Article 2.3. If the Job Order Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and store the salvable materials or equipment at the Job Order Contractor's expense. If the Job Order Contractor does not pay costs of such removal and storage within ten (10) days thereafter, the Owner may sell such materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting the costs that should have been borne by the Job Order Contractor, including compensation for Owner's additional services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Job Order Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Job Order Contractor are not sufficient to cover such amount, the Job Order Contractor shall pay the difference to the Owner.
- 12.2.6** **Cost of Correcting Other Affected Work.** The Job Order Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, Job Order Contractor, or other contractors caused by the Job Order Contractor's correction or removal of Work which is defective or not in accordance with the requirements of the Contract.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

- 12.3.1** If the Owner prefers to accept Work, which is not in accordance with the requirements of the Contract, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable for the difference in value together with an allowance for damage or loss of quality. Such adjustment shall be effected whether or not Final Payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

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**13.1 GOVERNING LAW**

- 13.1.1 The Contract shall be governed by the laws of the State of Arizona.
- 13.1.2 This Contract is made in accordance with and subject to the provision of all applicable laws, statutes, ordinances, rules, regulations, executive orders and codes. To the extent required by applicable law, each party hereto shall comply and require its Subcontractors and suppliers to comply with all then applicable federal, state of Arizona and local nondiscrimination laws, rules, regulations, ordinances and executive orders, including, without limitation, the Civil Rights Act of 1964, as they may be amended, modified, codified, supplemented or repealed from time to time.

**13.2 SUCCESSORS AND ASSIGNS**

- 13.2.1 The Owner and Job Order Contractor respectively bind themselves, their successors, assigns, and legal representatives to the other party hereto and to successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract.

**13.3 NOTICES**

- 13.3.1 Methods of Notice. All notices pursuant to this Agreement must be in writing and must be sent to the appropriate person and will be deemed properly given if sent by (1) personal delivery, (2) e-mail, return receipt required, (3) express mail, postage prepaid, return receipt required, or (4) certified United States mail, postage prepaid, return receipt required, addressed as follows:

Owner: Maricopa County  
 c/o Facilities Management Department  
 401 West Jefferson Street  
 Phoenix, Arizona 85003  
 Attn: Director  
 E-mail: ReidSpaulding@mail.maricopa.gov

Job Order Contractor: Caliente Construction Inc.  
 242 South El Dorado Circle  
 Mesa, AZ 85202  
 Attn: Project Manager  
 E-Mail: \_\_\_\_\_

*485 W Vaughn St  
 Tempe, AZ 85283*

Copy to: Maricopa County  
 c/o Office of Procurement Services  
 320 W. Lincoln Street  
 Phoenix, Arizona 85003  
 Attn.: Brian Garcia  
 Contracting Officer  
 E-Mail: garciab003@mail.maricopa.gov

Each party may, by notice to the others, specify a different address for subsequent notice purposes. Notice is effective on the date of actual receipt or five (5) days after the date of mailing, whichever is earlier.

### 13.4 RIGHTS AND REMEDIES

- 13.4.1** Legal Rights. Duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. This clause shall not be interpreted to permit the Job Order Contractor to recover any costs or damages that are otherwise limited, prohibited, or waived by the Contract.
- 13.4.2** No Waiver. No action or failure to act by the Owner or Job Order Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach thereunder, except as may be specifically agreed in writing.

### 13.5 TESTS AND INSPECTIONS

- 13.5.1** Job Order Contractor's Duty to Administer. Tests, inspections, and approvals of portions of the Work required by the Contract or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at the appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections, and approvals with the independent testing laboratory. The Job Order Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so the Owner may observe such procedures. Any of the Work requiring testing, inspection, or approval which is covered or otherwise made inaccessible without the consent of those requiring or making the inspection or test shall be uncovered or made accessible by, and at the expense of, the Job Order Contractor. Job Order Contractor shall be responsible for any testing, retesting, or other charges resulting from Job Order Contractor's failure to perform.
- 13.5.2** Additional Testing and Inspection. If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Article 13.5, the Owner will instruct the Job Order Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner, and the Job Order Contractor shall give timely notice to the Owner of when and where tests and inspections are to be made so the Owner may observe such procedures. The Owner shall bear such costs except as provided in Article 13.5.
- 13.5.3** Costs for Testing and Inspection. If such procedures for testing, inspection, or approval under Articles 13.5 reveals failure of the portions of the Work to comply with requirements established by the Contract, the Job Order Contractor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's services and expenses.
- 13.5.4** Certificates. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract, be secured by the Job Order Contractor and promptly delivered to the Owner.
- 13.5.5** Prompt Testing and Inspection. Tests or inspections conducted pursuant to the Contract shall be made promptly to avoid unreasonable delay in the Work.

### **13.6 MANUFACTURERS' NAMEPLATES**

**13.6.1** Manufacturers' nameplates shall not be permanently attached to ornamental and miscellaneous metal work, doors, frames, millwork, and similar factory fabricated products on which, in the Owner's opinion, the nameplates would be objectionable, if visible after installation of the Work. This provision does not apply to underwriters' labels when required, or to the manufacturers' name and rating plates on mechanical and electrical equipment.

### **13.7 MANUFACTURERS' INSTRUCTIONS**

**13.7.1** All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers' written specifications or instructions. In case of any difference or conflicts between the requirements of the manufacturers' instructions or specifications and the technical sections of the Specifications, the Job Order Contractor shall promptly report any such difference or conflict to the Owner.

### **13.8 SBE REQUIREMENTS**

**13.8.1** The Job Order Contractor shall comply with all requirements of the Small Business Enterprise ("SBE") program applicable to the Project as specified in the Maricopa County Small Business Enterprise Construction Contracting Requirements to be posted at a later date.

## **ARTICLE 14 CONTRACT INTERPRETATION:**

### **14.1 HEADINGS**

**14.1.1** The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any provision of this Agreement.

### **14.2 INTERPRETATION**

**14.2.1** In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. To the extent permitted by the context in which used, (1) words in the singular member shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; and (2) (unless specified otherwise) references to Articles are to Articles of Section 00700, General Conditions to the Job Order Contract.

## **ARTICLE 15 TERMINATION OR SUSPENSION OF THE CONTRACT OR TASK ORDER**

### **15.1 TERMINATION BY THE OWNER FOR CAUSE**

**15.1.1** Criteria for Termination for Cause. The Owner may terminate the Contract or terminate a Task Order if the Job Order Contractor:

- 15.1.1.1 Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
  - 15.1.1.2 Repeatedly disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
  - 15.1.1.3 Materially breaches any provision of the Contract or Task Order;
  - 15.1.1.4 Fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Job Order Contractor's ability to complete the Work for the Task Order in compliance with all the requirements of the Contract; or
  - 15.1.1.5 Fails after commencement of the Work to proceed diligently and continuously with the construction and completion of the Work for more than seven (7) days, except as permitted under the Contract.
  - 15.1.1.6 Repeatedly refuses or fails to carry out Safety provisions as required by Contract;
  - 15.1.1.7 Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Job Order Contractor and the Subcontractors.
- 15.1.2 Effect of Termination for Cause. When any of the above conditions exist, the Owner, may without prejudice to any other rights or remedies of the Owner, and after giving the Job Order Contractor and the Job Order Contractor's Surety, if any, three (3) days' written notice, terminate the Contract or Task Order and may, subject to any prior rights of the Surety:
- 15.1.2.1 Take possession of the Site and all materials, equipment, tools, and construction equipment machinery thereon owned by the Job Order Contractor;
  - 15.1.2.2 Accept assignment of subcontracts pursuant to Article 5.4; and
  - 15.1.2.3 Finish the Work for the Task Order by whatever reasonable method the Owner may deem expedient.
- 15.1.3 Job Order Contractor Right to Receive Payment. When the Owner terminates the Contract or a Task Order for one of the reasons stated in Article 15.1.1, the Job Order Contractor shall not be entitled to receive further payment for the Task Order until the Work is finished.
- 15.1.4 Costs for Finishing Work. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work for the Task Order, including compensation for the Owner's services and expenses made necessary thereby, such excess shall be paid to the Job Order Contractor. If such costs exceed the unpaid balance, the Job Order Contractor shall pay the difference to the Owner. The amount to be paid to the Job Order Contractor or Owner, as the case may be, shall, upon application, be certified after consultation with the Owner, and this obligation for payment shall survive termination of the Contract.

## 15.2 SUSPENSION BY THE OWNER FOR CONVENIENCE

- 15.2.1 Owner's Right. The Owner may, without cause, order the Job Order Contractor in writing to suspend, delay, or interrupt the Work for a Task Order in whole or in part for such period of time as the Owner may determine.
- 15.2.2 Adjustment in Task Order Sum. An adjustment shall be made for increases in the cost of performance of the Task Order, including profit on the increased cost of performance, caused by suspension, delay, or interruption. No adjustment shall be made to the extent:
  - 15.2.2.1 that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Job Order Contractor is responsible; or
  - 15.2.2.2 that an equitable adjustment is made or denied under another provision of this Contract.
- 15.2.3 Method for Adjustment in Task Order Sum. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

## 15.3 OWNER'S TERMINATION FOR CONVENIENCE

- 15.3.1 Effect of Termination for Convenience. The Owner reserves the right to terminate the Contract or a Task Order for convenience and without cause, even if Job Order Contractor has not failed to perform any part of the Contract or a Task Order. Termination of the Task Order Work shall be effected by written notice to the Job Order Contractor. Upon receipt of such notice, Job Order Contractor shall, unless the notice otherwise directs:
  - 15.3.1.1 Immediately discontinue the Work of the Task Order and the placing of all orders and subcontracts in connection with this Contract;
  - 15.3.1.2 Immediately cancel all of the existing orders and subcontracts made hereunder or for the Task Order involved;
  - 15.3.1.3 Immediately transfer to the Owner all materials, supplies, Work in progress, appliances, facilities, machinery, and tools acquired by the Job Order Contractor in connection with the performance of the Contract or the Task Order, and take such action as may be necessary or as the Owner may direct for protection and preservation of the Work relating to this Contract; and
  - 15.3.1.4 Deliver all plans, Drawings, Specifications, and other necessary information to Owner.
- 15.3.2 Job Order Contractor's Exclusive Remedy. If the Owner terminates the Contract or a Task Order for convenience, the following shall be the Job Order Contractor's exclusive remedy:
  - 15.3.2.1 Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the Work;

- 15.3.2.2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settling or discharging outstanding commitments entered into by the Job Order Contractor in performing the Contract; and
- 15.3.2.3 Payment of profit, in so far as profit is realized hereunder, of an amount equal to the estimated profit on any Task Order Work underway at the time of termination multiplied by the percentage of completion of the Work. In no event shall the Job Order Contractor be entitled to anticipated fees or profits on Work not required to be performed.
- 15.3.3 Warranties, Guarantees, and Indemnities to Remain in Effect. All obligations of the Job Order Contractor under the Contract with respect to completion of the Work, including but not limited to all warranties, guarantees, and indemnities, shall apply to all Work completed or substantially completed by the Job Order Contractor prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Job Order Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Job Order Contractor for any cause.
- 15.3.4 Conversion of Termination for Cause to Termination for Convenience. Upon a determination that a termination of this Contract or a Task Order, other than a termination for convenience, under this Article was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Article 15, and the Job Order Contractor's remedy for such wrongful termination shall be limited to the recoveries specified under Article 15.3.2.
- 15.3.5 Remedy Limited to Damages. In the event that Job Order Contractor is terminated, whether for cause or convenience, the Job Order Contractor's sole remedy shall be for damages. In no event shall Job Order Contractor be entitled to reinstatement or other equitable relief from a court or through Alternative Dispute Resolution as provided in Exhibit B.
- 15.3.6 Notice that Contract is Subject to Termination Provisions of A.R.S. § 38-511. The parties acknowledge, and as required by law, notice is hereby given that this Contract is subject to A.R.S. § 38-511.**END OF SECTION**

EXHIBIT A

DEFINITIONS TO THE GENERAL CONDITIONS  
TO THE CONSTRUCTION CONTRACT

**Allowance** means funds which are included in the Task Order Bid and designated for uses by the Owner.

**Application for Payment** has the meaning set forth in Article 9.2.1 of the General Conditions to the Construction Contract.

**Article** shall refer to Specifications Section 00700, General Conditions of the Construction Contract.

**Authorized Agent** means any person, which may be an employee of the Owner or a consultant, with written notification who acts on behalf of the Owner for the purposes of managing the Task Order.

**Business Day** means all days of the year except Saturday, Sunday and legal holidays of the United States of America or the State of Arizona.

**Certificate of Substantial Completion** has the meaning set forth in Article 9.8.2 of the General Conditions to the Construction Contract.

**Claim** means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Job Order Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**Contract** means the fully executed Contract document between the Job Order Contractor and Maricopa County, Arizona, as may be amended or modified from time to time.

**Contract Documents** are defined in Section 00500, 7 Contract Documents.

**Day or "day"** means calendar day unless otherwise specifically defined.

**Drawings** means the documents referenced in Section 00500, 7 Contract Documents, showing the design, location and dimensions of the Work, generally including but not limited to plans, elevations, sections, details, schedules and diagrams and/or those developed under a specific Task Order

**Employer** means any individual, firm, or corporation who provides direct labor at or from the Project Site either by written or verbal contract, work order, purchase order, or invoice.

**Final Completion** means when all of the Work of the Contract fulfills all of the terms of the Contract in all respects.

**Final Payment** has the meaning set forth in Article 9.9.2 of the General Conditions to the Job Order Contract.

**Furnish or "furnish"** means "furnish only", including delivery of materials to the Site.

**General Requirements** means Division I of the Specifications.

**Indemnitees** means the Owner and all of their respective authorized agents, employees, successors and assigns.

**Install or "install"** means "install only" furnished materials or items. Such materials or items shall be received at the Site, unloaded, stored and/or distributed, protected, and installed in place, including final connections. Minor items and accessories reasonably inferable as necessary to complete the proper installation shall be provided by the Job Order Contractor whether or not they are specifically called for by the Specifications or Drawings.

**Insurance Carrier** means the carrier providing coverage for any of the insurance programs.

**Insured** means the entity named in a Policy or Certificate of Insurance signed by a duly authorized representative of the Insurers.

**Insurer** means the Insurance Carrier named on a Policy or Certificate of Insurance.

**Job Order Contractor** means the person or entity identified as such in the Job Order Contract.

**JOC Construction Schedule** has the meaning set forth in Article 3.11.1 of the General Conditions to the Contract.

**Material Status Report** has the meaning set forth in Article 3.11.7 of the General Conditions to the Job Order Contract.

**Notice to Proceed** means that written dated document which instructs the Job Order Contractor to proceed and sets forth the date for substantial and final completion of the project outlined in a specific Task Order.

**Owner** means Maricopa County, Arizona, or its Authorized Agent.

**Product Data** means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Job Order Contractor to illustrate materials or equipment for some portion of the Work.

**Project** means the total construction necessary for the full and efficient use of the facilities and appurtenances described in the individual Task Order Documents.

**Provide or Perform or "provide" or "perform"** means to furnish, install and complete all labor, materials, equipment, services and other items required to complete the referenced tasks.

**Record Documents** has the meaning set forth in Section 3.12.2 of the General Conditions.

**Record Drawings** has the meaning set forth in Section 3.12.2 of the General Conditions.

**Samples** are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**SBE** has the meanings set forth in Article 13.8 of the General Conditions to the Construction Contract, Maricopa County Small Business Enterprise Construction Contracting Requirements.

**Schedule of Values** has the meaning set forth in Article 9.1 of the General Conditions to the Job Order Contract.

**Scope Documents** means all documents associates with setting forth the scope of Work designated in each Task Order utilized to develop the Task Order Sum.



**Shop Drawings** are drawings, diagrams, schedules and other data specially prepared for the Work by the Job Order Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**Site** means that certain real property upon which the Project is to be constructed and which is generally depicted in the Contract Documents.

**Specifications** means the document referenced in each individual Task Order consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**Subcontractor** means any person or entity supplying labor, equipment, or material for a portion of the Job Order Contractor's Work either on or off the Site and all of the respective employees, agents, successors and assigns of such person or entity. The term "Subcontractor" includes sub-subcontractors of the Job Order Contractor but does not include subcontractors of other contractors performing Work for the Project.

**Substantial Completion** is the date certified by the Architect/Engineer, if utilized, and/or the Owner in accordance with Article 9.8.1 of the General Conditions to the Job Order Contract.

**Surety** means the entity providing the performance and payment bonds required under Article 11.4 of the General Conditions to the Job Order Contract.

**Task Order** means that document which identifies and notifies the Job Order Contractor that a task needs to be performed pursuant to the Job Order Contract and all subsequent documents setting forth the scope, time and sum.

**Task Order Modification** has the meaning set forth in Article 7.1 of the General Conditions to the Construction Contract.

**Task Order Sum** is stated in Section 00500, 4.1 and means the total amount payable by the Owner to the Job Order Contractor for performance of the Work under each individual Task Order and pursuant to the terms of the Contract.

**Task Order Time** means the periods of time set forth in each individual Task Order for Substantial Completion and Final Completion of the Work set forth in that Task Order.

**Work** means all administration, labor, equipment and materials, whether on or off the Site, necessary to produce and fully complete the construction required by the Contract or reasonably inferable therefrom. If all or part of the Work involves demolition, the term "Work" shall also mean demolition and all activities related to demolition.

**Work Day** relates to the Job Order Contractor's schedule bases for calculating project activities and durations.

**END OF EXHIBIT**

**EXHIBIT B**

**ALTERNATIVE DISPUTE RESOLUTION**

- 1.1 Scope.** Notwithstanding anything to the contrary provided elsewhere in the Contract, the alternative dispute resolution (“ADR”) process provided for herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon the Contract, the interpretation thereof or the performance or breach by any party thereto, including but not limited to original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
- 1.2 Neutral Evaluator, Arbitrators.** The County will select a Neutral Evaluator to serve as set forth in this ADR process. As needed under § 1.6.2 below, the County and Job Order Contractor shall each select an arbitrator to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona and shall have experience in the field of construction law. All arbitrators, once selected, shall serve as neutral arbitrators, even if they are party-appointed. The County and the Job Order Contractor shall name their respective arbitrators within five (5) calendar days after the declaration of a failure of mediation or the mutual waiver of mediation.
- 1.3 Discussion and Partnering.** When a claim is made or a dispute arises relating to the Contract, senior representatives of the County and the claimant will meet personally within ten (10) days to discuss the claim/dispute and attempt to resolve it. If, after good faith efforts, resolution is not achieved, the claim/dispute (hereafter “dispute”) will proceed to the neutral evaluation process.
- 1.4 Neutral Evaluation Process.** If the parties have been unable to resolve the dispute after discussions and partnering, the following neutral evaluation process shall be used to resolve any such dispute.
- 1.4.1 Notification of Dispute.** The County through its Agent shall promptly notify the Neutral Evaluator in writing of the existence of a dispute within ten days of the County or the Job Order Contractor declaring need to commence the neutral evaluation process.
- 1.4.2 Non-Binding Informal Hearing.** The Neutral Evaluator shall schedule a non-binding informal hearing of the matter to be held within ten (10) calendar days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as he deems appropriate and shall notify each party of the hearing of its opportunity to present such evidence as they believe will resolve the dispute. The Neutral Evaluator shall notify each party to the dispute that they shall submit a written outline of the issues and evidence intended to be introduced at the hearing and their proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Potential Arbitrators shall not participate in such informal hearing or proceedings process. The Neutral Evaluator is not bound by the rules of evidence when admitting evidence in the hearing and may limit the length of the hearing, the number of witnesses or any evidence introduced to the extent deemed relevant and efficient.
- 1.4.3 Non-Binding Decision.** The Neutral Evaluator shall render a non-binding written decision as soon as possible, but not later than five (5) calendar days after the hearing concludes.

1.4.4 **Further proceedings.** In the event that either party declines to accept the Neutral Evaluator's decision as the resolution of the dispute, the dispute will proceed to mediation.

1.5 **Mediation.** In the event that a meeting of principals and neutral evaluation have failed, the parties shall engage in mediation (as a condition precedent to arbitration) within fifteen (15) days of a party's notifying the Neutral Evaluator that the party declines to accept the Neutral Evaluator's decision as the resolution of the dispute. The mediator shall be chosen by the parties' agreement. If such agreement is not reached by five (5) days after the neutral evaluator's receipt of a party's notification, then the mediator shall be named by the Neutral Evaluator. In the event that mediation fails (or is waived by both parties) then the matter shall proceed to binding arbitration.

1.6 **Binding Arbitration Procedure.** The following binding arbitration procedure shall serve as the exclusive method to resolve a dispute if any party chooses not to accept the decision of the Neutral Evaluator and mediation has failed or has been waived. A party requesting binding arbitration shall notify the Neutral Evaluator in writing within seven (7) calendar days of the failure or waiver of mediation of the party's demand for arbitration. If the Job Order Contractor requests arbitration it shall post a cash bond with the Neutral Evaluator in an amount agreed upon by the parties or, in the event of no agreement, the Neutral Evaluator shall establish the amount of the cash bond to defray the cost of the arbitration as set forth in paragraph 1.6.11 and the proceeds from the bond shall be allocated in accordance with paragraph 1.6.13 by the Arbitration Panel. The bond must be in the full amount agreed upon or as established by the Neutral Evaluator to pay the potential cost of the full arbitration proceeding. The bond must be posted with and received by the Neutral Evaluator within five (5) calendar days after the demand for arbitration.

1.6.1 **Arbitration Panel and Applicable Law and Rules.** Disputes involving less than \$200,000 shall be heard by one single arbitrator chosen by agreement of the parties. For disputes in excess of \$200,000, the Arbitration Panel shall consist of three arbitrators: the County's appointed arbitrator, the Job Order Contractor's appointed arbitrator and a third arbitrator (or "neutral arbitrator") who shall be selected by the parties' arbitrators as set forth in Section 1.5.2. The arbitration is to be convened and administered under the Revised Uniform Arbitration Act ("RUAA") (A.R.S. § 12-3001 et seq.) and the American Arbitration Association Construction Rules shall serve as a guideline for proceedings, thus as a supplement to the RUAA.

1.6.2 **Selection of Neutral Arbitrator.** For disputes in excess of \$200,000, the parties' arbitrators shall choose the Neutral Arbitrator, within ten (10) calendar days of notification of a demand for arbitration having been received by the Neutral Evaluator. The Neutral Arbitrator shall have the same qualifications as those of the arbitrators set forth in paragraph 1.2. above. In the event that the two party selected arbitrators cannot agree on a Neutral Arbitrator as set forth above, the Neutral Arbitrator shall be selected as the Default Neutral Arbitrator. If the County and Job Order Contractor cannot agree on the single arbitrator or upon a Default Neutral Arbitrator, then County and the Job Order Contractor shall each submit two names to Judge Eino Jacobson, or his successor as designated by Maricopa County, who shall select one person. The Neutral Arbitrator may submit his invoices for services to the Owner, and the Owner shall pay the amounts invoiced (subject to the provisions of paragraph 1.4.13) unless and until the Job Order Contractor is determined by the Arbitration Panel to be the non-prevailing party and the Arbitration Panel determines per 1.6.11 what party pays such costs.

1.6.3 **Expedited Hearing.** The parties have structured this procedure with the goal of providing for the prompt, efficient and final resolution of all disputes falling within the

purview of this ADR process. To that end, any party can petition the Neutral Evaluator to set an expedited hearing. If the Neutral Evaluator determines that the circumstances justify it, the Neutral Evaluator shall contact the selected single arbitrator or Arbitration Panel and arrange for scheduling of the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical but in no event later than twenty (20) calendar days after notification of request for arbitration having been received. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the single arbitrator or the Arbitration Panel upon a showing of emergency circumstances.

- 1.6.4 **Procedure.** The single arbitrator or the Arbitration Panel will conduct the hearing in such a manner that will resolve disputes in a prompt, cost efficient manner giving regard to the rights of all parties. Each party shall supply to the single arbitrator or Arbitration Panel a written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The single arbitrator or the Arbitration Panel shall review and consider the Neutral Evaluator decision. The single arbitrator or the Chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of any materials or information for which a privilege is recognized by Arizona law. The single arbitrator or the Chairman upon proper application shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to confirm or enforce such orders of the Chairman.
- 1.6.5 **Hearing Days.** In order to effectuate parties' goals, the hearing once commenced, will proceed from working day to working day until concluded, absent a showing of emergency circumstances.
- 1.6.6 **Award.** The single arbitrator shall within ten (10) calendar days of the conclusion of a hearing issue a reasoned award. The Arbitration Panel shall, within ten (10) calendar days from the conclusion of any hearing, by majority vote issue its reasoned award. The award shall include an allocation of fees and costs pursuant to 1.6.11 herein. The award is to be in accordance with the Contract and the law of the State of Arizona.
- 1.6.7 **Scope of Award.** Regardless of the provisions of the RUAA, the Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. If an award is made against any party in excess of one hundred thousand dollars (\$100,000), exclusive of interest, arbitration fees, costs and attorneys' fees, it shall be supported by written findings of fact, conclusions of law and a statement as to how damages were calculated.
- 1.6.8 **Jurisdiction.** The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction over the claim as regards its amount upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing. If the dispute is in reality one involving less than \$200,000, the arbitration shall continue before the Neutral Arbitrator as a single arbitrator, with the party appointed arbitrators being excused.

- 1.6.9 **Entry of Judgment.** As provided in the RUAA, any party can make application to the Maricopa County Superior Court for confirmation of an award, and for entry of judgment on it.
- 1.6.10 **Severance and Joinder.** To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the single arbitrator or Arbitration Panel, may: (i) at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and (ii) the Neutral Evaluator, on his own authority, or the single arbitrator or Arbitration Panel may, on its own authority, join or sever parties and/or claims subject to this ADR process as deemed necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes, provided, however, that the A/E, Owner and Project Professionals shall not be joined as a party to any claim made by a Job Order Contractor. Nothing herein shall create the right by any party to assert claims against another party not germane to the Contract or not recognized under the substantive law as applicable to the dispute. Neither the Neutral Evaluator nor the single arbitrator or Arbitration Panel is authorized to join to the proceeding parties not in privity with the County. Job Order Contractor cannot be joined to any pending arbitration proceeding, without Job Order Contractor's express written consent and unless Job Order Contractor is given the opportunity to participate in the selection of the single arbitrator or non-County appointed arbitrator.
- 1.6.11 **Fees and Costs.** Each party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator and the mediation. All fees and costs associated with any arbitration before the single panel or Arbitration Panel, including without limitation the Arbitrator fees, and the prevailing party's reasonable attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. In the event that Job Order Contractor is the non-prevailing party, all fees and costs as noted above shall first be paid out of the bond posted with the Neutral Evaluator. In no event shall the Job Order Contractor's obligation to pay fees and costs be limited to the amount of the bond posted herein. In no event shall any Arbitrator's hourly fees be awarded in an amount in excess of \$250 per hour and (i) costs shall not include any travel expenses in excess of mileage at the rate paid by Maricopa County, not to exceed a one way trip of 150 miles, and (ii) all travel expenses, including meals, shall be reimbursed pursuant to the travel policy of Maricopa County in effect at the time of the hearing. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the single arbitrator or Arbitration Panel. Fees for the Neutral Evaluator shall be paid by County.
- 1.6.12 **Confidentiality.** Any proceeding initiated under this ADR provision shall be deemed confidential to the maximum extent allowed by Arizona law and, except for disclosures to a party's attorneys or accountants, no party shall make any disclosure related to the disputed matter or to the outcome of any proceeding except to the extent required by law, or to seek interim equitable relief, or to enforce an agreement reached by the parties or an award made hereunder. This provision does not affect the County's right to inform the County Supervisors of the resolution of the dispute.
- 1.6.13 **Equitable Litigation.** Notwithstanding any other provision of ADR to the contrary, any party can petition the Maricopa County Superior Court for interim equitable relief as may become necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to the Project pending resolution of a dispute pursuant to ADR provided herein. No court may order any permanent injunctive relief except as may be necessary to

enforce an order entered by the Arbitration Panel. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

- 1.6.14 **Change Order.** Any award in favor of the Job Order Contractor against the County or in favor of the County against the Job Order Contractor shall be reduced to a Change Order and executed by the parties in accordance with the award and the provisions of the Contract.
- 1.6.15 **Merger and Bar.** Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of the Contract performance period which reasonably should or could have been brought against any party that was or could have been brought into this ADR process, with respect to the subject claim. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.
- 1.7 **Inclusion in Other Contracts.** The Job Order Contractor shall cooperate with the County in efforts to include this ADR provision in all other project contracts. Subject to Job Order Contractor's reasonable agreement, the Job Order Contractor agrees that any modification to this ADR provision that is included in the construction or other contracts shall also apply to the Job Order Contractor. It is the intent of the parties that any changes to this ADR provision in later contracts will be evolutionary and designed to incorporate the terms of this ADR provision without material changes to the substance or procedure of this ADR provision.

END OF EXHIBIT

**EXHIBIT C**

**[Legal Worker Certification]**

6/9/2014

(Date)

Maricopa County  
Office of Procurement Services – Article 5  
320 W. Lincoln Street  
Phoenix, Arizona 85003

As required by Arizona Revised Statutes §41-4401, Maricopa County (the "County") is prohibited, after September 30, 2008 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214-A. The undersigned entity warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to the below entity.

The undersigned acknowledges that a breach of this warranty by the below entity or by any subcontractor or sub-subcontractor under any Contract resulting from this solicitation shall be deemed a material breach of the Contract, and is grounds for penalties, including termination of the Contract, by the County. The County retains the right to inspect the records of the below entity, subcontractor and sub-subcontractor employee who performs work under the Contract, and to conduct random verification of the employment records of the below entity and any subcontractor and sub-subcontractor who works on the Contract, to ensure that the below entity and each subcontractor and sub-subcontractor is complying with the warranties set forth above.

Caliente Construction Inc

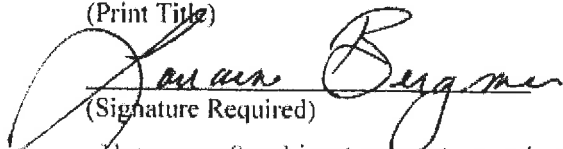
(Firm)

Lorraine Bergman

(Print Name)

President/CEO

(Print Title)



(Signature Required)

lbergman@calienteconstruction

(Email Address)

242 S El Dorado Circle

(Address Line 1)

Mesa, AZ 85202

(Address Line 2)

480-894-5500

(Phone)

480-894-2323

(Fax)

86-0697201

(Federal Taxpayer ID Number)

485 W Vaughn  
St Tempe  
AZ 85283

EXHIBIT D



**JOB ORDER CONTRACTING  
REQUEST FOR PROPOSAL**

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

**TO JOB ORDER CONTRACTOR:** \_\_\_\_\_ **REQUEST NO:** \_\_\_\_\_

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

**CONTRACT FOR:** \_\_\_\_\_ **CONTRACT NO:** \_\_\_\_\_

Please submit an itemized quotation for the requested work in accordance with Contract Documents.

**THIS IS NOT A TASK ORDER NOR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED HEREIN.**

**DESCRIPTION:** (Written description of the work)

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

**ATTACHMENTS:** (List attached documents that support description)

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

**INITIATED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



**EXHIBIT E**

**PERFORMANCE BOND AND PAYMENT BOND**

**PART 1 GENERAL**

**1.1 DESCRIPTION**

- 1.1.1 All bonds must be pursuant to A.R.S. Title 34, Chapter 6, Article 1, and executed solely by a surety company or companies holding a Certificate of Authority to transact surety business in Arizona, issued by the Director of the State of Arizona Department of Insurance.
- 1.1.2 Bonds executed by an individual surety or sureties are not in compliance with Arizona Revised Statutes.
- 1.1.3 The use of the Owner-supplied bond forms is required.

**1.2 SUBMITTALS**

- 1.2.1 Submit a completed copy of the Statutory Performance Bond within five (5) days of the date of the Notice of Intent to Award letter.
- 1.2.2 Submit a completed copy of the Statutory Payment Bond within five (5) days of the date of the Notice of Intent to Award letter.

**END OF SECTION**

STATUTORY PERFORMANCE BOND

PURSUANT TO TITLE 34, CHAPTER 6, ARTICLE 1, OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal,  
and the \_\_\_\_\_, a corporation duly organized under the laws of the  
State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ hereinafter  
called the Surety), as Surety are held and firmly bound unto Maricopa County (hereinafter called the  
Obligee), in the amount of \_\_\_\_\_  
(\$ \_\_\_\_\_) for the payment whereof, the said  
Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns,  
jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the  
\_\_\_\_\_ day of \_\_\_\_\_, 2004, to services as outlined in the Job Order Contract, **Contract No.  
14007-JOC**, which contract is hereby referred to and made a part hereof as fully and to the same extent as  
if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal  
faithfully performs and fulfills all of the undertaking, covenants, terms, conditions, and agreements of the  
contract during the original term of the contract and any extension of the contract with or without notice  
to the Surety, and during the life of any guaranty required under the contract, and also performs and  
fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized  
modifications of the contract that may hereafter be made, notice of which modifications to the Surety  
being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6,  
Article 1, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with  
the provisions of Title 34, Chapter 6, Article 1, Arizona Revised Statutes to the extent as if it were copied  
at length in this agreement.

The prevailing party in a suit on this bond shall be entitled as part of the judgment reasonable attorney's  
fees as may be fixed by the judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
AGENCY OF RECORD, STATE OF ARIZONA

\_\_\_\_\_  
PRINCIPAL

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

\_\_\_\_\_  
AGENCY ADDRESS

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

\_\_\_\_\_  
SURETY

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

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

\_\_\_\_\_  
BOND NUMBER

\_\_\_\_\_  
ATTACH SURETY POWER OF ATTORNEY



**EXHIBIT F**  
**[SBE Reporting Document]**  
**MARICOPA COUNTY SBE PARTICIPATION REPORTING FORM**

**This form is to be submitted with each pay application or invoice.** Any pay application or invoice without this form attached is subject to rejection as not being a completed pay application or invoice pursuant to the terms of the contract.

\_\_\_\_\_  
Name of Prime Consultant/Contractor

\_\_\_\_\_  
Contract No.

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Project No.

\_\_\_\_\_  
Street Address

\$ \_\_\_\_\_  
Amount of this Pay Application/Invoice

\_\_\_\_\_  
City, State ZIP

Complete below with information on the SBE firms utilized as subconsultants/subcontractors for this pay application/invoice. If work was self-performed and your firm, as the prime, is an SBE firm pursuant to A.R.S. § 41-1001, et seq., then you may list your firm as the SBE firm.

SBE Firm Name	SBE Firm Address	Type of Work Performed	\$ Pd to SBE this App/Inv
			\$
			\$
			\$
			\$
			\$
			\$
			\$

A mark in this box certifies that no SBE firms were utilized as the prime, subconsultant or subcontractor with respect to this pay application/invoice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Telephone Number

**EXHIBIT G**

**Request for Qualifications Dated February 13, 2014 and Addendum 1 are incorporated herein as though they were fully attached to this contract as Exhibit G.**



14007-Solicitation.pdf



14007-Addendum  
#1.pdf



# Maricopa County

## REQUEST FOR QUALIFICATIONS FOR JOB ORDER CONTRACTOR

SERIAL # 14007-JOC  
CONTRACT # 14007-JOC

**Job Order Contractor for Facilities Management**

**Statement of Qualifications Due Friday, March 07, 2014  
At 11:00 AM (Arizona Time)**

**Maricopa County  
Office of Procurement Services  
320 W. Lincoln St. (Second Floor)  
Phoenix, Arizona 85003  
(602) 506-3246**

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This Request for Qualifications is separated in two parts: Part I – Request for Qualifications Information, and Part II – Attachments. The Attachments are part of the Request for Qualifications and the terms, conditions and criteria therein must be met by any Proposer.

# REQUEST FOR QUALIFICATIONS

## Job Order Contractor For Maricopa County

### PART I: REQUEST FOR QUALIFICATIONS INFORMATION

### DIVISION I: REQUEST FOR QUALIFICATIONS AND LEGAL ADVERTISEMENT

#### MARICOPA COUNTY REQUEST FOR QUALIFICATIONS (RFQ)

Maricopa County extends an invitation to interested and qualified firms or individuals to submit formal sealed qualifications to provide Job Order Contracting design phase services, as needed, and construction phase services as described herein.

**ALL CURRENT JOC CONTRACT AWARDEES ARE ELIGIBLE TO RESPOND. IT IS THE INTENT OF MARICOPA COUNTY TO CANCEL ALL PREVIOUSLY AWARDED JOC'S FOR FACILITIES MAINTENANCE SERVICES ISSUED BY OR ON BEHALF OF THE FACILITIES MANAGEMENT DEPARTMENT UPON AWARD OF THIS SOLICITATION.**

Design Services: The scope of work will vary with each Job Order. Minor design services may be required for some job orders; however, most will be designed through registered professional consultants under separate contracts. For job orders that require design services, the contractor shall seek the services of Arizona registered professionals to prepare plans for permitting.

Construction Services by the JOC Contractor may include, but are not limited to:

- Provide construction services for various projects, including required labor (including subcontractors), materials, equipment, and related services for renovations; tenant improvements; additions, including site work and utility extensions; and upgrades and replacement of building mechanical, electrical, and building automation systems. Projects will be located throughout Maricopa County, Arizona and may include work in occupied judicial, detention, office, and customer service facilities.
- Assist with scoping and constructability issues.
- Provide project scheduling.
- Provide detailed cost estimating and knowledge of marketplace conditions.
- Provide value engineering as required.
- Provide long-lead procurement studies and possibly initiate procurement of long-lead items.
- Coordinate with various County departments and other agencies including utility companies, etc.
- Schedule and manage site operations.
- Bid, award, and manage all subcontracts while meeting the County project requirements.
- Provide quality controls.
- Address all federal, state, city, and county permitting requirements and assist in the permitting processes.
- Maintain a safe and clean work site for all project participants, County staff, and public.

The Maricopa County Facilities Management intends to award eight (8) job order contracts to separate persons or firms.

The contract term will be for a period of three (3) consecutive years with two (2) one year options to renew the contract for a total of five (5) years maximum per contract. The overall construction cost shall not exceed five million (\$5,000,000) per contract year, maximum \$1,000,000 limit per individual project task order.





**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALIENTE CONSTRUCTION, INC.**

**EXHIBIT B**  
Scope of Work

**PROJECT**

In accordance with the terms and conditions of this Agreement and Maricopa County Contract No. 14007-JOC, the City is retaining Caliente Construction Inc. for general maintenance and repair services city-wide on an as-needed basis.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALIENTE CONSTRUCTION, INC.**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

Method and amount of compensation is in accordance with Section 3 of this agreement.

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$300,000 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

City shall pay Contractor compensation in accordance with the rates as set forth in the Maricopa County Contract, No. 14007-JOC, for general maintenance and repair services city-wide on an as-needed basis.



## Legislation Description

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**File #:** 16-636, **Version:** 1

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**AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH CACTUS ASPHALT, A DIVISION OF CACTUS TRANSPORT, INC., FOR PUBLIC HOUSING PARKING LOT IMPROVEMENTS**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Construction Agreement with Cactus Asphalt, a division of Cactus Transport, Inc., in an amount not to exceed \$154,518.55 for the construction of improvements to the parking lots at three city-owned public housing developments using Community Development Block Grant (CDBG) funds.

**Background**

This project is to apply micro-surfacing to existing asphalt parking areas, asphalt repairs, concrete curb repairs including the removal and replacement of existing curb ramps with new American with Disabilities Act (ADA) sidewalk curb ramps, dumpster pad improvements, and the restriping of all parking and handicap stalls at three Public Housing locations. The areas of improvements include: Glendale Homes located at 5215 West Ocotillo Road; Lamar Homes located at 6842 North 61st Avenue; and Cholla Vista Apartments located at 5320 West Maryland Avenue.

**Analysis**

The Engineering Division published a Notice to Contractors requesting bids for COG Parking Lot Rehabilitation project (Project Number 151637) on October 6 and 13, 2016. On October 25, 2016, two bids were received with Cactus Asphalt submitting the lowest responsive and responsible bid in the amount of \$154,518.55. Staff anticipates issuing a Notice to Proceed in January 2017, with construction beginning in February 2017.

**Community Benefit/Public Involvement**

Well maintained infrastructure is an important element of strong neighborhoods. The application of a micro-surface will extend the useful life of the parking lots, while the replacement of the existing curbs with ADA compliant curb ramps will make the sidewalks more accessible to pedestrian traffic within this neighborhood.

**Budget and Financial Impacts**

Funds are available in the Fiscal Year 2016-17 CDBG Project Awards budget. Expenditures with Cactus Asphalt are not to exceed \$154,518.55.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$154,518.55</b>	<b>1320-31065-550800, PI-Field Operations-St Recon</b>

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from? N/A

## CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Cactus Asphalt, a division of Cactus Transport, Inc., an Arizona corporation, authorized to do business in Arizona ("Contractor") as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

### RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in the Notice to Contractors and the attached Exhibit A ("Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the Information for Bidders, and the Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions;
- C. City and Contractor desire to memorialize their agreement with this document.

### AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

#### 1. Project.

**1.1 Scope.** Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City.

**1.2 Documents.** The following documents are, by this reference, entirely incorporated into this Agreement and attached Exhibits as though fully set forth herein:

- (A) Notice to Contractors;
- (B) Information for Bidders;
- (C) MAG General Conditions, Supplemental General Conditions, Special and Technical Provisions;
- (D) Proposal;
- (E) Bid Bond;
- (F) Payment Bond;
- (G) Performance Bond;
- (H) Certificate of Insurance;
- (I) Appendix; and
- (J) Plans and Addenda thereto.

Should a conflict exist between this Agreement (and its attachments), and any of the incorporated documents as listed above, the provisions of this Agreement shall govern.

#### 1.3 Project Team.

- (A) **Project Manager.** Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to complete the project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement.
- (B) **Project Team.**
  - (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
  - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) **Sub-contractors.**

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in Exhibit A, the Project shall be completed by no later than within one hundred twenty (120) consecutive calendar days from and including the date of receipt of the Notice to Proceed.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services and materials for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- (A) Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- (B) Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
  - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default of this Agreement.

3.3 **Compliance.** Services and materials will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, or other standards and criteria designated by City.

Contractor must not discriminate against any employee or applicant for employment on the basis of race, religion, color sex or national origin. Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section.

3.4 **Coordination; Interaction.**

- (A) If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").
- (B) Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- (C) If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper

execution of the Project.

- 3.5 Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.
- 3.6 Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment as satisfaction of the Contractor's warranty under this subsection.
- 3.7 Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance bonds as required under A.R.S. § 34-608.

**4. Compensation for the Project.**

- 4.1 Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$154,518.55, as specifically detailed in the Contractor's bid and set forth in Exhibit B ("Compensation").
- 4.2 Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.
- a. Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

**5. Billings and Payment.**

**5.1 Applications.**

- (A) The Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- (B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.

**5.2 Payment.**

- (A) After a full and complete Payment Application is received, City will process and remit payment within thirty (30) days.
- (B) Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Contractor and its Sub-contractors; and
  - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

**5.3 Review and Withholding.** City's Project Manager will timely review and certify Payment Applications.

- (A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- (B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.
- (C) Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.
- (D) City will temporarily withhold Compensation amounts as required by A.R.S. 34-221(C).

## 6. Termination.

**6.1 For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than fifteen (15) days following the date of delivery.

- (A) Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (B) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.

**6.2 For Cause.** City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven (7) days after receipt of written notice specifying the breach.

- (A) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages.
- (B) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

## 7. Insurance.

**7.1 Requirements.** Contractor must obtain and maintain the following insurance ("Required Insurance"):

- (A) Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively, "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
- (B) General Liability.
  - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
  - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision.
  - (4) These limits may be met through a combination of primary and excess liability coverage.
- (C) Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and 1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.



- (D) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- (E) Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.
- (F) Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
  - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
  - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
  - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- (G) Certificates of Insurance.
  - (1) Within ten (10) business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
  - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
  - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement.
- (H) Other Contractors or Vendors.
  - (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
  - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- (I) Policies. Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section.
  - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
  - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

## **7.2 Sub-contractors.**

- (A) Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- (B) City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.

- (C) Contractor and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

**7.3 Indemnification.**

- (A) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- (B) This indemnity and hold harmless policy applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- (C) Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

**7.4 Waiver of Subrogation.** Contractor waives, and will require any Subcontractor to waive, all rights of subrogation against the City to the extent of all losses or damages covered by any policy of insurance.

- 8. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
- 9. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
- 10. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.
- 11. **Notices.**
  - 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
    - (A) The Notice is in writing, and
    - (B) Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested).
    - (C) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
      - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier on or before 5:00 p.m.; or

- (2) As of the next business day after receipt, if received after 5:00 p.m.
- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 **Representatives.**

- (A) Contractor. Contractor's representative ("Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Cactus Asphalt  
Attn: Bryan Glazer  
8211 West Sherman Street  
Tolleson, Arizona 85353

- (B) City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
Attn: Sharletha Johnson  
5850 West Glendale Avenue  
Glendale, Arizona 85301

With required copies to:

City of Glendale  
City Manager  
5850 West Glendale Avenue  
Glendale, Arizona 85301

City of Glendale  
City Attorney  
5850 West Glendale Avenue  
Glendale, Arizona 85301

- (C) Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be considered to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- (D) Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. **Entire Agreement; Survival; Counterparts; Signatures.**

13.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

- (C) Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

**13.2 Interpretation.**

- (A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- (B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- (C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.

**13.3 Survival.** Except as specifically provided otherwise in this Agreement each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

**13.4 Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval.

**13.5 Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

**13.6 Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.

**13.7 Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

**14. Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**15. Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Compensation

The parties enter into this Agreement as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

\_\_\_\_\_  
By: Kevin R. Phelps  
Its: City Manager

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Cactus Asphalt, a Division of Cactus Transport, Inc,  
an Arizona corporation

\_\_\_\_\_  
By: Bryan Glazer  
Its: Vice President

WOMEN-OWNED/MINORITY BUSINESS [ ] YES [ ] NO  
CITY OF GLENDALE TRANSACTION PRIVILEGE TAX NO. \_\_\_\_\_  
FEDERAL TAXPAYER IDENTIFICATION NO. \_\_\_\_\_

**EXHIBIT A  
CONSTRUCTION AGREEMENT**

**PROJECT**

The project will include the construction of a micro-surface application, striping, ancillary concrete repairs (if necessary) and additional items necessary for completion at Cholla Vista Homes, Glendale Homes, and Lamar Homes public housing developments.

**EXHIBIT B  
CONSTRUCTION AGREEMENT**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

By bid, including all services, materials and costs.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$154,518.55.

**DETAILED PROJECT COMPENSATION**

As shown in detail on the Bid Schedule.

BID TABULATION

**PROJECT# 151637 - CDBG PUBLIC HOUSING PARKING LOT IMPROVEMENTS**

OPENED AT THE CITY OF GLENDALE, ENGINEERING DEPARTMENT  
5850 W. GLENDALE AVENUE, 3RD FLOOR

DATE: OCTOBER 25, 2016 - 10:00 A.M.

	CONTRACTOR	BID BOND/CHECK	ACKNOWLEDGE ADDENDA 1 & 2	TOTAL BASE BID
1	CACTUS ASPHALT	BB	YES	\$154,518.55
2	SURFACE CONTRACTING, INC.	BB	YES	\$198,970.85
3				
4				
5				
6				
7				
8				
9				
10				





## Legislation Description

**File #:** 16-637, **Version:** 1

### **AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH DWL ARCHITECTS + PLANNERS, INC., FOR THE FIELD OPERATIONS COMPLEX MASTER PLAN UPDATE**

Staff Contact: Jack Friedline, Director, Public Works

#### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Professional Services Agreement with DWL Architects + Planners, Inc. for the Field Operations Master Plan Update, in an amount not to exceed \$69,800. The term of the Agreement is for one year.

#### **Background**

The Field Operations Center opened in 1976 and encompasses approximately 50 acres. The Master Plan was developed in 1998, and was last updated in 2002. The goal of this study is to obtain information regarding the current condition and future needs of the city's Field Operations Complex, which are critical to sustaining the desired level of service, and to determine the long-term building renewal funding requirements.

#### **Analysis**

DWL Architects + Planners, Inc. were selected from the pre-qualified Engineering Consultants On-Call List to provide the necessary services.

#### **Community Benefit/Public Involvement**

This study will assist City Management in making informed, data-driven investment decisions for the city's public facilities, thereby improving asset performance, minimizing costs, and reducing risk.

#### **Budget and Financial Impacts**

Funding is available in the Fiscal Year 2016-17 Capital Improvement Plan Budget. Expenditures with DWL Architects + Planners shall not exceed \$69,800 for the entire term of the Agreement.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$15,000</b>	<b>2360-17110-518200, Water Services</b>
<b>\$35,000</b>	<b>2480-78006-551200, Solid Waste</b>
<b>\$19,800</b>	<b>2070-70800-518200, Building Maintenance Reserve</b>

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**PROFESSIONAL SERVICES AGREEMENT**  
**FIELD OPERATIONS MASTER PLAN UPDATE**  
**PROJECT 161733**

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and DWL Architects + Planners, Inc, an Arizona Corporation, ("Consultant") as of the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date").

**RECITALS**

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

**AGREEMENT**

The parties hereby agree as follows:

**1. Key Personnel; Other Consultants and Subcontractors.**

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
  - a. Project Manager.
    - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
    - (2) The City must approve the designated Project Manager.
  - b. Project Team.
    - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
    - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
  - c. Discharge, Reassign, Replacement.
    - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
    - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
  - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 Compliance.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with

any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

### 3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

## 4. **Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$69,800 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
  - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
- b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
- c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
- b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

## 5. **Billings and Payment.**

### 5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

### 5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
  - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

### 5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

**6. Termination.**

6.1 **For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 **For Cause.** City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of \$2,000,000 for each claim and a \$4,000,000 annual aggregate limit.
- d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).



8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 **Subcontractors.** Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.8 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

12. **Notices.**

12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.

- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

DWL Architects + Planners, Inc.  
 c/o Peter Pascu  
 Executive Vice President  
 2333 North Central Avenue  
 Phoenix, Arizona 85004

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
 c/o Michael A. Johnson  
 City of Glendale Engineering Department  
 5850 West Glendale Avenue, Suite 315  
 Glendale, Arizona 85301

With required copy to:

City Manager  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

City Attorney  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

- c. Concurrent Notices.
  - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
  - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
  - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.
- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

**13. Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

**14. Entire Agreement; Survival; Counterparts; Signatures.**

14.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.

- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

14.2 **Interpretation.**

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

14.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

14.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

14.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

14.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

14.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

**15. Term.** The term of this Agreement commences upon the Effective Date and continues for a one (1) year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional one (1) year. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

**16. Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**17. Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

---

By: Kevin R. Phelps  
Its: City Manager

ATTEST:

---


Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

---

Michael D. Bailey  
City Attorney

DWL Architects + Planners, Inc.,  
an Arizona Corporation



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By: Peter Pascu  
Its: Executive Vice President

**EXHIBIT A**  
**Professional Services Agreement**

**PROJECT**

Field Operation Facilities Master Plan

Provide architectural master planning services on the City of Glendale Field Operation Facilities located at 6210 West Myrtle Avenue, Glendale, Arizona

**EXHIBIT B**  
**Professional Services Agreement**

SCOPE OF WORK

Field Operation Master Planning Services

Basic Services:

DWL Architects + Planners, Inc. (DWL) will provide architectural master planning services on the City of Glendale Field Operation Facilities located at 6210 W. Myrtle Avenue, Glendale, Arizona. Basic Services will include the following tasks and services:

Task 1: Attend kick-off meeting with the Owner to discuss channels of communication, procedures, schedule, and key expectations associated with the update of the Master Plan.

Task 2: Perform condition assessments of existing buildings and site. Task 2 will include:

- A. Update and develop necessary background documents of each building and site components to facilitate towards the development of Master Plan.
- B. Perform visual site survey of existing facilities to document existing departments and space usage of each building, including Spring City, Lazy J Trailer Park, and Retention Area.
- C. Perform code reviews related to Fire Separation Distance, Building Classification, Exiting, Energy Code, and ADA requirements.
- D. Evaluate condition of existing buildings and components, including visual observation of structural, mechanical, plumbing, electrical, and fire protection systems.
- E. Evaluate existing Parking, Traffic Circulation, and Security conditions.
- F. Prepare an assessments draft report for stakeholder's review and comments, and prepare a final assessments report.

Task 3: Needs assessments and goal setting. Task 3 will include:

- A. Prepare Questionnaire Form, and distribute to all stakeholders.
- B. Interview directors, supervisors, and operators per each Department and reconcile the results.
- C. Prepare draft Space Programming and Relationship Matrix.
- D. Attend program verification meetings with the stakeholders.
- E. Prepare a final Space Programming and Relationship Matrix document

Task 4: Master Plan Development. Task 4 will include:

- A. Develop Master Plan Concepts including Goals & Priorities, Design Guideline, and Planning for the future growth.
- B. Develop Plan Options, along with associated rough probable budgetary costs, and Recommendations for review and comments by stakeholders.
- C. Attend meetings with the stakeholders to review Plan Options.
- D. Prepare the draft Master Plan.
- E. Attend a meeting with the stakeholders to review the draft Master Plan.
- F. Document and submit the final Master Plan.

As a part of \$20,000 Allowance, DWL will provide preliminary architectural design services of a solid waste/ multi-use building at the northwest corner of the Field Operation Facilities.

**EXHIBIT C**  
**Professional Services Agreement**

SCHEDULE

DWL Architects + Planners, Inc. will be ready to begin work immediately upon receipt of the Notice to Proceed (NTP). The final Master Plan Package will be delivered to the City of Glendale within approximately ninety (90) calendar days from NTP

Schedule by Tasks:

Day 1

Task 1: Attend kick-off meeting

Day 2 through Day 21

Task 2: Perform condition assessments of existing buildings and site.

Day 17 through Day 37

Task 3: Needs assessments and goal setting.

Day 38 through Day 70

Task 4: Master Plan Development

Day 64 through Day 90

Preliminary Design of Solid Waste/ Multi-use Building.

**EXHIBIT D**  
**Professional Services Agreement**

COMPENSATION

**METHOD AND AMOUNT OF COMPENSATION**

Compensation shall be based on hourly rates plus estimated allowance for reimbursable expenses.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$69,800.

**DETAILED PROJECT COMPENSATION**

Architectural Master Plan Services	\$ 45,800
Owner Contingency	\$ 2,500
Reimbursable Expenses	\$ 1,500
Allowance	\$ 20,000
Total:	\$ 69,800





Legislation Description

**File #:** 16-638, **Version:** 1

**AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH PROJECT ENGINEERING CONSULTANTS, LTD., FOR THE 91ST AVENUE IMPROVEMENTS PROJECT**

Staff Contact: Jack Friedline, Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a Professional Services Agreement with Project Engineering Consultants, Ltd., in an amount not to exceed \$83,282 for the 91st Avenue Improvements project.

**Background**

The 91st Avenue Improvements project will design a right turn lane into the Y-Lot adjacent to the University of Phoenix Stadium. The design will also include sidewalk, a bike lane, street lighting, landscape upgrades and the reconfiguration of a traffic signal and striping at intersection of Maryland Avenue and 91st Avenue.

**Analysis**

Project Engineering Consultants, Ltd. was selected from the pre-qualified Engineering Consultants On-Call List to provide the necessary services. Staff anticipates issuing a Notice to Proceed in January, with completion of this design project before the end of March 2017.

**Community Benefit/Public Involvement**

The purpose of the turn lane on 91st Avenue is to minimize traffic congestion and encourage a more efficient loading of the parking lot during events at the University of Phoenix Stadium and Gila River Arena.

**Budget and Financial Impacts**

Funds are available in the Fiscal Year 2016-17 Capital Improvement Plan Budget. Expenditures with Project Engineering Consultants, Ltd. shall not exceed \$83,282 for the entire term of the Agreement.

Cost	Fund-Department-Account
\$83,282	1980-68124-550800, Streets Construction

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

## PROFESSIONAL SERVICES AGREEMENT

91<sup>st</sup> Avenue Improvements  
Project 161718

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Project Engineering Consultants, Ltd., an Arizona Corporation, ("Consultant") as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ ("Effective Date").

### RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

### AGREEMENT

The parties hereby agree as follows:

#### 1. **Key Personnel; Other Consultants and Subcontractors.**

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
  - a. **Project Manager.**
    - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
    - (2) The City must approve the designated Project Manager.
  - b. **Project Team.**
    - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
    - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
  - c. **Discharge, Reassign, Replacement.**
    - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
    - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. **Subcontractors.**

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 **Standard.** Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
  - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.**

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 **Coordination; Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with

any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

### 3.5 Work Product.

- a. **Ownership.** Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. **Delivery.** Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. **City Use.**
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

## 4. **Compensation for the Project.**

- 4.1 **Compensation.** Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$83,282 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
  - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
  - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
  - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 **Allowances.** An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
  - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
  - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
  - d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.
- 4.4 **Expenses.** City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
  - b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
  - c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

**5. Billings and Payment.**

5.1 **Applications.**

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 **Payment.**

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
  - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 **Review and Withholding.** City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. **Professional Liability.** Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of **\$1,000,000** for each claim and a **\$1,000,000** annual aggregate limit.
- d. **Worker's Compensation:** Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 **Waiver of Subrogation.** Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).



8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 **Subcontractors.** Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.8 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. **Notices.**

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.

- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Michael D. Heaton  
c/o Project Engineering Consultants, Ltd.  
2310 West Mission Lane; Suite #4  
Phoenix, AZ 85021

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
c/o Wade Ansell  
5850 West Glendale Avenue, Suite 315  
Glendale, Arizona 85301

With required copy to:

City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. **Entire Agreement; Survival; Counterparts; Signatures.**

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. **Term.** The term of this Agreement commences upon the Effective Date and continues for a one (1) year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional one (1) year, consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. There are no automatic renewals of this Agreement.

15. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Project
- Exhibit B Scope of Work
- Exhibit C Schedule
- Exhibit D Compensation

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

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By: Kevin R. Phelps  
Its: City Manager

ATTEST:

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Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

---

Michael D. Bailey  
City Attorney

Project Engineering Consultants, Ltd.  
an Arizona Corporation



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By: Michael D. Heaton  
Its: Project Manager/Partner

**EXHIBIT A**  
**Professional Services Agreement**

**PROJECT**

Project Engineering will be the prime Consultant to the City of Glendale to prepare design plans to construct a right turn lane for the Westgate Parking Lot (P1). The new turning lane will be on 91st Avenue north of Maryland Avenue. The new lane will service a recently constructed parking lot in the Westgate Entertainment District in Glendale. Improvements will also include a sidewalk, street lighting, a bike lane, landscaping and irrigation along the west side of 91<sup>st</sup> Avenue between Maryland Avenue and 6250 North Intersection. The new right turn lane at the parking lot entrance will facilitate safe turning movements into the new facility.

**EXHIBIT B**  
**Professional Services Agreement**

**SCOPE OF WORK**

A full scope is attached. A scope summary is listed below:

- Task 1 General Project Administration
- Task 2 Topographic Survey/Data Collection
- Task 3 Utility Research & Coordination
- Task 4 Roadway Design(Hydrant, Bike Lane, Sidewalk, etc)
- Task 5 Structural (Signal & Sign Foundation)
- Task 6 Striping, Signal, & Traffic
- Task 7 Landscape Plans
- Task 8 Irrigation Plans
- Task 9 Specifications, Quantities, & Cost Estimate

**EXHIBIT C**  
**Professional Services Agreement**

**SCHEDULE**

A proposed schedule is attached. A summary is shown below:

Survey	3 weeks
30% Plans	4 weeks
City Review	1 weeks
60% Plans	3 weeks
City Review	1 weeks
90% Plans	3 weeks
City Review	1 weeks
100% PS&E	2 weeks
Final PS&E	18 weeks

**EXHIBIT D**  
**Professional Services Agreement**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

Compensation shall be hourly rates plus allowable reimbursable expenses.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$83,282.

**DETAILED PROJECT COMPENSATION**

A complete breakdown is attached. Summary as follows:

Total Direct Fee - 91st Avenue Improvements = \$71,382

Electrical Subconsultant - CR Engineers (Allowance) = \$7,900

Geotechnical Subconsultant - Ninyo & Moore (Allowance) = \$4,000

**TOTAL NOT TO EXCEED FEE = \$83,282.**





## Legislation Description

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**File #: 16-639, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION OF SRP FACILITIES WITH SALT RIVER VALLEY WATER USERS' ASSOCIATION AND APPROVAL OF A BUDGET APPROPRIATION TRANSFER FOR THE RELOCATION OF IRRIGATION FACILITIES IN THE INTERSECTION OF 59TH AND OLIVE AVENUES**

Staff Contact: Jack Friedline, Director, Public Works

### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into an Agreement for Construction of SRP Facilities with Salt River Valley Users' Association (SRP) in an amount not to exceed \$360,688 for the relocation of irrigation facilities as a part of the City's 59th and Olive Avenue Intersection Improvements. Staff is also seeking approval of a budget appropriation transfer in the amount of \$126,251 to fund this Agreement.

### **Background**

The 59th and Olive Intersection Improvements project (Project Number 151622) will increase the traffic capacity and safety for an important city intersection. The relocation of SRP's irrigation facilities is a crucial part of the completion of the city's project.

### **Analysis**

The Engineering division procured the services of AECOM Technical Services, Inc. (AECOM) for the design of the intersection capacity improvements. AECOM identified utility conflicts and submitted the project design to utilities as a part of the design process. SRP reviewed the plans and, with AECOM, identified which of its facilities needed relocation. The city's intersection improvements project will construct a bus bay for which an SRP irrigation line will need to be upgraded and relocated.

### **Previous Related Council Action**

On April 12, 2016, Council approved a Professional Services Agreement with AECOM Technical Services, Inc. for the design of the 59th and Olive Avenues Intersection Improvements Project.

### **Community Benefit/Public Involvement**

Well designed and safe infrastructure is an important element of strong neighborhoods and business corridors and is critical for the attraction of quality economic development.

### **Budget and Financial Impacts**

Funds are available in the fiscal years 2016-17 Capital Improvement Program in the amount of \$234,437 for

the construction agreement with SRP. Staff is requesting a budget appropriation transfer from DIF Contingency in an amount of \$126,251 to cover the total construction cost not to exceed \$360,688.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$360,688</b>	<b>1600-67817-550800, 59th &amp; Olive</b>

Capital Expense? Yes

Budgeted? No

Requesting Budget or Appropriation Transfer? Yes

If yes, where will the transfer be taken from? DIF Contingency



## **AGREEMENT FOR CONSTRUCTION OF SRP FACILITIES**

This Agreement for construction, modification or relocation of SRP irrigation facilities ("Agreement") is entered into between the Salt River Valley Water Users' Association, a corporation organized under the laws of the Territory of Arizona, ("SRP"), and the City of Glendale, an Arizona municipal corporation ("City"). SRP and City may be referred to as "Party", or collectively as "Parties".

WHEREAS, City has requested that SRP irrigation facilities be modified or relocated to accommodate certain improvement or other development needs of City for Olive Ave & 59th Ave Intersection Improv located at Olive Ave & 59th Ave, and;

WHEREAS, SRP is willing to construct such accommodation, in whole or in part, or to permit the City to construct such accommodation in whole or in part ("Work") with certain conditions.

THEREFORE, in consideration of the matters described herein and of the mutual benefits and obligations set forth herein, SRP and City agree as follows:

- 1) SRP shall perform the Work listed on the Construction Bid Summary Section I, and optional Section II, if offered by SRP and selected by the City. The Construction Bid Summary is attached hereto as Exhibit A. The Work is further detailed in SRP's Plans & Specifications, which are attached hereto as Exhibit B.
- 2) City shall select the desired option below by checking the box.
  - OPTION A - Work that must be performed by SRP. City shall pay SRP actual costs not to exceed \$13,796.00 as set forth in Section I of Exhibit A.
  - OPTION B - Work that must be performed by SRP and optional pipeline construction by SRP. City shall pay SRP actual costs not to exceed \$360,688.00 as set forth in Sections I and II of Exhibit A.
- 3) The City shall perform any Work not included in the Work to be performed by SRP and comply with following conditions:
  - a. City shall obtain such other licenses, permits, and agreements as required by any governing bodies having jurisdiction over the location which is the subject hereof.
  - b. Construction shall not commence until receipt of SRP's Notice to Proceed.
  - c. City shall notify the SRP inspector and request a dryup if necessary to perform the Work. SRP cannot assure a dryup, which may only be possible for brief periods and certain times of the year.



- d. City shall be liable for any and all damage to the property of the United States of America (USA), SRP, the Salt River Project Agricultural Improvement and Power District, or any other person or entity, caused by or arising out of its performance hereunder, or the performance of any of its contractors or subcontractors. To the extent permitted by law, City shall indemnify and hold harmless the USA, SRP and the Salt River Project Agricultural Improvement and Power District (Indemnitees), against and from any claims, actions, loss, damage, costs, expenses, or other liabilities for property damage or personal injuries in any way caused by or arising out of the City's performance hereunder, or the performance of its contractors or subcontractors. City's obligation to Indemnitees pursuant to this paragraph shall extend to and encompass all costs incurred by Indemnitees in defending against such claims or actions, and shall survive termination of this Agreement.
  - e. City warrants that construction shall conform to SRP plans and specifications and be free from defects in material and workmanship. If defect in materials or workmanship or other non-conformance with plans and specifications appears within one year from the date of SRP acceptance, and SRP so notifies City within a reasonable time after its discovery, City shall immediately correct the non-conformity at City's sole cost and expense within thirty (30) calendar days of notice by SRP. If City fails to correct the non-conformity within the time period specified by SRP, SRP may correct the non-conformity and City will pay for the cost of performing the Work.
  - f. In the event the City is unable to complete its Work, SRP shall have the right, but not be obligated, to complete the Work by whatever method SRP deems appropriate. This includes providing or obtaining any labor, materials or equipment and perform any part of the incomplete Work or Work that must be redone. The cost of completing the Work, along with reasonable administrative charges or other damages caused by delays in completing the Work shall be charged to City.
- 4) Changes to the plans and specifications may only be made by SRP. SRP shall provide City with prior written notice of any changes in costs. City shall agree in writing to any changes in cost to the City.
  - 5) This Agreement shall be governed in all respects by the laws of the state of Arizona.
  - 6) Either Party may terminate this Agreement at any time by providing thirty (30) days written notice to the other Party. In the event the City desires to terminate this Agreement prior to the completion of SRP's work, City shall reimburse SRP for the actual costs incurred as well as reasonable costs required to restore the



facilities of SRP, the USA or the Salt River Project Agricultural Improvement and Power District.

- 7) If City's sub-contractor(s) file a lien against the premises where the Work and services are being performed, City shall, at its own expense, promptly take any and all action necessary to cause any such lien to be released or discharged. If City does not satisfy the lien in a prompt manner, SRP may satisfy the amount of the lien and then City shall reimburse SRP for the amounts paid in settling the lien.
- 8) In the event of dispute involving the terms of this Agreement or an allegation of material breach by either Party, the Parties reserve all rights and remedies, arising by law or equity, but shall waive any right to demand a trial by jury in an action commenced in court with respect to any legal proceeding arising out of or relating to this Agreement.
- 9) This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.
- 10) This Agreement is subject to the provisions of ARIZ. REV. STAT. § 42-17106.
- 11) Notices:

If to City:  
City of Glendale  
Mr. Kiran Guntupalli  
5850 W Glendale Ave  
Glendale, AZ 85301

If to SRP:  
SRP  
Attn: Robert Larchick  
Water Engineering and Transmission, MS PAB 246  
P.O. Box 52025  
Phoenix, Arizona 85072-2025

- 12) This Agreement is binding upon the Parties hereto, and their respective successors and assigns.
- 13) All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to SRP in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, SRP shall not disclose data generated in the performance of the services to any third person without the prior written consent of the City, or its designee.




- 14) In the event there is a breach of this Agreement, the prevailing Party to litigation shall be entitled to its reasonable attorney's fees and court costs. It is further understood and agreed that in the event any dispute arises regarding this Agreement or the terms and conditions hereof, the sole venue for litigation regarding this Agreement shall be in the Courts of Maricopa County, Arizona.
- 15) This Agreement represents the entire agreement of the Parties and supersedes all negotiations, representations, prior discussions or preliminary agreements between the Parties. No statements, warranties or representations of any kind not created in this Agreement shall in any way bind the Parties. This Agreement can only be changed or modified by a writing signed by all of the Parties hereto.
- 16) No term or provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall affect the validity or enforceability of the remaining terms and provisions of this Agreement. Any term found to be invalid or unenforceable shall be deemed as severable from the remainder of the Agreement.
- 17) This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no individual performing under this Agreement on behalf of SRP will be considered a City employee, and that no rights of City civil service, City retirement or City personnel rules shall accrue to such individual. SRP shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold harmless the City with respect thereto.
- 18) SRP shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on SRP, a request for an amendment may be submitted.
- 19) This Agreement is in the nature of a personal services agreement and SRP shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.
- 20) This Agreement is may be canceled by City for a conflict of interest pursuant to Arizona Revised Statutes §38-511.



IN WITNESS HEREOF, each Party has caused the execution of this Agreement by the undersigned, who is vested with authority to bind such Party to the terms and conditions herein.

“SRP”  
Salt River Valley Water Users’  
Association, an Arizona corporation

“City”  
City of Glendale, an Arizona  
municipal corporation

  
\_\_\_\_\_  
Robert E. Larchick, P.E.  
Director  
Water Engineering and Transmission

\_\_\_\_\_  
City Representative

11/30/2016  
\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Title of Representative

\_\_\_\_\_  
Date Signed



**EXHIBIT A**  
**Construction Bid Summary**

File No: SRP# 1500705

SRP# 1500705  
OLIVE AVE & 59th AVE INTERSECTION IMPROVEMENTS

11/30/2016

**SECTION I - Items by SRP**

Item	Item Description	Unit	Quantity	\$/Unit	Bid	Net Bid
1.	Inspection	LS	1	3,229	3,229	3,229
2.	Survey	LS	1	3,326	3,326	3,326
3.	Administrative Support	LS	1	2,187	2,187	797
4.	Construction Engineering	LS	1	797	797	2,187
5.	As Built Drawings	LS	1	1,494	1,494	1,494
6.	Project Supervision	LS	1	696	696	696
7.	Cost & Scheduling	LS	1	2,067	2,067	2,067
<b>SECTION I TOTALS</b>					<b>\$13,796</b>	<b>\$13,796</b>

**SECTION II - Bid Items**

Item	Item Description	Unit	Quantity	\$/Unit	Bid	Net Bid
1.	30" RGR Conc Pipeline CL5	LF	256	255	65,366	65,366
2.	42" RGR Conc Pipeline CL5	LF	312	307	95,641	95,641
3.	Temp AC Patching	LF	1	28278	28,278	28,278
4.	Temp Sidewalk & Curb Patching	LS	1	29832	29,832	29,832
5.	Pole Braces	LS	2	5200	10,400	10,400
6.	Mobilize, Dust Control, Cleanup	LS	1	7534	7,534	7,534
7.	Construction Supervision	LS	1	5578	5,578	5,578
8.	Security, Traffic Control, Trench Safety	LS	1	63,750	63,750	63,750
9.	Removals	LS	1	40,513	40,513	40,513
<b>SECTION II TOTALS</b>					<b>\$346,892</b>	<b>\$346,892</b>

Summary:	SECTION I - Items by SRP	\$13,796
	SECTION II - Bid Items	\$346,892
	<b>NET BID =</b>	<b>\$360,688</b>

**NOTES:**

1. Items listed in this Bid Summary constitute a total bid which valid for 60 days and expires on: **January 29, 2017**
2. All utility conflicts must be resolved and completed prior to the arrival of SRP Construction forces.
3. Items and/or services not specifically listed in the details and quantities above are excluded.
4. This Construction Estimate Bid Summary was prepared without input from SRP Water Construction.

rb





## Legislation Description

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**File #: 16-604, Version: 1**

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### **AUTHORIZATION TO ENTER INTO A MONTH-TO-MONTH BANKING AGREEMENT WITH BANK OF AMERICA CORPORATION**

Staff Contact: Vicki Rios, Director, Budget and Finance

#### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a month-to-month banking agreement with Bank of America Corporation, retroactively to December 1, 2016; and to approve the expenditure of funds in an amount not to exceed \$96,000.

#### **Background**

Bank of America Corporation (Bank of America) provides banking services including depository, cash vault, merchant card processing, safekeeping, ACH, disbursements, wire transfers, reconciliation, image and other miscellaneous services to the city. In December 2005, the city issued Request for Proposals (RFP) 05-53 to solicit proposals for banking services. Through this process, Bank of America was awarded Contract #C-6668 which was approved administratively in November 2006. The agreement had an initial two-year term beginning December 1, 2006 through November 30, 2008 with an option to extend the terms of the contract for an additional eight years in two years increments. Amendments No. 1 through No. 4 were approved administratively and extended the terms of the agreement from December 2, 2009 through November 30, 2014. Amendment No. 5 was approved by the Council on March 24, 2015 and extended the terms of the agreement from December 1, 2014 through November 30, 2016.

In October 2016, the city issued RFP 17-17 to solicit proposals for general banking and depository services, prepaid debit cards, merchant card processing services, custody services, and purchasing card and virtual card services. The city expects to select a vendor early in 2017 and implement any new service providers by the end of fiscal year 2017.

#### **Analysis**

Banking services are critical to the city's day-to-day operations. Bank of America services the checking accounts the city uses for daily deposits, payments to vendors, and employee payroll. This month-to-month agreement with Bank of America allows the city to continue receiving banking services with the same terms, conditions and schedule of fees while completing the RFP process to select a banking services provider, negotiating any new contracts, and potentially implementing new service providers.

The contract with Bank of America is retroactive to December 1, 2016 and may be terminated upon a 30-day written notice. The retroactive date is necessary because the currently banking agreement expired on

November 30, 2016 but there were delays in negotiating the terms of the month-to-month agreement with Bank of America.

Banking service fees fluctuate from month-to-month based on the volume of the transactions and they are estimated to be approximately \$8,000 per month. Staff anticipates completing the selection process for banking services in the early months of 2017 and completing implementation with any new service providers by the end of this fiscal year. However, if the transition results in implementation of new service providers, the process could take up to a full year. Therefore, staff is requesting authority to expend funds up to \$96,000 (12 months x \$8,000 per month) under this month-to-month agreement.

**Previous Related Council Action**

On March 24, 2015, Council approved Amendment No. 5 of Contract #C-6668.

**Budget and Financial Impacts**

Actual banking service fees are allocated to the funds which have bank accounts. Currently the general fund and landfill have existing accounts with Bank of America. The general fund has nine accounts and landfill has one account. Banking service fees fluctuate from month to month based on the volume of the transactions but they are estimated to be approximately \$8,000 per month.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$86,400</b>	<b>1000-11390-520430; Banking Fees</b>
<b>\$9,600</b>	<b>2440-17710-520430; Banking Fees</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

# Agreement for Government Banking Services

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This month-to-month Government Banking Services agreement (the "GBSA") is made and entered into as of this 1 day of December, 2016, between the City of Glendale (the "Client") and Bank of America, N.A., a national banking association, ("Bank") each, a "Party". Client and Bank are referred collectively as "Parties."

WHEREAS, on December 1, 2006, the Parties entered into an agreement ("Agreement") under which Bank agreed to provide banking services for approximately 8 years. The Agreement was subsequently superseded by the Bank's *Treasury Services Terms and Conditions* booklet (including user documentation and set-up forms) signed on December 17, 2013; and

WHEREAS, Client wants to continue to receive banking services on a month to month basis; and

WHEREAS, the parties wish to enter into this GBSA solely for the purpose of having the Bank to continue to provide banking services on the terms and conditions as described herein;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Integrated Agreement. The Agreement between Client and Bank related to the Services shall this consist of this GBSA, including the fee schedule attached as, Exhibit A; the Bank's *Treasury Services Terms and Conditions* booklet (including user documentation and set-up forms) dated December 17, 2013; (the "Booklet"), which is attached as Exhibit B; and Bank's *Deposit Agreement and Disclosures* booklet, which is attached as Exhibit C. In the event of conflict among any of the provisions of the preceding documents, such documents shall govern in the following order of precedence: (1) this GBSA and Exhibit A; (3) the Booklet (including user documentation and set-up forms) attached hereto as Exhibit B, and (4) Bank's *Deposit Agreement and Disclosures* booklet, attached hereto as Exhibit C. The integrated agreement supersedes all prior negotiations, representations, statements and agreements, whether written or oral, regarding the Services.
2. Commencement of Performance. Except as otherwise agreed by the Parties, Bank shall begin performing each Service upon execution and delivery of this GSBA, the applicable service agreement(s) and related set-up form(s). Bank shall continue to perform such Services during the term of this GSBA, subject to the parties' rights to terminate the Agreement as provided in the GBSA or Booklet.
3. Term. This Agreement is for a month to month term beginning December 1, 2016, and may be terminated by either party upon 30 days written notice to the other.
4. Services. Services shall be provided pursuant to this GSBA and any attachments hereto, including, but not limited to, the Booklet (including user documentation and set-up forms). Services utilized but not covered on Exhibit A, and assessments such as *FDIC charges*, will appear on the Client's monthly account analysis statements. Pricing for additional services and options that the Client may want to add in the future will be negotiated at the time of set-up and upon execution of applicable documentation, if required.
5. Dispute Resolution: Any dispute or controversy concerning the use of Services described in the Booklet will be decided by binding arbitration conducted in the United States of America (except as you and we expressly agree otherwise) in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award made by the arbitrator may be entered in any court having jurisdiction.
6. Insurance: The Bank agrees to provide insurance certificates evidencing coverage of worker's compensation, general liability, Financial Institution (Fidelity) Bond, and cyber liability coverage. The Bank reserves the right to self insure any lines of coverage.
7. Notices. Except as may otherwise be specified in the set-up form(s), notices to either Party shall be sent by U.S. mail, postage prepaid, to the addresses set forth below.

Client: The City of Glendale  
5850 West Glendale Avenue, Suite 317  
Glendale, Arizona 85301

Bank: Bank of America, N.A.  
ATTN: Larry Giandon,  
COLLIER CENTER AZ1-200-22-32  
201 E WASHINGTON ST  
PHOENIX, AZ, 85004-2428

Changes in the respective address set forth above may be made from time to time by any Party upon written notice to the other Party.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the date first written above.

**City of Glendale**  
\_\_\_\_\_  
(CLIENT'S LEGAL NAME)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

**Bank of America, N.A.**  
\_\_\_\_\_  
(BANK NAME)

By: \_\_\_\_\_  
*Larry D. Giandon*  
(Signature)

Name: **Larry Giandon**  
(Print or Type)

Title: **Senior Vice President; Market Leader**  
(Print or Type)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

# **Exhibit A**

**A Proposed Depository Analysis Statement**  
**Glendale, AZ City of      EXHIBIT A - PRICING**



Month of:                      November 2014  
 Bid Term(year):              2

Balance Summary	Balance
AVG POSITIVE LEDGER BALANCE	\$51,597,969.00
AVG LEDGER BALANCE	\$51,597,969.00
LESS AVG FLOAT	\$1,874,731.00
AVG COLLECTED BALANCE	\$49,723,238.00
AVG NEGATIVE COLL BALANCE	\$27,354.00
AVG POSITIVE COLL BALANCE	\$49,750,592.00
LESS RESERVES	\$0.00
AVAIL BAL FOR EARNINGS CREDIT	\$49,750,592.00
AVAIL BALANCE REQUIRED	\$54,250,715.56
NET AVAIL BALANCE	(\$4,500,123.56)
REQ RESERVES ON NET AVAIL BALANCE	\$0.00
DEFICIT COLL BALANCE	(\$4,500,123.56)
AVAIL BAL FOR EARNINGS CREDIT	\$49,750,592.00
EARNINGS ON AVAIL BALANCE	\$6,133.64
LESS TOTAL SERVICE CHARGES	\$6,688.45
DEFICIT POSITION	(\$554.81)
CURRENT PERIOD SERVICE CHARGE	\$554.81
<b>RATE INFORMATION</b>	
EARNINGS ALLOWANCE RATE	0.15%
RESERVE REQUIREMENT RATE	0.00%
COLLECTED OVERDRAFT INTEREST CHARGE RATE	*see footnote below
MULTIPLIER (POSITIVE COLLECTED BALANCE REQUIRED PER \$1.00 OF SERVICE CHARGE)	8,111.11

The Earnings Allowance Rate (EAR) on your account is used to calculate your Earnings Allowance, which is based on your average investable balance. Your EAR may vary; and, at our discretion, we may change this rate at any time. When determining the EAR rate, Bank of America considers a number of prevailing market indicators.

The Collected Overdraft Interest Charge Rate on your account is used to calculate your Collected Overdraft Interest Charge, which is based on your negative collected balance. The rate on your account may vary; and, at our discretion, we may change this rate at any time. When determining this rate, Bank of America considers a number of factors and generally bases this rate on our Prime Rate plus a margin. The margin may change from time to time.

Prices are valid for 90 days from receipt of this pro-forma.  
 Other fees may be assessed in accordance with Bank of America's Schedule of Fees.

**Confidential to Bank of America/Merrill Lynch**

# A Proposed Depository Analysis Statement

Glendale, AZ City of      EXHIBIT A - PRICING



Month of:                      November 2014

Bid Term(year):              1

AFP Code	Service Description	R/T	Volume Range	Number of Units	Proposed Price	Service Charge	Balance Required
<b>Depository Services</b>							
010000	ACCOUNT MAINTENANCE		1+	10	\$8.0000	\$80.00	\$648,888.80
010020	ZBA MASTER ACCOUNT MAINT		1+	1	\$15.0000	\$15.00	\$121,666.65
010021	ZBA SUBSIDIARY ACCOUNT MAINT		1+	3	\$10.0000	\$30.00	\$243,333.30
010100	DEBITS POSTED ELECTRONIC		1+	150	\$0.0900	\$13.50	\$109,499.99
010100	DEBITS POSTED-OTHER		1+	28	\$0.1000	\$2.80	\$22,711.11
010101	CREDITS POSTED ELECTRONIC		1+	691	\$0.3500	\$241.85	\$1,961,671.95
010310	DEPOSIT ACCOUNT STATEMENTS	T	1-1	0	\$0.0000	\$0.00	\$0.00
010310	DEPOSIT ACCOUNT STATEMENTS	T	2+	9	\$0.0000	\$0.00	\$0.00
010310	PAPER DEPOSIT STATEMENT MAILED		1+	1	\$25.0000	\$25.00	\$202,777.75
100000	BANKING CENTER DEPOSIT		1+	1	\$0.3500	\$0.35	\$2,838.89
100100	ITEM PROCESSING DEPOSIT		1+	1	\$0.3500	\$0.35	\$2,838.89
100100	VAULT DEPOSIT		1+	357	\$0.3500	\$124.95	\$1,013,483.19
100200	CHECK DEPOSIT-ICL or RDSO		1+	36	\$0.2500	\$9.00	\$72,999.99
100209	TRANSMISSION MAINTENANCE		1+	2	\$100.0000	\$200.00	\$1,622,222.00
10021Z	CKS DEP PRE-ENCODED ITEMS		1+	5,020	\$0.0420	\$210.84	\$1,710,146.43
100229	IMAGE DEPOSITED ITEMS-ICL		1+	20,368	\$0.0014	\$28.52	\$231,289.92
100229	IRD DEPOSITED ITEMS- ICL		1+	0	\$0.0018	\$0.00	\$0.00
10022Z	CKS DEP UN-ENCODED ITEMS		1+	19	\$0.0019	\$0.04	\$292.81
100310	CKS DEPOSITED FOREIGN ITEMS		1+	6	\$0.0000	\$0.00	\$0.00
100400	RETURNS-CHARGEBACK		1+	30	\$2.0000	\$60.00	\$486,666.60
100401	RETURNS-ALTERNATE ADDRESS SVCS		1+	1	\$0.0000	\$0.00	\$0.00
100402	RETURNS-RECLEAR		1+	27	\$1.5000	\$40.50	\$328,499.96
100402	RETURNS-RECLEAR SERVICES		1+	1	\$0.0000	\$0.00	\$0.00
150102	GENERAL CHECKS PAID TRUNCATED		1+	1,211	\$0.1000	\$121.10	\$982,255.42
150410	STOP PAY AUTOMATED>12 MONTHS		1+	3	\$10.0000	\$30.00	\$243,333.30
<b>Total Depository Services</b>						<b>\$1,233.79</b>	<b>\$10,007,416.95</b>
<b>Commercial Deps-Cash Vault</b>							
100106	DEP CONDITIONING-SURCHG-VAULT		1+	40	\$0.0000	\$0.00	\$0.00
100111	COIN DEPOSIT-NON STD BAG-VLT		1+	22	\$4.0000	\$88.00	\$713,777.68
100113	COIN DEPOSIT-STD BAG-VLT		1+	1	\$2.0000	\$2.00	\$16,222.22
10011Z	CURR/COIN DEP/\$100-VLT		1+	7,348	\$0.0900	\$661.32	\$5,364,039.27
100142	CHANGE ORDER-AUTO-VLT		1+	3	\$2.0000	\$6.00	\$48,666.66
100142	CHANGE ORDER-STANDING-VLT		1+	25	\$2.0000	\$50.00	\$405,555.50
100144	COIN SUPPLIED/ROLL-VLT		1+	1,030	\$0.0900	\$92.70	\$751,899.90

# A Proposed Depository Analysis Statement

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100148	CURRENCY SUPP/\$100-NONSTD-VLT		1+	341	\$0.0800	\$27.28	\$221,271.08
10014A	CURRENCY SUPP/\$100-STD-VLT		1+	1	\$0.0600	\$0.06	\$486.67
100501	DEPOSIT CORRECTION-CASH		1+	4	\$4.0000	\$16.00	\$129,777.76
101010	BANK CONTRACTED TRANSP-VAULT		1+	1	\$1,743.2000	\$1,743.20	\$14,139,286.95
109999	CHANGE ORDER REFUSAL-VLT		1+	1	\$0.0000	\$0.00	\$0.00
<b>Total Commercial Deps-Cash Vault</b>						<b>\$2,686.56</b>	<b>\$21,790,983.68</b>
<b>General ACH Services</b>							
250000	ACH LV-MONTHLY MAINTENANCE		1+	1	\$10.0000	\$10.00	\$81,111.10
250000	ACH MONTHLY MAINTENANCE		1+	5	\$15.0000	\$75.00	\$608,333.25
250100	ACH CONSUMER OFF US DEBITS	R	1-25000	4,531	\$0.0950	\$430.45	\$3,491,386.74
250100	ACH CONSUMER ON US DEBITS	R	1-25000	913	\$0.0950	\$86.74	\$703,517.13
250101	ACH CONSUMER OFF US CREDITS	R	1-25000	3,572	\$0.0950	\$339.34	\$2,752,424.07
250101	ACH CONSUMER ON US CREDITS	R	1-10000	688	\$0.0950	\$65.36	\$530,142.15
250102	ACH LV OFF US ITEMS		1+	22	\$2.5000	\$55.00	\$446,111.05
250102	ACH LV ON US ITEMS		1+	6	\$1.5000	\$9.00	\$72,999.99
250120	ACH ORIGINATED ADDENDA		1+	28	\$0.0100	\$0.28	\$2,271.11
250150	ACH BLOCKS AUTH INSTRUCTIONS	R	1-10	4	\$0.0000	\$0.00	\$0.00
250200	ACH DEBIT RECEIVED ITEM		1+	150	\$0.0000	\$0.00	\$0.00
250201	ACH CREDIT RECEIVED ITEM		1+	682	\$0.0000	\$0.00	\$0.00
250302	ACH RETURN ITEM	R	1-200	14	\$2.5000	\$35.00	\$283,888.85
250501	ACH INPUT-FILE		1+	4	\$8.0000	\$32.00	\$259,555.52
250501	ACH LV-INPUT		1+	7	\$0.0000	\$0.00	\$0.00
250504	ACH INPUT-ECHANNEL		1+	2	\$8.0000	\$16.00	\$129,777.76
250640	ACH DELETE/REVERSAL		1+	1	\$7.0000	\$7.00	\$56,777.77
251050	ACH BLOCKS AUTH MAINTENANCE		1+	1	\$15.0000	\$15.00	\$121,666.65
251070	ACH NOTIF OF CHANGE (NOC)		1+	1	\$1.0000	\$1.00	\$8,111.11
259999	ACH OPTIONAL RPTS-ELECTRONIC		1+	4	\$0.7500	\$3.00	\$24,333.33
259999	ACH STANDARD RPTS-ELECTRONIC		1+	13	\$0.7500	\$9.75	\$79,083.32
<b>Total General ACH Services</b>						<b>\$1,189.91</b>	<b>\$9,651,490.90</b>
<b>Controlled Disbursement Services</b>							
159999	CPO ARP ISSUE NOT RECD NOTIF		1+	24	\$1.0000	\$24.00	\$194,666.64
159999	CPO ARP ISSUE POSTED NOTIF		1+	99	\$1.0000	\$99.00	\$802,999.89
159999	CPO ARP ISSUE RECD NOTIF		1+	117	\$1.0000	\$117.00	\$948,999.87
159999	CPO ARP O-S ISSUES NOTIF		1+	40	\$1.0000	\$40.00	\$324,444.40
159999	CPO ARP POSITIVE PAY NOTIF		1+	94	\$0.0000	\$0.00	\$0.00
<b>Total Controlled Disbursement Services</b>						<b>\$280.00</b>	<b>\$2,271,110.80</b>
<b>Wire Transfer Services</b>							
350000	CPO GP MTHLY MAINT BASIC		1+	1	\$20.0000	\$20.00	\$162,222.20
350103	ELEC WIRE OUT-DOMESTIC		1+	12	\$6.0000	\$72.00	\$583,999.92



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350123	ELEC WIRE OUT-BOOK DB		1+	7	\$4.0000	\$28.00	\$227,111.08
350300	INCOMING DOMESTIC WIRE		1+	4	\$6.0000	\$24.00	\$194,666.64
350320	BOOK CREDIT		1+	5	\$4.0000	\$20.00	\$162,222.20
350409	CPO WIRE TFR EOD SUMMARY NOTIF		1+	7	\$1.0000	\$7.00	\$56,777.77
350599	CPO GP CUST MNT TEMP STORAGE		1+	19	\$0.5000	\$9.50	\$77,055.55
	<b>Total Wire Transfer Services</b>					<b>\$180.50</b>	<b>\$1,464,055.36</b>
	<b>Account Reconciliation Services</b>						
150230	ARP STALE DATE MAINT		1+	2	\$0.0000	\$0.00	\$0.00
150240	ARP MAX DOLLAR MAINT		1+	2	\$0.0000	\$0.00	\$0.00
159999	ARP PPAY INPUT FILE-TRANS		1+	20	\$10.0000	\$200.00	\$1,622,222.00
200010	ARP FULL PPAY MAINT-PPR SUPP		1+	2	\$50.0000	\$100.00	\$811,111.00
200110	ARP FULL PPAY INPUT PER ITEM		1+	1,272	\$0.0700	\$89.04	\$722,213.23
200209	ARP VOID CANCEL ITEMS		1+	23	\$0.0000	\$0.00	\$0.00
200305	CPO ARP ONLINE REPORTS		1+	2	\$25.0000	\$50.00	\$405,555.50
	<b>Total Account Reconciliation Services</b>					<b>\$439.04</b>	<b>\$3,561,101.73</b>
	<b>Information Services</b>						
400052	CPO PREM PDR ACCOUNT		1+	10	\$18.0000	\$180.00	\$1,459,999.80
400055	CPO PREM CDR ACCOUNT		1+	9	\$18.0000	\$162.00	\$1,313,999.82
400272	CPO PREM PDR ITM STORED 12 MTH		1+	3,504	\$0.0500	\$175.20	\$1,421,066.47
400275	CPO PREM CDR ITEM		1+	2,503	\$0.0500	\$125.15	\$1,015,105.42
400299	CPO ONLINE SUBSCRIPTION		1+	1	\$0.0000	\$0.00	\$0.00
400299	CPO PREM IR MAINTENANCE		1+	1	\$0.0000	\$0.00	\$0.00
400340	CPO PER IMAGE ACCESS	T	1-10	9	\$0.0000	\$0.00	\$0.00
400340	CPO PER IMAGE ACCESS	T	11+	0	\$0.2500	\$0.00	\$0.00
400340	CPO PREM RESEARCH ITEM	T	1-100	0	\$0.0000	\$0.00	\$0.00
400340	CPO PREM RESEARCH ITEM	T	101+	108	\$0.0030	\$0.32	\$2,628.00
	<b>Total Information Services</b>					<b>\$642.67</b>	<b>\$5,212,799.51</b>
	<b>Image Services</b>						
151351	IMAGE RETRIEVAL		1+	8	\$0.2500	\$2.00	\$16,222.22
151399	IMAGE ARCHIVE-1 YEAR		1+	1,397	\$0.0100	\$13.97	\$113,312.21
151399	IMAGE MAINTENANCE CPO	T	1-1	0	\$10.0000	\$0.00	\$0.00
151399	IMAGE MAINTENANCE CPO	T	2+	2	\$10.0000	\$20.00	\$162,222.20
209999	PP IMAGE REQUESTED-CPO		1+	3	\$0.0000	\$0.00	\$0.00
	<b>Total Image Services</b>					<b>\$35.97</b>	<b>\$291,756.63</b>
	<b>Miscellaneous Services</b>						
150500	NONRELATIONSHIP CUST CK CASHED		1+	14	\$0.0000	\$0.00	\$0.00
	<b>Total Miscellaneous Services</b>					<b>\$0.00</b>	<b>\$0.00</b>
	<b>TOTAL ACTIVITY CHARGES</b>					<b>\$6,688.45</b>	<b>\$54,250,715.56</b>

# A Proposed Depository Analysis Statement

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Prices are valid for 90 days from receipt of this pro-forma of 11/24/14 , upon client accepting pro-forma pricing will be valid for 2 years from signed contract as long as completed within 90 days of pro-forma  
ECR will be valid for only one year of completed contract renewal and will be reviewed and evaluated based on current market conditions  
Other fees may be assessed in accordance with Bank of America's Schedule of Fees.

Confidential to Bank of America/Merrill Lynch

**A Proposed Depository Analysis Statement**

**Glendale, AZ City of      EXHIBIT A - PRICING**



# **Exhibit B**

## TREASURY SERVICES TERMS AND CONDITIONS BOOKLET

### Introduction

Thank you for choosing the Bank of America Corporation group of financial institutions for your worldwide treasury management business needs. We appreciate the opportunity to serve you. If you have any questions about our extensive array of treasury services (including the locations where each service is available) or about this Treasury Services Terms And Conditions Booklet (the "Booklet"), please contact your treasury services representative.

Capitalized terms used in this Booklet are defined in the Glossary. The terms "we," "us" and "our" refer to each of the Bank of America Corporation subsidiary banks which provide you a particular Service under the terms of this Booklet. The terms "you" and "your" refer to each Client identified on the Authorization and Agreement for Treasury Services.

This Booklet contains the terms and conditions under which we provide you worldwide treasury services. It is used in conjunction with the Account Agreement which covers account terms and conditions. Please read this Booklet carefully and keep it for your records.

By signing and returning the Authorization and Agreement for Treasury Services form, you agree to the General Provisions section of this Booklet (which contains terms and conditions applicable to all Services), except that you agree to the Software License section of the General Provisions only to the extent we provide you Software in connection with one or more Services. You also agree to those portions of the Treasury Services and Electronic Trade Services sections of this Booklet which contain the specific terms and conditions that relate to the Services we provide to you. If you would like an additional Service, it will be covered by the terms and conditions of this Booklet once we have approved your use of the Service. You may begin using the Service when we have received all required and properly executed forms and you have successfully completed any testing or training requirements. To assist in our establishment and maintenance of overdraft limits, any payment instructions and any electronic access to the Services and to assist in our compliance with any applicable laws, rules and regulations, you shall provide us with any information we request, including but not limited to, financial information about you and identification information and documentation about you and your employees and any representatives authorized by you to conduct transactions on your behalf.

Whenever you use any of the Services covered by this Booklet, you agree to be bound by these terms and conditions, as amended from time to time, and to follow the procedures in the applicable Materials.

THE ENTIRETY OF THE GENERAL PROVISIONS SECTION OF THIS BOOKLET TOGETHER WITH THE APPLICABLE SERVICE SECTIONS HEREIN FORMS THE AGREEMENT BETWEEN YOU AND US WITH RESPECT TO THE SERVICES DEFINED THROUGHOUT THIS BOOKLET.

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## TREASURY SERVICES

We offer a wide variety of treasury services. Each Service has many features and options. Your treasury services representative will be happy to describe these to you and to recommend those that will best meet your needs.

A List of Banks and Services is enclosed with this Booklet. This list includes the names of each Bank of America Corporation subsidiary bank offering Services under this Booklet and the names under which we currently offer those Services. Please contact your treasury services representative at any time if you wish to receive an updated list.

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## ACCOUNT RECONCILEMENT

Our Account Reconciliation Services will help you reconcile and manage the credit and debit activity in your accounts. Detailed information regarding the features offered for such Services is available in the applicable User Documentation.

Your use of an Account Reconciliation Service does not affect any of your obligations, which are described in the applicable Account Agreement, to discover and report with respect to your accounts (including joint accounts where permitted): (i) unauthorized signatures, alterations or endorsements on checks and (ii) unauthorized Requests and other discrepancies. Your use of this Service or our receipt of information associated with this Service does not increase our duty with respect to accounts or the payment of checks.

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## AUTOMATED CLEARING HOUSE (ACH)

This section applies only to ACH Services processed within the United States of America and its territories. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

Our ACH Services allow you to transfer funds to or from your accounts by initiating Entries which may be sent through the ACH system or processed directly to accounts with us.

We may send Entries to any ACH processor selected by us or directly to another bank or processor. Each ACH Service is described in the applicable User Documentation. You authorize us to issue paper instruments or items, such as drafts, or remotely created checks, (collectively, "RCCs"), as instructed by you or as reasonably determined by us to be appropriate. The capitalized ACH terms appearing in italics below are defined in the NACHA Rules.

### COMPLIANCE WITH NACHA RULES; LAWS; AND ADDITIONAL REQUIREMENTS

You agree to comply with the NACHA Rules for all Entries, whether or not an Entry is sent through a processor or the ACH network. You act as *Originator* and we act as *Originating Depository Financial Institution (ODFI)* with respect to Entries. You will utilize the ACH service to us as provided in the User Documentation and the NACHA Rules, including, but not limited to, the delivery of Entries. The NACHA Rules govern if they conflict with this Booklet, except that the file specification requirements in the User Documentation govern if they conflict with the NACHA Rules. For Entries that may be processed directly to accounts with us or other processor, debits and returns may be reported on next day information reporting. The User Documentation will govern if such timing conflicts with the NACHA Rules.

You agree to comply with applicable laws and regulations. You may not use this Service for any illegal transaction or activity, including under the regulations and laws of the receiver of your transaction. Your compliance includes adherence to applicable laws and regulations, including United States economic sanctions laws and regulations, regulations issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury and Executive Orders issued by the President of the United States.

You agree to cooperate with us fully to facilitate our adherence to guidance provided by any regulatory body, including, but not limited to, the Office of the Comptroller of the Currency ("OCC"), including guidance concerning risk management of ACH or any other Service. For this purpose, you agree that we may mandate specific internal controls at your locations, audit your operations and/or request additional information. We may restrict either your initiation or re-initiation, or apply certain risk management rules at our discretion. We may monitor, assess and enforce limitations on initiation and return activity.

If you originate on behalf of any other party, you also represent and warrant that you will monitor, assess and enforce limitations in accordance with the NACHA Rules.



If you originate on behalf of any other entity, we may require information regarding such entity to verify your customer and the nature of their business. If you are acting as a third party payment processor or a third party sender as defined by NACHA Rules, we may request that you furnish us with additional information. Such information may include, without limitation, data: (i) regarding your financial condition; (ii) verifying your customers and the nature of their businesses; and (iii) sufficient for us to determine whether you are working with additional ODFIs. You agree to comply with all audit requirements under the NACHA rules, and agree to provide proof of compliance upon our request.

Where a preauthorized debit Entry from a consumer's account varies in amount from the previous debit Entry, you will comply with the notice requirements set forth in the NACHA Rules, the Electronic Funds Transfer Act and Regulation E of the Board of Governors of the Federal Reserve System, as applicable.

If you make International ACH Transactions ("IAT") using the Service such transactions are subject to the terms of this section for the portions of the transaction that occur and are processed within the United States of America and its territories.

#### AUTHORIZED PERSONS

Before using an ACH Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to verify the authenticity of Entries and Reversal/Deletion Requests in accordance with the Security Procedure and to perform certain other duties in connection with such Service.

#### WARRANTIES

Each time you use an ACH Service, (i) you warrant that you have obtained appropriate authorization from each Receiver and that Entries conform to such authorization and comply with the NACHA Rules, and (ii) you make the same warranties to us as we make under the applicable section(s) of the NACHA Rules.

#### PAYMENT WITH RESPECT TO ENTRIES

We generally debit your account on the settlement date for credit Entries (including debit Reversals), unless you are prefunding your Entries. Prefunding means that you are required to pay for all credit Entries before the settlement date as we may specify, using a Standalone Account. If your account is not a Standalone Account, we may at any time convert it to a Standalone Account for prefunding. We may, at our discretion, without prior notice to you, require prefunding before we process your credit Entries. We are not obligated to process any credit Entries, even if we have done so in the past, without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand.

We generally credit your account on the settlement date for debit Entries (including credit Reversals), unless such Entries are subject to ACH Managed Processing which will delay settlement for the Entries as further described in the User Documentation for the ACH Service being used.

You will pay us for the amount of any returned debit Entries (including rejected debit Entries), any adjustment Entries or any returned RCCs, which we have previously credited to your account. Such amounts shall be immediately due and payable. You agree that we do not need to send a separate notice of debit Entries or RCCs which have been returned unpaid. You may request reports containing information regarding returned debit Entries and RCCs.

#### ACTING ON ENTRIES

We send Entries to the ACH processor or other bank or processor for settlement on the Effective Entry Date shown on the Entries or a delayed settlement date if such Entries are subject to ACH Managed Processing, if we receive the Entries by the applicable processing deadlines specified in the User Documentation for the ACH Service being used. We may treat Entries that we receive for processing after a deadline as if received on the next Business Day. Entries will be deemed received by us when we receive the complete file at the location specified in the User Documentation.

#### REJECTION OF ENTRIES

We may reject any Entry that does not comply with the requirements of the Booklet or the applicable User Documentation, including any ACH processing and/or exposure limits described in the User Documentation, or that we are unable to verify through use of the Security Procedure. We may also reject any Entry that may be returned for any reason under the NACHA Rules or if you have breached your payment obligations for any ACH Service we provide to you or may require your Entries to be subject to ACH Managed Processing. We will give notices of rejection and/or

Entries becoming subject to ACH Managed Processing. We may also, without prior notice to you, no longer accept or process your debit Entries or may require your Entries to be subject to ACH Managed Processing.

Notice of rejection and/or Entries becoming subject to ACH Managed Processing will be given to you by telephone, by electronic means, by facsimile or by mail within the time period specified in the User Documentation and will be effective when given. We are not liable for the rejection or ACH Managed Processing requirement of any Entry and are not obligated to pay you interest for the period before you receive the notice of rejection or ACH Managed Processing requirement. If an Entry is rejected for any reason, it is your responsibility to correct the Entry you intend to resubmit.

#### REVERSAL OR DELETION

We have no obligation to cancel or amend any Entry after we have received it. If you send us a Reversal/Deletion Request and we are able to verify the authenticity of the Reversal/Deletion Request using the Security Procedure, we will make a reasonable effort to act on your Reversal/Deletion Request. We will not be liable to you if such Reversal/Deletion Request is not effected (for example, but not limited to, if it is returned for non-sufficient funds). You agree to indemnify us in connection with any such Reversal/Deletion Request as provided in UCC 4A. Your obligations under this provision will survive the termination of any ACH Service.

#### PROVISIONAL PAYMENTS

You agree to be bound by the provision of the NACHA Rules and UPIC Rules providing that payment of a credit Entry by the *Receiving Depository Financial Institution (RDFI)* to the *Receiver* is provisional until the *RDFI* receives final settlement for the Entry. If final settlement is not received, the *RDFI* is entitled to a refund from the *Receiver* of the amount credited. This means that the *Receiver* will not have been paid.

Our payment of any debit Entry, returned credit Entry or credit Reversal is provisional until we receive final settlement for the Entry or Reversal. If final settlement is not received, we are entitled to a refund and we may charge your account for the amount previously credited. We may delay the availability of any amount credited (i) for a debit Entry subject to ACH Managed Processing, or (ii) for a debit Entry or credit Reversal if we believe that there may not be sufficient funds in your account to cover any chargeback or return of the Entry or Reversal. Our rights under this subsection shall survive termination of the Service and/or the Booklet.

#### INCONSISTENCY OF NAME AND NUMBER

An *RDFI* can make payment to a *Receiver* based solely on the account number, even if the name in the Entry differs from the name on the account. We will send an Entry to an *RDFI* based solely on the bank identifying number you provide, even if you provide us with a different *RDFI* name.

#### SUPPLEMENTAL TERMINATION

This subsection supplements the *Suspension and Termination* section. If you originate on behalf of any other entity, and we determine, in our sole discretion, that we no longer wish to process transactions for such entity, Services may be suspended, modified or amended.

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### **AUTOMATED CLEARING HOUSE (ACH) AUTHORIZATION TO RECEIVE**

This section applies only to ACH Authorization to Receive Services for Entries received in the United States of America.

With the ACH Authorization to Receive Services, you provide us with the authorization criteria for Entries you desire to receive for debit or credit to your account. We will automatically return any Entry which does not meet your authorization criteria.

We may also return an Entry that would be returned for any reason under the NACHA Rules. The ACH Authorization to Receive Services do not apply to transactions between you and us, and we may pay Entries which you have authorized us to originate against your account (e.g., loan or credit card payments), whether or not you have included these in your authorization criteria. We may also pay any Entries, Reversals or adjustments which we are required to accept under the NACHA Rules EPN Rules, operating circulars or any other applicable rule, guideline or regulation.

You are responsible for providing authorization criteria in a manner and form acceptable to us. In your authorization criteria you may specify a maximum amount for authorized Entries, in which case you must specify the amount in dollars and cents.

You agree to comply with the NACHA Rules for all Entries. Under the NACHA Rules, credit Entries are provisional and may be revoked prior to final settlement. If the credit Entry is revoked before final settlement and final settlement is not received, we may charge your account for any amount previously credited to your account. In this instance, the person who originated the credit Entry is considered not to have paid you and we do not send a separate notice regarding such failed payment.

If an ACH Authorization to Receive Service is terminated for any reason, we will no longer be obligated to monitor Entries against your authorization criteria and will receive and accept or return Entries to your account in accordance with our normal procedures. You still have the right to return Entries in accordance with the NACHA Rules.

If you also subscribe to our ACH Positive Pay Services as described in this Booklet, you will still need to make your pay or return decisions under your ACH Positive Pay Services. Such decisions will supersede the terms contained in your ACH Authorization to Receive Services.

#### SUPPLEMENTAL TERMINATION

This subsection supplements the Suspension and Termination section, if we have assisted you in obtaining a UPIC. We may terminate this Service immediately and send you notice of the termination if we, in our sole discretion, no longer wish to provide this Service.

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### **ACH POSITIVE PAY**

Our ACH Positive Pay Services allow you to identify exception items, and to instruct us whether to pay or return those items. An exception item is an ACH Entry not previously authorized by you.

On each Business Day, we notify you of ACH debit and credit Entries presented to us for settlement on that Business Day and which we have identified as exceptions based on authorization information you have provided to us (as more fully described in the applicable User Documentation). Exceptions are determined by comparing ACH Entries presented to us (including by other depository institutions, ACH operators or by us) with the authorization instructions you have provided. Alternatively, you may choose not to authorize any ACH Entries, in which case we will treat all such ACH Entries as exception items.

On the same day we report exception items to you, you must notify us, by the deadline specified in the applicable User Documentation, which ACH Entries you want us to pay/accept or which to return. If you fail to notify us by the deadline, we will handle the exception items in accordance with the prescribed default procedure as outlined in the User Documentation. Where required, you will indicate which ACH Entries you want us to return, having been deemed by you to be unauthorized. Our deadlines, return procedures and procedures for authorizing ACH Entries are described in the applicable User Documentation. In order to assist you in making your decision whether we should pay or return exception items, you may wish to contact your trading partner or ACH customer support for further information. This will not however extend your deadlines to pay or return.

Before using the ACH Positive Pay Services, you must entitle, in a form or manner acceptable to us, the persons authorized by you to perform certain duties in connection with such ACH Positive Pay Services.

You must access the daily reports of exception items via one of our Websites. Using such Website, you must then notify us which exception items to pay/accept or which to return. If you fail to notify us by the deadline, we will handle the exception items in accordance with the prescribed default procedure as outlined in the User Documentation.

Where available, we provide you a report of exception items. You must then notify us which items to pay/accept or which to return. If you fail to notify us by the deadline, we will handle the exception items in accordance with the prescribed default procedure as outlined in the User Documentation.

Where available you may request to receive certain types of notifications of your exception items. These notifications are further described in the applicable User Documentation.

By using the ACH Positive Pay Services, you authorize us to return ACH Entries or to pay/accept ACH Entries in accordance with your authorization instructions and the return procedure in the applicable User Documentation. We will have no liability for payment of an ACH Entry which is unauthorized if (i) the ACH Entry is included in a report of exception items; and (ii) you do not give us timely instructions to return the ACH Entry.

You acknowledge that our ACH Positive Pay Services do not preclude our standard ACH processing procedures, which may cause an ACH Entry to be dishonored even if your instructions do not otherwise require us to return such ACH Entry.

You acknowledge that if we receive an ACH Entry after the deadline, which is identified as an exception item, the exception item will be handled as more fully described in the applicable User Documentation.

You acknowledge that our ACH Positive Pay Services are intended to be used to identify and return ACH Entries which you suspect in good faith are unauthorized. They are not intended to be used as a substitute for authorization instructions or to delay your pay/accept return decisions on exception items, including and not limited to stop payment orders on ACH Entries which are not suspected in good faith to be unauthorized. If we suspect or deem, in our sole discretion, that you are using the ACH Positive Pay Services contrary to those intentions, we may require you to provide evidence that ACH Entries we return pursuant to your instructions were in fact unauthorized. In addition, we may hold you liable for losses we sustain on ACH Entries which we are requested to return under such ACH Positive Pay Services and which you do not reasonably establish as unauthorized ACH Entries.

ACH Positive Pay Services do not apply to transactions between you and us. We may pay Entries which you have authorized us to originate against your account ( e.g., loan or credit card payments), whether or not you have included these in your authorization criteria. We may also pay any Entries, Reversals or adjustments which we are required to accept under the NACHA Rules, operating circulars or any other applicable rule, guideline or regulation.

If you also subscribe to our ACH Block and Authorization Services, you will still need to make your pay or return decisions under your ACH Positive Pay Services. Such decisions will supersede the terms contained in your ACH Block and Authorization Services.

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## **BANK-PRINTED DRAFTS**

Using the Bank-Printed Drafts Service you may request us to issue a bank draft by submitting a Payment Advice using your computer (using Software we provide or by accessing a Website) or sending us a data file transmission, to print drafts (which may include drafts denominated in a currency other than the currency in which the relevant account is denominated) drawn on accounts designated and owned by us. In processing your Payment Advice we will apply the exchange rate that you obtained from one of our trading centers, online or assigned by us, as more fully described in the User Documentation. We will print the draft and mail it to the address that you provide with your Payment Advice. We will debit your account for the amount of any Payment Advice that you send to us.

For drafts issued by us on your behalf, we reserve the right to place a stop payment on drafts that remain uncleared beyond timelines as defined by us in the User Documentation. If we place a stop payment on a draft for this reason then we will return funds to you according to our returns process, as defined in the User Documentation.

### AUTHORIZED PERSONS

Before using a Bank-Printed Drafts Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

### STOP PAYMENT REQUESTS

Generally, you may send us a request to stop payment with respect to a draft drawn on an account designated and owned by us only if the draft is lost, stolen or destroyed. In such case, you must first complete and provide us with a declaration of loss and indemnity agreement reasonably acceptable to us. A stop payment will not be effective until we first receive your completed declaration of loss and indemnity agreement; have had a reasonable amount of time to review and approve it; and then have reviewed our records to determine that the draft has not already been paid.

### YOUR RESPONSIBILITIES

You must create and transmit to us a Payment Advice for each draft you issue using the Service. You must make certain that each draft, Payment Advice and electronically transmitted Stop Payment Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation.

You must retransmit any Payment Advice, electronically transmitted Stop Payment Request or other message initially transmitted to us through the Service if you have not received an acknowledgment message from us within the time period specified in the applicable User Documentation.

#### OUR RESPONSIBILITIES

When we receive the Payment Advice, we will transfer funds from your account with us to the bank account on which the draft is drawn.

We will print drafts as requested by you in your Payment Advice.

#### PAYMENT WITH RESPECT TO DRAFTS

You agree you will not issue any drafts using a Service which would cause your applicable account balance, according to your records, to be exceeded. If your records and ours disagree regarding the account balance, our records will control for purposes of these Services. You must ensure that Collected and Available Funds sufficient to cover the total of all drafts issued, are on deposit in your account each Business Day at the time stated in the applicable User Documentation.

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### **BILLPAY AND INVOICE MANAGEMENT**

You may use the Bill Payment Feature, the Invoice Management Feature and other related services, provided through our designated Website, and explained in the applicable User Documentation. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein. You may only access the Service through the Bank's designated Website and use the Service to request us to make bill payments on your behalf to Vendors in payment of invoices and bills that you received from such Vendors. We will process your bill payment request by means of an ACH credit entry to the bank account of the Vendor, by mailing a check on your behalf to the Vendor, or by other electronic payment means. You may use the Service to receive invoices sent to you from Vendors that choose to deliver invoices to you via the Service. You also may upload through the Service images of invoices that you receive directly from Vendors. You may view and manage these invoices through the Service.

#### INVOICE MANAGEMENT FEATURE

The Service includes an online Inbox where you can upload, store, index and manage your Bills and Documents. You may upload Bills and Documents to your Service Inbox directly through the Service Website or by email using the email address assigned to your Service Inbox. You also may authorize Vendors to send Bills and Documents to the Service Inbox using the email assigned to it. We are not responsible for Bills that are misdirected or not received in your Inbox. You should regularly review your Inbox to confirm that expected Bills from Vendors are received there. You will resolve disputes regarding invoices from Vendors directly with such Vendors and we have no responsibility with respect to such disputes.

You also may submit and store other remittance information to the Service, including address and bank account and routing information for a Vendor. You are responsible for verifying the accuracy of the Vendor information prior to scheduling a Payment Transaction, and we will have no liability for losses or damages due to you or your Vendor's actions or inactions. If you input a Vendor's bank routing number and bank account number, you represent and warrant that (i) this information is accurate and correct, and (ii) you have obtained from the Vendor any required authorizations, including the authorization to disclose the Vendor's account information and to request us to initiate ACH debit or credit entries, as applicable, to the Vendor's bank account in accordance with your Payment Transaction Request and, if necessary, the initiation of adjustments for any transactions debited or credited in error.

By providing us with the name and bank account information of a Vendor to whom you wish to direct bill payments, you authorize us to use and follow this information when processing your Payment Transaction Requests to that Vendor. In order to process Payment Transactions more efficiently and effectively, we may submit payments to the best known Vendor address based on information in the Vendor Database. When necessary, we may alter payment data or data formats or change or reformat your Vendor's bank account number and routing information to match the account number or format and/or routing information required by your Vendor for electronic payment processing or as set forth in the Vendor Database.

## BILL PAYMENT FEATURE

**Scheduling Bill Payment.** To make a payment to a Vendor for a Bill, you may use the Service to schedule a Payment Transaction and select the Process Date on which we will debit the Payment Account to originate the Payment Transaction. The Service will indicate the earliest possible Process Date for each Payment Transaction Request and will calculate an estimated Arrives By Date. We will use commercially reasonable efforts to issue the Payment Transaction within two business days following the Process Date, depending on the size of the payment and subject to our own review of the Payment Transaction Request. We will determine the payment method for each scheduled Payment Transaction Request. You are solely responsible for scheduling Payment Transactions and selecting a Process Date for each payment that allows sufficient time for the payment to be delivered on or prior to the due date on the Bill. We make no representation or warranty to you that a Payment Transaction will be received by the Vendor or credited to the Vendor's bank account on or before the Arrives By Date. Regardless of the Process Date selected by you, we shall have no liability to you or your Vendor in the event that you incur a late fee or other financial liability to a Vendor arising from a delayed, undelivered, or late payment.

**Payment Method and Transaction Limits.** You may, through the Service, request that we process a Payment Transaction Request as a check payment or as an ACH credit entry payment or other electronic payment; provided, however, that we reserve the right to select the method by which to process a Payment Transaction Request. ACH credit entry payments and other electronic payments may only be made to U.S. domestic bank accounts. All other payments made through the Service must be made by issuance and mailing of a check to a U.S. address. We may, in our sole discretion, impose limits on the amount of money sent through the Service, on a per-transaction or a cumulative basis, and change those limits at any time without prior notice to you. You may not submit a Payment Transaction Request that would require the processing of an international ACH transaction (IAT).

**Processing Bill Payments.** You hereby authorize us to debit your Payment Account for the amount of each Payment Transaction Request and remit funds in accordance with your Payment Transaction Request through the ACH network or other electronic funds network or by paper check, as determined by us in our sole discretion. We may debit your Payment Account by means of an ACH debit or direct posting/book transfer. You are responsible for maintaining collected and available funds in the Payment Account in an amount sufficient to pay for all debits to fund the Payment Transaction Requests on or before the Process Date. We are not obligated to process any Payment Transaction Requests, even if we have done so in the past, without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand. We may post these debits to your Payment Account even if the debits cause your Account to have a negative intraday balance or to be in an overdraft position. After the Process Date and prior to origination of the ACH credit entry or payment of the issued check, funds deducted from your Payment Account will be held in a master bank account or general liability account at the Bank. You acknowledge and agree that you have no ownership interest or right to the funds in this bank account. This bank account arrangement does not create a trust or other fiduciary obligations on the part of us to you.

**Issuance of Check Payments.** You hereby authorize us to print and issue a paper check drawn by you, and to indicate on such check that you are the drawer and/or that you have authorized the drawing of the check. We may be identified on the check as the drawee bank. You agree that we shall not have any liability to you or any other person on the check as an endorser, a drawer or a co-signer or in any other capacity. You acknowledge and agree that in the event of a returned check or other non-payment of an issued check, you may be subject to claims from third parties under law in your capacity as drawer of the check. In addition to any other indemnification provided herein, you further agree to indemnify us for any loss, damage or claim arising from our issuance of a check in accordance with your Payment Transaction Request.

**Returned Transactions.** A Vendor, a Vendor's bank or the United States Postal Service may return a Payment Transaction for various reasons such as, but not limited to, Vendor's forwarding address expired, invalid bank routing number, invalid bank account number, Vendor remittance address is not correct, Vendor is unable to identify an account, or a Vendor account is paid in full. In addition, a Vendor may refuse to accept a Payment Transaction. We will use commercially reasonable efforts to provide you with notice of a returned Payment Transaction. You agree that we shall not have any liability for any returned Payment Transaction or any resulting loss or damage that you may incur.

Unless otherwise directed, we will void such returned Payment Transaction and credit the returned Payment Transaction to your Payment Account.

**Payment Cancellation Requests.** You may cancel, reschedule or modify a Scheduled Payment Transaction prior to the time that we begin processing it, subject to any restrictions set forth in the User Documentation. You may only cancel, reschedule or modify a Scheduled Payment Transaction through the Service Website. Once we have begun processing a Payment Transaction, it cannot be cancelled, rescheduled or modified by you. In addition, we reserve the right in our sole discretion to suspend or cancel any Scheduled Payment Transaction if your Payment Account or your use of the Service is not in good standing, as determined by us in our sole discretion. We will credit back to the Payment Account any debits previously made to fund a cancelled Scheduled Payment Transaction.

**Stop Payment Requests.** You may use the Service to place a stop payment on a Payment Transaction that is processed by means of a check payment. There is no stop payment option for a Payment Transaction that is processed by ACH credit or other electronic payment. Our ability to process a stop payment request on a check payment depends on whether or not a check has cleared. We must have a reasonable opportunity to act on any stop payment request after we receive the request from you. In some cases, we may pay a check even if a stop payment request is in effect. For example, if one of our branches (or banking centers) or affiliates becomes a "holder in due course" of the check that you asked us to stop, we may still pay the check. Although we will use commercially reasonable efforts to accommodate stop payment requests, we will not have any liability to you for failing to do so. If we do honor a stop payment request, you agree to indemnify us (and our service provider) for any liability or claim that we incur arising from a person that seeks payment from us on the check based on such person's status as a holder of the check and/or otherwise based on our role in the issuance of the check on your behalf. You further authorize us to settle and pay any such claim from a holder or a payee of the check without prior notice to you and you further authorize us to debit your Payment Account for the amount of such paid claim.

**Prohibited Payments.** You are prohibited from using the Service to make the following types of payments: (i) tax payments, (ii) payments to settle securities transactions, and (iii) court ordered payments. In no event shall we be liable for any claims for damages resulting from your scheduling of these types of payments. You shall comply with all applicable state and federal laws in initiating any Payment Transaction.

**Payment Review.** In our discretion, we may place a hold on a Payment Transaction Request for as long as reasonably required to conduct an appropriate inquiry regarding you, the Vendor, a Bill, payment history, and other relevant circumstances and factors. Depending on the results of this review, we may process the Payment Transaction Request, reverse or cancel the Payment Transaction Request, or hold the Payment Transaction Request and related funds pending instructions from a government agency. At any time, a Payment Transaction Request or a Payment Transaction may be reversed or canceled by us in our sole discretion and without prior notice to you.

**Compliance with Service Documentation.** You are responsible for ensuring that each Payment Transaction Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation for the Service.

#### REGISTERED VENDOR DATABASE

We use a third party company that operates an online database containing payment routing and other information regarding Registered Vendors. We do not operate or control the Vendor Database and we are not responsible for the accuracy of information that is stored in the Vendor Database. The Vendor Database is not part of the Service. When making a Payment Request, you may look-up your Vendors in the Vendor Database to see if they are Registered Vendors. You also may ask your Vendor to register with the Vendor Database and provide information regarding its preferred bank account number and routing information for bill payments processed through the Service to the Vendor. If your Vendor registers with the Vendor Database, your Vendor will be required to agree to the terms and conditions provided by the third party company that govern the use and operation of the Vendor Database.

The Service may obtain payment routing information and mailing address information for your Registered Vendors from the Vendor Database. We may at our option process a Payment Transaction to the Registered Vendor based upon the account and routing number information and/or mailing address information provided by the Registered Vendor

without further investigation or confirmation by us. You are responsible for any Payment Transaction that is processed by the Service using the Registered Vendor data contained in the Vendor Database.

#### PROVISIONAL PAYMENTS

For Payment Transactions processed through the ACH credit entry, you agree to be bound by the provision of the NACHA Rules providing that payment of a credit Entry by the Receiving Depository Financial Institution (RDFI) to the Receiver (the Vendor) is provisional until the RDFI receives final settlement for the Entry. If final settlement is not received, the RDFI is entitled to a refund from the Vendor of the amount credited. This means that the Vendor will not have been paid.

#### SUPPLEMENTAL LIMITED WARRANTY/DISCLAIMER

You acknowledge and agree that (i) we are making no representations or warranties of any kind regarding the content of Bills, Documents or the Vendor Database, and (ii) you and your Vendors are transmitting and receiving Bills through the Service at your own risk. We disclaim any and all warranties of any kind (whether express or implied) including but not limited to any warranties of merchantability or fitness for a particular purpose with respect the Service, the Vendor Database, and the content and timely delivery of the Bills and any related information. We will have no liability or responsibility for any losses, costs, expenses or damages incurred by you or your Vendors with respect to the use of the Vendor Database or any Bills transmitted or received through the Service.

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#### **CASHPAY®**

Our CashPay® Service allows you to pay your employees and other payees by directly depositing payments to their CashPay accounts. Your payees can immediately access their money through ATMs, point-of-sale (POS) terminals and over-the-counter cash access transactions at offices of financial institutions that accept Visa® cards.

#### CASHPAY FUNDING OPTIONS

You may fund the CashPay accounts in one of two ways: by initiating Entries through the Automated Clearing House (ACH) system or, upon our approval, by instructing us to transfer funds from a deposit account you maintain with us. (ACH Services are governed by the ACH section of this Booklet.)

If you choose to pay by the transfer of funds from your account with us, we will debit your account following receipt of your payment instructions in a mutually agreed-upon format and method. You must have sufficient Collected and Available Funds in your account to cover the transfer amount. In the event that sufficient funds are not available at the time of settlement, you agree that we may take steps to protect ourselves, including refusing to fund CashPay accounts and terminating the CashPay Service (which will not affect funds previously transferred to CashPay accounts), without incurring any liability to you or your payees.

#### CERTIFICATION OF ENROLLMENT INFORMATION

You must provide us information for each payee who wishes to open a CashPay account. Each time you provide us with such information or initiate a transfer of funds to a CashPay account, you certify that the following statements are true and accurate as of such date:

- The payee is entitled to receive payments issued by you, and is otherwise qualified to participate in the CashPay program.
- All information provided by you about the payee is correct, including but not limited to the payee's name, date of birth, physical address, social security number or other identifying information contained in another form of identification issued by a governmental entity, employment/occupation, method of verification, country of citizenship, country of residence and source of income.
- If the payee is to receive wage payments through a CashPay account, the payee is legally employable in the United States of America.
- You have provided the payee the explanatory CashPay Service information that we have provided to you for that purpose, including the USA PATRIOT Act disclosure, and the payee has authorized the transfer of wages to the CashPay account.
- The payee has not cancelled the authorization to transfer the wages to the CashPay account.



You agree to notify us promptly of any changes to the payee enrollment information you have provided to us for this Service or if any employee who has a CashPay Account is no longer employed by you. Upon our request, you will promptly provide us any additional information for each payee to allow us, among other things, to verify enrollment information.

#### ADDITIONAL LIMITATION OF LIABILITY

As a general rule, ATMs cannot dispense cash in increments other than \$5, \$10 or \$20. This means that your payees may not be able to withdraw at an ATM all funds paid by you to the payees' CashPay accounts. We will wire the difference to any payee who requests such payment; however, we will not be responsible if your payees or others assert a claim against us due to this inability to withdraw all funds at an ATM.

#### PROMOTIONAL MATERIALS

We will provide you with explanatory documentation for you to give your payees. We will provide to each payee the CashPay agreement, which discloses the terms and conditions of each payee's CashPay account. Such payees are not entitled to any rights or benefits we give to our other deposit account holders or debit card holders unless such rights or benefits are contained in the CashPay agreement.

You must obtain our prior written consent if you elect to promote the CashPay Service using materials (in any format) other than the documentation we provide to you for that purpose.

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### **CHECK ISSUANCE AND DOCUMENT PRINTING**

With our Check Issuance and Document Printing Services, you may request us to (1) create checks on your behalf that are drawn on either (i) accounts owned and maintained by you with us or another bank or (ii) accounts designated and owned by us, and/or (2) print and mail on your behalf statements, invoices and other documents. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

#### AUTHORIZED PERSONS

Before using a Check Issuance and Document Printing Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service. If you use a third party to perform certain duties, you will provide such authorization in a form acceptable to us.

#### STOP PAYMENT REQUESTS

You must submit Stop Payment Requests in accordance with the applicable User Documentation or Account Agreement, as appropriate. Generally, you may send us or our third party processor a Stop Payment Request with respect to a check drawn on an account designated and owned by us only if the check is lost, stolen or destroyed. In such case, you must complete and provide us with a declaration of loss and indemnity agreement reasonably acceptable to us. If you wish to stop payment on a check drawn on an account you maintain with us, you must make your request as provided in the applicable Account Agreement.

#### YOUR RESPONSIBILITIES

You must create and transmit to us or our third party processor a Check Issuance Request for each check you want us to issue on your behalf and a Document Printing Request for each document you want us to print and mail on your behalf. You must make certain that each Check Issuance Request and Document Printing Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation.

If you have not received an acknowledgment message from us or our third party processor within the time period specified in the applicable User Documentation, then you must contact customer support for instructions before resubmitting any Check Issuance Request, Document Printing Request or other message initially transmitted to us or our third party processor through a Service.

In the case of checks drawn on accounts designated and owned by us, you must ensure that Collected and Available Funds, sufficient to cover the total of all checks issued, are on deposit in your accounts. We will debit your account to cover such checks when we receive your Check Issuance Request. In the case of checks drawn on accounts designated and owned by you, you will be governed by the applicable Account Agreement. In the case of checks drawn on accounts

designated and owned by you and maintained at another financial institution, the processing of those checks may be governed by additional terms between you and that financial institution.

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## **COIN AND CURRENCY ORDERS**

Our Coin and Currency Order Services allow you to place orders for coin and currency (as used in this section, “change orders”) with our cash vaults or the vaults of various armored carriers at which we maintain a cash inventory. Some of these armored carrier vaults have been designated by us as our extended vaults.

Before using a Coin and Currency Order Service, you will provide us with the names and locations of the person(s) authorized by you to receive the access IDs and PINs required to use the Service. We will provide such persons with access IDs and PINs so that change orders can be placed via a voice response system or electronically via a transmission, in accordance with the applicable User Documentation.

In order to use the Coin and Currency Order Service, you must contract separately with an armored carrier service that is acceptable to us to provide for the transportation of the coin and currency, which you have ordered, from one of our cash vaults, one of our armored carrier vaults and/or another location designated by us. Such armored carriers are your agents. Your armored carriers must continue to meet our requirements. In the event that they do not, we may not allow them to pick up your orders until they meet our requirements.

You authorize us to act upon any request for coin or currency made in accordance with this Booklet and the procedures described in the applicable User Documentation. In connection with any coin and currency you order from our cash vaults or our armored carrier vaults, you authorize us to debit your account (i) on the day that such coin and currency are available for release from such vault to your armored carrier, or (ii) on the day that we deliver such coin and currency to another location for pickup by your armored carrier, as applicable. Each time you use a Coin and Currency Order Service, you represent and warrant that you have sufficient Collected and Available Funds in your account for each change order requested by you. We have no obligation to release any coin and currency ordered by you unless there are sufficient Collected and Available Funds in the designated account or sufficient funds under a line of credit to pay for such order at the time scheduled for release of the coin and currency to the armored carrier.

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## **COLLECTION LETTERS**

Our Collection Letter Services allow you to forward us drafts, checks and travelers checks (as used in this section, “items”) drawn on banks outside of the United States and (i) denominated in U.S. dollars or (ii) drawn in specified foreign currencies (as described in the applicable fee schedules or User Documentation) for collection.

You must prepare and forward a transmittal letter, in a form acceptable to us, along with those items you want us to process for collection in accordance with the applicable User Documentation. You agree that you will only request collection on items which are drawn on banks outside of the United States (i) in U.S. dollars or (ii) in specified foreign currencies (as described in the applicable fee schedules or User Documentation) for collection.

We will send each item you forward to us for collection to the bank on which such item was drawn or to an appropriate correspondent bank. We will generally credit your account for each item on the first Business Day following the day on which we receive payment for each such item at our then-prevailing buy rate for the applicable currency. We will deduct all service fees and charges, plus any correspondent bank fees and charges, from the amount of any payment credited to your account for such items. Special handling or services other than collection of the items will be charged in accordance with our special handling fees (as described in the applicable fee schedules or User Documentation).

We will send you a written advice showing the applicable buying rate and fees and charges for each item we process as a collection item through use of a Collection Letter Service.

Any credit given for the items received for collection is provisional only, and is subject to our actual receipt of cash proceeds. We may charge back any items at any time, whether the item is returned or not. You bear all risk of return, including without limitation the risk of late returns and fraudulent items. If we take an item payable in foreign currency for collection, you will bear all exchange rate risk.

Clearance of foreign items is subject to the regulations of the foreign country, and such regulations are different from U.S. Federal Reserve regulations. We will contact you when information is received. If you request and we agree, we

will determine the status of any collection item and you agree to pay phone or wire charges incurred for such a request.

We will use our discretion regarding the method of transmitting items for collection. Notwithstanding the Limitation of Liabilities section in this Booklet, the measure of damages for such failure shall be limited to the reasonable expenses of obtaining duplicate items should the originals be misdirected, lost or destroyed, or such other damages as are expressly provided for under applicable law.

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## **COMMERCIAL DEPOSITS**

With our Commercial Deposit Services, (i) you may make deposits of coin and currency, checks and other payment instruments at one of our designated banking centers with pre-approval, depository facilities (which may include a night depository facility), processing centers, ATMs or cash vaults; (ii) you or, if applicable, a third party acting as your agent, may make deposits of checks using our Image Cash Letter Service or our Remote Deposit Service; and/or (iii) you may obtain credit for Safe Deposits through the Safe Connect Service further described herein. If these deposits are delivered by you or your agent before the cutoff time specified at the deposit location or in the applicable User Documentation, we will give you same-day provisional credit for such deposits, subject to later verification by us and our availability schedule. Banking center deposits that are immediately verified are covered under your Account Agreement.

The Image Cash Letter Service allows you, or a third party acting as your agent, to transmit an image cash letter (ICL) to us. We may create, on your behalf, a paper substitute check or image replacement document (IRD) from such electronic image transmission, as described in the applicable User Documentation.

The Remote Deposit Service allows you to create or have created on your behalf a paper substitute check or IRD from an electronic image or an original paper check, as described in the applicable User Documentation.

### YOUR RESPONSIBILITIES

You agree to follow all requirements set out in the User Documentation, and to meet all specifications for returns contained in the User Documentation; provided, however, in the event that a relevant provision of the User Documentation conflicts with applicable regulatory requirements, you agree to follow such applicable regulatory requirements.

You agree to prepare all deposits accurately and in good faith and to follow the procedures for preparation, packaging and delivery of deposits as provided in the applicable User Documentation. In order to receive a receipt of deposit at banking centers, depository facilities (which may include a night depository facility), or processing centers, and except as otherwise set forth with respect to the Safe Deposit service further described below, we may require you to provide a duplicate deposit slip. This is in addition to the number of original deposit slips required by us to process the deposit or to use other procedures as set forth in the User Documentation. If we require you to provide a duplicate deposit slip, we will stamp this duplicate deposit slip and return it to you. In all cases, deposits are subject to later verification by us.

For deposits made to one of our cash vaults, you must contract separately with an armored carrier service that is acceptable to us to transport your deposits. Armored carriers are your agents unless otherwise agreed in writing between us.

If you use our Image Cash Letter Service or our Remote Deposit Service, then prior to sending us an electronic image transmission, you and we must agree on image and transmission standards as more fully described in the applicable User Documentation.

You warrant that all ICL file transmissions you send us comply with the specifications outlined in the User Documentation, and you agree to indemnify us for any loss or expense incurred by us (including attorneys' fees and expenses of litigation) as a result of your breach of this warranty. You must provide us with the reason for return of a check by such means as we may specify from time to time in our User Documentation. For example, we may require you to provide us with the reason for return of a check in the unqualified returns ICL cash letter file transmission or through stamping the front of the check with the reason for return. We will use our best efforts to notify you promptly when we cannot determine the bank of first deposit on a check in the amount of \$2,500 or greater, or such other

amount as may be set forth in the User Documentation from time to time. You will respond to our notice by secure email promptly upon receipt.

If you use our Image Cash Letter Service or our Remote Deposit Service, then except as provided herein, for any IRD or image created under this Service, you are deemed to be the warrantor of certain warranties under Check 21, and for each and every day an IRD is created, you accept all responsibilities as warrantor for those warranties under Check 21 regarding creation of the IRDs. You understand that you are responsible for capturing and sending fully legible copies of the original paper check or Electronic Image which will be cleared as a Paper Image or IRD.

If you use our Image Cash Letter Service or our Remote Deposit Service, then you give the same warranties and indemnities to us that we, as reconverting bank, give under 12 CFR Parts 229.52 and 229.53 of Check 21 regulations or any successor legislation. With respect to any Image forward presented by us after your deposit, in paper check or Image form, in your account, you give the same representations, warranties and indemnities to us that we, as sending bank, give pursuant to the image exchange rules, including any applicable clearing house rules and/or regulations, that govern us. With respect to Images sent by you to us under this Service, your warranties include warranties that the Image accurately represents all the information on the front and back of the original check as of the time the original check was truncated, the MICR-line information contains all information needed for a substitute check or draft, and any transmission to us from you complies with the specifications described in the applicable User Documentation. You agree to indemnify us and any receiving parties that suffer losses as a result of receiving the substitute check instead of the original, or receiving duplicate items, whether in paper or Image form. You are responsible for capturing and sending fully legible copies of the item which may be created as an IRD. Notwithstanding the foregoing, provided you comply with the agreed upon image and transmission standards and we accept your transmission, and as more fully described in the applicable User Documentation, we will not hold you responsible for any breach of warranty or indemnity either under Check 21 based on image quality for IRDs, or under applicable image exchange rules, including any applicable clearing house rules and/or regulations, based on image quality for any Images, that we produce from your image transmission. If, in connection with your use of our Remote Deposit Service, we provide you with Software and such Software provided by us operates in a manner which causes you to breach any warranties under Check 21, in spite of your exercise of reasonable care, you shall report such Software issues to us as soon as reasonably practicable, and as more fully described in the applicable User Documentation, and we will not hold you responsible for such breach of warranty.

If you use our Image Cash Letter Service or our Remote Deposit Service, then you shall pay us for the amount of any returned Images or IRDs (including rejected images or rejected IRDs) or any claims for adjustments accepted by us, for any IRD or Image which we have previously credited to your account. Such amounts shall be charged as returns or adjustments to your account and are immediately due and payable by you. Such amounts appear on your reports to the extent agreed between us. Certain returned IRDs and/or returned Images may be redeposited, if you have a separate reclear service agreement or arrangement with us. Any IRD created and deposited to your account must comply with all requirements mandated by Check 21. If you intend to include reclears along with other items in a forward ICL file sent to us for processing, you must identify the reclear items on the ICL file in accordance with our instructions set forth in our User Documentation.

If you use our Image Cash Letter Service or our Remote Deposit Service, you agree that you provide the same warranties and indemnities that we are required to provide under applicable statutes, rules, clearinghouse arrangements, operating circulars and other applicable laws, rules or regulations. Without limiting the foregoing, you warrant and guarantee that, if you deposit a demand draft or remotely created check (an unsigned draft or a preauthorized draft) using the Image Cash Letter Service or Remote Deposit Service, the draft or remotely created check was created from paper (or from a paper item) and is authorized according to the terms on its face by the person identified as drawer. You agree to indemnify us from all loss, expense and liability related to a claim that such draft or check was not created from a paper item and/or was not authorized by the person on whose account it was drawn.

If, upon our review of your deposit account activity, we determine that abuse or unauthorized activity is or may be occurring with respect to deposited demand drafts, we may require you to provide collateral to cover the return of and/or claims against deposited demand drafts. In addition, we may require you to maintain such collateral coverage

with us beyond termination your use of any deposit service, such as our Image Cash Letter Service and/or of your relationship with us as a bank customer.

In the event you use our Image Cash Letter Service or our Remote Deposit Service to redeposit any returned item as an IRD or Image, you agree to follow our procedures, set forth in the User Documentation, concerning your provision of the reason for return.

If you use our Remote Deposit Service, then it is your responsibility to use check imaging equipment acceptable to us as specified from time to time (as used in this section, "hardware") to be installed at your site in order to use any such Remote Deposit Service. The terms and conditions pursuant to which the hardware is obtained, installed and maintained shall be as agreed between you and the vendor and/or lessor of such hardware and we assume no responsibility therefore.

If you will be utilizing ACH components of our Remote Deposit Service, you must execute an agreement concerning such usage, as we may specify.

If you have captured images from checks, you agree that you will securely store, safeguard and securely destroy the items as set forth in the User Documentation. Imaged documents (or original documents, if available) must be provided to us promptly, at our request, to facilitate investigations related to unusual transactions or poor quality transmissions, or to resolve disputes.

You agree to cooperate with us fully to facilitate our adherence to guidance provided by the Federal Financial Institutions Examination Council, including guidance concerning risk management of remote deposit capture. For this purpose, you agree that we may mandate specific internal controls at your locations, audit your operations and/or request additional information.

#### ADDITIONAL RESPONSIBILITIES UNDER ECCHO

In the event you are a financial institution and thereby eligible for ECCHO membership, you may use our Image Cash Letter Service or our Remote Deposit Service only if you are a member of ECCHO.

#### RETURN OF ON-YOU ITEMS BY ICL

In the event you are a financial institution to whom we may send, via ICL, On-You items pursuant to ECCHO rules, you agree that such ICL transmissions by us to you shall be governed by, and be in accordance with, the applicable provisions hereof and of ECCHO rules.

#### UNQUALIFIED RETURNS ICLs

In the event that you use the Image Cash Letter Service to send us unqualified returns ICLs, you additionally agree as follows:

You agree to send us return items only if you return the items within the requirements of the UCC and Regulation CC. You warrant that all returned checks sent to us comply with the deadlines of Regulation CC and the UCC and you agree to indemnify us for any loss or expense incurred by us (including attorneys' fees and expenses of litigation) as a result of your breach of this warranty.

You agree to provide to us the same warranties that we provide to any receiver of a returned item that you send us using this Service, whether such warranty is made under Regulation J, Federal Reserve Operating Circular 3, clearinghouse rules, including ECCHO rules, or other applicable regulations or rules. These warranties include, but are not limited to, a warranty that the image of the return item is an accurate representation of the front and the back of the related check; the electronic image return accurately corresponds to the electronically returned item being returned; and the electronic image return is not a duplicate of another electronic image return.

When you return an item using the Image Cash Letter Service, you agree that you provide the same warranties and indemnities that we are required to provide under applicable statutes, rules, clearinghouse arrangements, operating circulars and other applicable laws, rules or regulations.

#### REDEPOSITING RETURNED ITEMS

When you redeposit a returned item using the Image Cash Letter Service, you agree to redeposit the image of the returned check or IRD, which was physically returned to you, which shall include all endorsements and return item stamps. You agree that you provide the same warranties and indemnities that we are required to provide under

applicable statutes, rules, clearinghouse arrangements, operating circulars and other applicable laws, rules or regulations and you agree to indemnify us for any loss or expense incurred by us (including attorneys' fees and expenses of litigation) as a result of your breach of these warranties.

#### USE OF IMAGE CASH LETTER SERVICE WITH RESPECT TO SAVINGS BONDS

If you are a financial institution, you may use this Image Cash Letter Service to accept, transmit, deposit, exchange and/or otherwise process Savings Bonds only in accordance with those Savings Bonds Provisions applicable to you, which include the regulations and operating guidelines of the U.S. Treasury Department.

Under all circumstances, each and every time you use this Image Cash Letter Service to accept, transmit, deposit, exchange and/or otherwise process Savings Bonds, in addition to the representations, warranties and undertakings otherwise provided in the Booklet, as amended hereby, you represent and warrant that you are an authorized Paying Agent, and that the Savings Bonds which you accept, transmit, deposit, exchange and/or otherwise process will be eligible for transmission by transmission of images thereof in accordance with the Savings Bonds Provisions as applicable. You further agree that, by your usage of this Image Cash Letter Service, you are deemed to provide such other representations, warranties, undertakings and indemnities as are applicable to you as a Paying Agent or otherwise under the Savings Bonds Provisions. In addition, you agree that we shall have no liability with respect to any Savings Bonds accepted, transmitted, deposited, exchanged and/or otherwise processed by you, except such liabilities as may be imposed by operation of law or except where the relevant loss is caused solely by our gross negligence or willful misconduct.

You agree that in the event of a conflict between the provisions of this section and any other provisions in this Booklet, the provisions of this section shall govern insofar as the same concern Savings bonds.

#### OUR RESPONSIBILITIES

We receive your deposit and issue provisional credit to your account for the amount you declare on the deposit slip. The declared amount is subject to later verification by us.

If we find an error when we verify your deposit, we will debit or credit the amount of the error to the deposit account listed on the deposit slip, unless you and we have agreed otherwise in writing; provided, however, we reserve the right to set a standard adjustment amount (which we may change from time to time), in which case we will not make a correction to a deposit when the error is less than our current adjustment amount.

We give you same-day provisional credit for deposits delivered before the cutoff time on a Business Day. For deposits delivered after the cutoff time or on a non-Business Day, we give you provisional credit on the next Business Day.

We will apply and be responsible for (i) the appropriate endorsement of the bank of first deposit, if applicable, as more fully described in the applicable User Documentation on the back of each printed IRD; (ii) the appropriate legend of legal equivalency on the front of the printed IRD; and (iii) appropriate language identifying the reconverting bank if we do not clear your electronic image transmission through image exchange.

#### SAFE CONNECT SERVICE

You may use the Safe Connect Service for the purpose of obtaining credit, which credit may be provisional, for Safe Deposits as described herein and in Bank's User Documentation. You agree that the Safe to be utilized in connection with the Safe Connect Service must be installed at a Safe Location. Subject to cutoff times and other provisions contained in the User Documentation, we shall provide you with credit for Safe Deposits; depending upon the applicable procedures used by you, such credit may be subject to later verification and/or adjustment by us and/or the Transportation Provider designated to transport Safe Deposits from the Safe to the Vault Location. Your Safe Deposits shall be governed by the terms of this Booklet, except as otherwise provided herein.

**Your Responsibilities Concerning Safe and Transportation Provider.** Your responsibilities with regard to the Safe Connect Service include the following. You shall be solely responsible for the procurement of the Safe, whether by lease, sale or otherwise, and for the installation and removal of the Safe in accordance with any agreements that you may have with any third party providing the Safe. You shall not be required to prepare deposit and/or duplicate deposit slips with respect to Safe Deposits, as deposit information regarding such Deposits will be set forth in the Safe Feed. You shall be responsible for engaging a Transportation Provider to remove Safe Deposits from the Safe and to transport the Safe Deposits to Vault Locations. You agree to select the Transportation Provider you engage from a list

of approved armored carriers provided by us from time to time. Such Transportation Provider shall be your agent, not ours, except as otherwise provided herein.

**Settlement.** Settlement terms may vary depending upon applicable procedures used by you; such procedures may be dependent, in part, upon the terms set forth in the applicable agreement between you and the Transportation Provider. Upon receipt of the Safe Deposits at the Vault Location, we or the Transportation Provider shall verify such Deposits, for which credit, which may have been provisional, has been given by us. In such instance, solely when conducting verification, the Transportation Provider shall be acting as our agent, not yours. In the event of a discrepancy between deposit amounts set forth in a Safe Feed, addressing a Safe Deposit, and deposit amounts verified at the Vault Location with respect to such Safe Deposit, any adjustments made shall be in accordance with our User Documentation. Information concerning such adjustments will be reflected in your account statements and, in some cases, in written or electronic advices and reports produced through one of our Information Reporting services.

**No Warranties; Limitation of Liability.** The following is in addition to the Limitation of Liabilities section under this Booklet.

YOU ACKNOWLEDGE THAT WE DO NOT PROVIDE, NOR DO WE MAKE, ANY RECOMMENDATIONS REGARDING THE SAFE. WE HAVE NOT MADE AND DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING THE SUITABILITY OF THE SAFE, ITS DURABILITY, ITS CONDITION, ITS QUALITY AND/OR ITS RELIABILITY. ACCORDINGLY, WE ALSO DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR PARTICULAR PURPOSE WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE. WE SHALL NOT BE LIABLE TO YOU OR OTHERS FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY THE SAFE OR ANY SAFE FEED, HOWEVER ARISING, OR THE USES THEREOF OR THE FAILURE OF ANY OPERATION THEREOF. NO REPRESENTATION OR WARRANTY AS TO THE SAFE OR ANY OTHER MATTERS BY OTHERS SHALL BE BINDING UPON US OR IMPOSE ANY LIABILITY UPON US NOR SHALL THE BREACH OF SUCH RELIEVE YOU OR IN ANY WAY AFFECT ANY OF YOUR OBLIGATIONS TO US HEREIN.

IF THE SAFE IS NOT SATISFACTORY FOR ANY REASON, YOU SHALL NOT MAKE ANY CLAIM ON ACCOUNT THEREOF AGAINST US. REGARDLESS OF CAUSE, YOU WILL NOT ASSERT ANY CLAIM WHATSOEVER AGAINST US FOR LOSS OF ANTICIPATORY PROFITS OR ANY OTHER INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES.

**Supplemental Representations and Warranties.** In addition to the representations and warranties set forth in this Booklet, you represent and warrant to us that (a) you have given or procured, as the case may be, all necessary consents and approvals for our accessing of your information and/or information of the Transportation Provider, as we deem appropriate, for purposes of this Agreement; and (b) you and/or the Transportation Provider as your agent shall safeguard all Safe Deposits until delivery of such Deposits at the Vault Location and commencement of verification. In the event that the security of Safe Deposits is breached prior to such delivery and commencement of verification, and/or if the delivery of the Safe Deposits to the Vault Location is delayed, we may reverse any credit, provisional or otherwise, provided with respect to such Safe Deposits as set forth in the User Documentation. You agree to notify us promptly in the event of any such security breach or delay.

You agree that you shall be deemed to make and renew each representation and warranty set forth in this Booklet on and as of each day on which the Safe Connect Service is provided.

**Supplemental Termination Provisions.** Notwithstanding anything to the contrary in this Booklet, the Safe Connect Service may be terminated at any time as set forth below.

In addition to the events listed in the Termination section of the Booklet which allow us to terminate any Service immediately, each of the following events will also give us the right to immediately terminate the Safe Connect Service at any time:

- a) You breach, or permit the breach of, the security of the Safe.
- b) We determine that you have failed to maintain a financial condition that we deem to be reasonably satisfactory to minimize any credit or other risks to us in providing the Safe Connect Service or we deem immediate termination to be necessary or appropriate to prevent a financial loss to us.

c) We, in our sole discretion, determine that the Safe Connect Service is no longer feasible or desirous for us to pursue.

#### ADDITIONAL PROVISIONS FOR YOUR ARMORED CARRIER

In order to make commercial deposits to or pick up coin and currency orders from one of our cash vaults, one of our armored carrier vaults and/or other locations designated by us, you must contract separately with an armored carrier service that is acceptable to us. Any subcontractors of your armored carriers who enter such cash vaults must also be acceptable to us. Your armored carriers and their subcontractors must meet and continue to meet our requirements as they may be in effect from time to time. Such armored carriers and their subcontractors are your agents and you are liable to us for their failure to comply with our requirements. In addition, if they do not meet our requirements, they may be refused entry to our cash vaults, our armored carrier vaults, and/or other locations, as applicable.

Our requirements include representations and warranties, minimum insurance coverages and other obligations applicable to your armored carriers and their subcontractors, as set forth in our Armored Carrier Requirements document, as in effect from time to time. You will instruct your armored carriers to comply with such requirements, including, without limitation, providing us with such information as we may request from them or their subcontractors in support of these requirements.

**Changes In Delivery Locations.** If at any time you would like to add or delete those locations of yours that will deliver commercial deposits to us or order coin and currency from us, you must notify us of such change in advance, by the deadline specified in the applicable User Documentation, or we may decline to accept such deposits and/or process such additional orders. With respect to commercial deposits, in the event we take receipt and open bag(s) of, or otherwise access, coin and currency delivered to our cash vault(s) from an added or deleted location, regarding which you have failed to provide the requisite advance notice as set forth herein, we shall not by such actions be deemed to have accepted such coin and currency for deposit, and we shall use commercially reasonable efforts to facilitate the return to you of such coin and currency, with such facilitation to be initiated within a reasonable period of time from the date the coin and currency was delivered to our cash vault(s) without the appropriate advance notice.

**Supplemental Suspension And Termination Provisions.** If at any time we believe (i) that our provision of the Service to you may create a risk of financial loss for us or result in an unacceptable credit exposure to us, (ii) that an account associated with the Service may be subject to irregular, unauthorized, fraudulent or illegal activity, or (iii) that your armored carrier and/or their subcontractors create an unacceptable risk exposure to us, we may, in our sole discretion, immediately, without prior notice to you, suspend or modify our provision of the Service, or deny your armored carrier and/or their subcontractors access to our cash vaults, armored carrier vaults and/or other locations until such time that such risk, exposure, or activity is eliminated or otherwise resolved to our satisfaction. Additionally, we may suspend our provision of the Service if you do not use it for such period of time as we may establish from time to time. We may terminate any the Service effective immediately, without prior notice to you, if the account necessary to provide the Service is closed. These suspension and termination rights are in addition to any such rights that we may otherwise have under our agreements with you.

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#### **COMMERCIAL PREPAID CARD**

Our Commercial Prepaid Card Services enable you to distribute Commercial Prepaid Cards to your employees and others that permit them access to a predetermined amount of funds. Commercial Prepaid Cards may be used at ATMs, point-of-sale (POS) terminals, and for over-the-counter cash access Transactions at offices of financial institutions that accept Visa® cards. Detailed information regarding such services is available in the applicable User Documentation.

#### OUR OBLIGATIONS

We will issue Commercial Prepaid Cards to you on your request after you have provided us such information regarding the Commercial Prepaid Card as we may require at that time. Before we issue each Commercial Prepaid Card, we will debit funds from a deposit account you maintain with us for the value amount of the Commercial Prepaid Card issued.

We will mail the Commercial Prepaid Cards to the address or addresses you provide us, together with a copy of the agreement between us and the Cardholder, our privacy policy for consumers (if applicable) and instructions for activating the Commercial Prepaid Card.



We will deduct the amount of each Transaction, which may include fees added by the ATM owner or the applicable network, from the value amount with respect to the Commercial Prepaid Card. We will also deduct applicable Cardholder fees.

You may request us to add value to previously issued Commercial Prepaid Cards by providing such information as we may require at that time. Upon receipt of your request and the required information, we will debit your deposit account with us for the amount to be added to the existing Commercial Prepaid Cards.

You acknowledge and agree that the Commercial Prepaid Card is for use only for business purposes and is not for use for personal family or household purposes. Cardholders will not pay any money or anything of value to receive the Commercial Prepaid Cards. Commercial Prepaid Cards will not be re-sold or distributed by you.

If there are insufficient Collected and Available Funds in your account, we have no obligation to issue or activate any Commercial Prepaid Card or to add value to any existing Commercial Prepaid Card and we may suspend or reverse any completed value load.

Upon your request, and with our approval, we may provide a Commercial Prepaid Card that is not reloadable.

#### COMMERCIAL PREPAID CARD CREATION

All Commercial Prepaid Cards shall identify us as the issuer and shall include such other names and trademarks as we require. If you elect to customize the Commercial Prepaid Cards, you will be responsible for any additional costs in the design or production of the Commercial Prepaid Cards. You will provide graphics, promotional material and wording to us for review and approval and you must comply with all the rules of Visa® USA, Inc. and other systems or organizations, as applicable. You will allow us to use your artwork on the Commercial Prepaid Cards, provided that you shall have first reviewed and approved such use. You will indemnify and hold us harmless from any and all liabilities, claims, costs, expenses and damages of any nature (including Legal Expenses) arising from any claim that the artwork you supplied infringes the intellectual property rights of any third party.

#### COMMERCIAL PREPAID CARD ACTIVATION

Each Cardholder will be instructed to call a toll-free (in the U.S.A.) number and use an interactive voice response system to authenticate the Cardholder by using a number unique to the Cardholder in order to activate the Commercial Prepaid Card. During this call, the Cardholder will receive their PIN, if applicable. The Cardholder can change the PIN at that time to any four digit number. Once the call is successfully completed, the Commercial Prepaid Card will be activated. You will be responsible for informing each Cardholder of any other restrictions you may impose on the use of the Commercial Prepaid Card, and we will not have any responsibility for enforcing those restrictions.

#### COMMERCIAL PREPAID CARD USAGE

We may refuse to issue or add value to any Commercial Prepaid Card if we believe the Commercial Prepaid Card will or may be used in violation, or may cause us to be in violation, of any law or regulation, or any rule of any payment system.

We will use reasonable efforts to prevent any overdraft with respect to a Commercial Prepaid Card or any unauthorized use of a Commercial Prepaid Card, but cannot ensure we will be able to do so.

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### **CONTROLLED BALANCE ACCOUNTS**

Our Controlled Balance Account Services let you control the transfer of funds between accounts with us. These Services may be restricted to certain account types.

Transfers you make from a U.S.-domiciled money market account using these Services are considered preauthorized transfers, are counted toward the number of transactions you are legally permitted each month, and may not be made to a checking account with an overdraft credit facility.

You may instruct us to make either date-related (where available) or balance-related (where available) transfers as described below. Once you instruct us to transfer funds between accounts, transfers begin on a mutually agreeable date or, for accounts domiciled in the United States of America, either immediately or on the date you specify.

With a date-related transfer, funds can be transferred in either direction between certain types of accounts on the date and in the amount you specify. Both interstate and intrastate funds transfers are permitted as long as you meet the

requirements for the account type(s), transfer date and account location(s). If the transfer date you specify is a non-Business Day, we make the transfer on the next Business Day.

With a balance-related transfer, you may have funds transferred to an account when the balance falls below a certain amount, or from an account, when the balance rises above a certain amount, or both. We transfer the amount required to meet the account balance you specify.

Unless you and we have otherwise agreed in writing, you may elect to have funds transferred to or from accounts of a U.S. Subsidiary; provided that (i) the U.S. Subsidiary's accounts are domiciled in the United States of America, (ii) you represent and warrant that such U.S. Subsidiary has authorized us to transfer funds between its accounts and your accounts and between its accounts and other accounts in the Service relationship via transfers through your account, and (iii) you provide us with such documentation as we may request in connection with such transfers.

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## **CONTROLLED DISBURSEMENT**

Our Controlled Disbursement Services provide information to you each Business Day so that you can fund the net total amount of (i) controlled disbursement checks presented that Business Day, (ii) certain controlled disbursement ACH transactions received prior to the time stated in the applicable User Documentation and (iii) any other check-related electronic adjustments to which we agree and which are posted that Business Day.

### ACCOUNTS

We make the Controlled Disbursement Services available through multiple Controlled Disbursement Points in different parts of the United States of America. These points are identified on the List of Banks and Services. Subject to our approval in each case, you may use such Service through one or more of those points. For each Controlled Disbursement Point you use, you shall maintain one or more Controlled Disbursement Accounts with us.

For each Controlled Disbursement Point, as more fully described in the applicable User Documentation, you may (i) draw checks bearing the respective point's routing numbers directly on your Controlled Disbursement Accounts, (ii) initiate or authorize third parties to initiate ACH debits pursuant to the section of this Booklet regarding ACH Services and (iii) subject to the applicable funds transfer Service agreement, initiate other electronic debits to your Controlled Disbursement Accounts. (For electronic debits to your Controlled Disbursement Accounts, you must use the appropriate funds transfer Service approved by us.)

### CHECKS

You shall only use checks which conform to the form and specifications described in the applicable User Documentation, and which have been satisfactorily tested by us. If we determine that checks used by you do not comply with such requirements, we may take the actions described in the applicable User Documentation.

### NOTIFICATION AND FUNDING

On each Business Day, we will inform you by the time specified in the applicable User Documentation of the total amount of debits presented for payment that day at or through a Controlled Disbursement Point and any other amounts required to be deposited in your corresponding Controlled Disbursement Accounts to cover such debits. On each such Business Day, prior to the time stated in the applicable User Documentation, you must ensure that sufficient Collected and Available Funds are on deposit in your Controlled Disbursement Account(s) to cover such amounts. If we attempt to post a debit to a Controlled Disbursement Account for the amount due and determine there are insufficient funds in the Controlled Disbursement Account, we may dishonor some or all of the checks then pending payment and/or, as appropriate, return or reject any electronic debit pending settlement. We may, however, in our sole discretion, allow an overdraft so some or all of such checks or electronic debits will be paid or settled. If we do so, we are not obligated to allow any such overdraft in the future.

If we allow an overdraft to occur in your Controlled Disbursement Account, repayment is immediately due and payable, and you will repay us, on or before the next Business Day, the amount of such overdraft along with interest on such amount as specified in our schedule of charges for business account services or as otherwise agreed. Additional terms and conditions contained in your Account Agreement may also apply. If you do not repay us as specified herein, we may dishonor some or all of the checks then pending final payment and/or, as appropriate, return or reject any electronic

debit pending settlement even if the Controlled Disbursement Account has sufficient Collected and Available Funds to cover such debits.

You will select the funding methods for your Controlled Disbursement Accounts from the options described in the applicable User Documentation. However, in certain circumstances, we may require a change in the funding methods used for your Controlled Disbursement Accounts, and may require such accounts to be funded via wire transfer or account transfer.

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## **DATA AGGREGATION AND USAGE SERVICE**

Our Data Aggregation and Usage Service is a data aggregation, information reporting and data manipulation service which provides you with on-line access to information reporting services. These services include not only data collection and manipulation but also information reporting, cash forecasting, and automated general ledger downloading, as applicable. The availability of one or more of the foregoing services may be dependent upon various factors, including the on-line channel(s) pursuant to which the Service may be accessed, and not all functionalities of the Service may be available for your use. Subject to the foregoing limitations concerning availability, upon your registration for the Service and completion of any other requirements, including identification of those accounts which you wish to be included for use with the Service, you may use your on-line access to retrieve, analyze, manipulate data from your accounts with us and with third parties. Detailed information regarding our Service, including information concerning the availability of the various functionalities, is set forth in the User Documentation.

You agree to use the security procedures we may designate from time to time with regard to access to the Service, verification of the authenticity of actions taken in connection with the Service, and safeguarding of correct user identification codes and passwords, as set forth in our User Documentation.

### DATA AGGREGATION

You must identify for us those accounts which you wish to be included for use with the Service. You must be the legal owner of, or have the legal right to access, such accounts. With regard to the accounts you identify, you must obtain and provide to us any applicable third party consents and comply with all other requirements, including data feed requirements, that we may specify from time to time as necessary or appropriate for our receipt or retrieval of this account information. With regard to the foregoing, you agree to the following:

- You represent that you are a legal owner of, or have the legal right to access, the accounts at third party web sites which you designate to us for information aggregation, information reporting or other purposes in connection with our provision of the Service. You further represent that you have the authority to designate us and our service provider(s), if applicable, as your agent and attorney-in-fact as set forth below.
- You authorize us, as your agent and attorney-in-fact, to access third party web sites, retrieve or receive account information, and use your account information for the purposes of providing the Service, and you further authorize us to take any action we deem necessary and appropriate to facilitate the foregoing with respect to your accounts at third parties.
- Third party account providers shall be entitled to rely upon the above authorization and power of attorney granted by you.
- You agree and acknowledge that, when we access and retrieve or receive information from third party web sites, we act as your agents, and not the agents of the third party.
- We do not have any responsibility or liability for transactions and/or inquiries you make with respect to any accounts you have, or may legally access, with third parties, and all fees charged by any third parties with regard to actions involving your accounts with such parties are your sole responsibility. You agree to abide by the terms and conditions governing your accounts with third parties, and to resolve any dispute you may have regarding such accounts with the relevant third party according to the relevant terms and conditions binding upon you and the third party, without any involvement or liability on our part.
- Subject to any constraints of third parties with whom you have accounts, in providing our services we will make reasonable efforts to comply with your instructions, given in accordance with our designated procedures, regarding the timing and frequency of account data pulling activities. However, account information reflected via your use

of the Service will constitute the most recent refresh successfully completed, but may not be accurate or current. We are not liable for any errors or delays in the content of such account information or for any action, and/or its consequences, which you may take in reliance upon such information. We do not endorse or recommend the services of any unaffiliated third party whom you select for purposes of using the Service's capabilities, including information aggregation capabilities, and from whom we collect your account information pursuant to your authorization.

#### DATA MANIPULATION

Using the Service's data manipulation capabilities, you may use various tools to populate and make other use of spreadsheet(s) as set forth in the User Documentation. With regard to the foregoing, you agree as follows:

- You agree and acknowledge that we are not responsible for any results associated with your use of any spreadsheet and/or similar representation, and/or your reliance thereupon; the appropriateness of the calculations performed in connection with your use of any spreadsheet or similar representation; the timeliness of any data populated the any spreadsheet or similar representation, as such data may not reflect true "real time" figures; the accuracy of any data provided by third parties, regardless of whether such data is populated by us or otherwise; and any data input by you.

#### CASH FORECASTING

Using the Service's cash forecasting capabilities, you may obtain estimates, analyses and other information based upon automated cash flow calculations. For these cash flow calculations, you may select relevant factors, such as actual account and user history, historical patterns of check clearing times and seasonality trends. You may use data from cash forecasting to take such steps (e.g. funds transfer) as you designate via certain other services for cash management purposes. You may also use the Service to obtain and implement recommended actions for managing liquidity. With regard to the foregoing, you agree as follows:

- You agree and acknowledge that, in connection with the Service's cash forecasting, we do not provide you with any guaranty or warranty regarding future payments, collections, cash requirements, funds availability or other circumstance, and you agree that you will take such steps as you deem reasonable to assess, verify, test and otherwise evaluate any forecasts or recommended actions provided pursuant to the Service.
- In providing you with various options, calculations and recommended actions to assist you with cash forecasting, we do not represent that any such options, calculations and/or recommended actions are advisable, suitable or reliable for your use. You expressly agree and acknowledge that there are inherent risks in utilizing cash forecasting tools and you assume all liability in connection with such utilization.

#### AUTOMATED GENERAL LEDGER INTERFACE

You may use the Service to access a capability which allows you to automatically download file(s) from your general ledger. In the event you elect to download general ledger information, you are solely responsible for verifying the accuracy, scope, completeness and timeliness of this information. You agree and acknowledge that neither we nor our service provider(s) undertake to reconcile such general ledger information in any manner or for any purpose, prior to, during or after downloading of this information to the Service. You also agree and acknowledge that our provision of this capability does not create any duty of ours either with regard to discrepancies or unauthorized actions or events or with regard to your responsibilities regarding accurate record keeping.

#### DISCLAIMER

We are not responsible for the accuracy, timeliness, scope, reconciliation and/or use of account and other information accessed or utilized in connection with the Service. You agree and acknowledge that all services and features utilized, and all actions taken, by you in connection with the Service are taken in your sole discretion and under your sole responsibility.

Without limiting the foregoing, you agree that the foreign exchange rates provided in connection with the Service are indicative only and are not live dealing rates. These indicative rates are provided by us solely as a courtesy. We do not accept any responsibility or liability for the accuracy or completeness of any indicative rates or for any reliance by or any other person on such rates. The indicative rates are derived from sources and models that we believe provide a

reasonable approximation of market rates at the time of calculation. Rates based on other models or differing assumptions or for different purposes may be materially different. With respect to your receipt of indicative rates in connection with the Service, you have full responsibility for all valuations of transactions for your own financial and regulatory reporting. Prices or valuations derived from use of indicative rates provided in connection with the Service do not necessarily represent or reflect prices or amounts at which any transaction could or would be entered into at this time or any other time, with us or with any other party.

In addition, we are not responsible for any data that is lost or destroyed in connection with your use of the Service. Without limiting the foregoing, we will not be responsible for any mechanical hard drive failure or other system failure, or if the Software is disabled (or "locked-up") as a result of your installation of other computer software on the personal computer, workstation or network on which Software is installed. We strongly recommend that you take the necessary measures to ensure that you perform daily back-ups of your data and the hard drives of the personal computers and/or services used in connection with the Software.

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## **DIGITAL DISBURSEMENT SERVICE**

Through the Digital Disbursement Service, you may request us to initiate disbursement payments to individual recipients using the bank account and bank routing information associated with the mobile telephone number or email address of the recipients, as registered with clearXchange or banks that participate in clearXchange. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein. We will process the disbursement payment directly if the recipient's registered account is held by Bank of America or through one or more electronic payment networks if the recipient's account is held at a different US-based bank or credit union. If the recipient is not a registered recipient with clearXchange or a bank that participates in clearXchange, we will notify the recipient on your behalf and request that the recipient register with clearXchange or with a bank that participates in clearXchange to receive disbursement payments. You may only access the Digital Disbursement Service through a Bank Approved Channel, and may rely on the applicable User Documentation for further detail.

Before using the Digital Disbursement Service, you will provide us with a written list, in a form acceptable to us, of persons authorized by you to verify the authenticity of Digital Disbursement transactions and Approval/Deletion requests in accordance with the Security Procedure and to perform certain other duties in connection with a Digital Disbursement Service. You shall update such list from time to time as necessary to reflect any changes in authorized persons.

**Registration of Recipients.** The Digital Disbursement Service can only complete a payment to a Recipient if the Recipient registers with clearXchange or a bank that participates in clearXchange and provides the bank deposit account and routing information to be associated with his/her Alias Based Identifier. If you send us a Payment Transaction Request for a Recipient that is not a Registered Recipient, we, acting on your behalf, will send the Recipient a message to the Recipient's Alias Based Identifier requesting that the Recipient register his/her payment credentials for receipt of payments sent through the Digital Disbursement Service. We will not be able to complete processing of a Payment Transaction until the Recipient completes registration and qualifies as a Registered Recipient. You authorize us to send one or more messages to a Recipient's email address and/or mobile phone number informing the Recipient that a payment transaction is pending and that the Recipient needs to register in order to receive the payment. If the Recipient fails to register within fourteen (14) calendar days, or such other time frame that we may establish in our sole discretion from time to time, the Payment Transaction Request will be cancelled. You represent that you have all requisite authority under applicable law to authorize us to contact the Recipient in this manner and for this purpose.

**Initiating a Digital Disbursement Payment.** To initiate a Digital Disbursement payment through the Digital Disbursement Service, you shall provide a Payment Transaction Request to us through a Bank Approved Channel in the required format and containing the required data elements as established under the User Documentation and the Materials. For each Payment Transaction Request, you shall include, without limitation: (i) the dollar amount of the disbursement payment, (ii) the Alias Based Identifier for the Recipient, (iii) the Process Date, and other required fields as established in the User Documentation and the materials. You represent and warrant that all information in a

Payment Transaction Request, including the Alias Based Identifier of the Recipient, is accurate, correct and complete. We will use commercially reasonable efforts to initiate the Payment Transaction on the Process Date. We make no representation or warranty to you that a Payment Transaction will be received by the Recipient or credited to the Recipient's bank account on the Process Date or any other date. Payments may be delayed if the Recipient has not registered as a Registered Recipient. We shall have no liability to you in the event that you incur financial liability to a Recipient or other person arising from a delayed, undelivered, or late payment.

**Processing and Payment of Digital Disbursements.** You hereby authorize us to debit your designated Settlement Account for the amount of each Payment Transaction Request and remit funds in accordance with your Payment Transaction Request through the ACH network, book transfer, or other electronic funds network, as determined by us or clearXchange. We may debit your Settlement Account by direct posting/book transfer for payment for your Payment Transaction Requests. You are responsible for maintaining collected and available funds in the Settlement Account in an amount sufficient to pay for all debits to fund the Payment Transaction Requests. Debits to the Settlement Account can occur on or after the Process Date that you submit to the Bank. We are not obligated to process any Payment Transaction Requests, even if we have done so in the past, without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand. We may post these debits to your Settlement Account even if the debits cause your Account to have a negative intraday balance or to be in an overdraft position. After the Process Date and prior to settlement of the funds to the Recipient, funds deducted from your Settlement Account may be held in an omnibus account or general liability account at the Bank. You acknowledge and agree that you have no ownership interest or right to the funds in this bank account, or to any compensation (including but not limited to interest or earnings credit) for funds held in such account. This bank account arrangement does not create a trust or other fiduciary obligations on the part of us to you.

**Our Reliance on Alias Based Identifiers and Related Bank Account Information.** You acknowledge that we, clearXchange and other processing banks will process the Payment Transaction to the Recipient based on the bank deposit account and routing information that is associated with the Alias Based Identifier that you include in the Payment Transaction Request. We shall have no responsibility to you or any other person, and we make no warranty or representation to you, that the bank deposit account associated with the Alias Based Identifier of the Recipient is in fact a bank account owned by or controlled by the Recipient. We have no responsibility for the accuracy of the bank account information associated with a Recipient's Alias Based Identifier. If you sent us an erroneous transaction and complete an unintended payment, you may submit a claim request and we will make a reasonable effort to act on your request. We will not be liable to you if such claim request is not effected. You agree to indemnify us in connection with any such claim request and/or reversal.

**Returned Transactions.** A Payment Transaction may be returned or rejected for various reasons such as, but not limited to, (i) the Recipient's bank account information associated with the Alias Based Identifier is expired or invalid, (ii) the Payment Transaction is rejected or returned by the Recipient, his/her financial institution or a payment network, or (iii) the Recipient has failed to register as a Registered Recipient. We will use commercially reasonable efforts to provide you with notice of a returned/rejected Payment Transaction. You agree that we shall not have any liability for any returned/rejected Payment Transaction or any resulting loss or damage that you may incur. Returned/rejected Payment Transactions will be credited to your Settlement Account.

**Payment Cancellation Requests.** You may request that we attempt to cancel a Payment Transaction that is pending (unknown Recipient), pending acceptance by the Recipient, or future dated for which we have not yet begun processing. We are not obligated to act on such a cancellation request. You may only request the cancellation of a Payment Transaction through a Bank Approved Channel. We will credit back to the Settlement Account any debits previously made to fund a successfully cancelled Payment Transaction.

**Transaction Limits.** We may, in our sole discretion, impose limits on the amount of funds sent through the Digital Disbursement Service, on a per-transaction or a cumulative basis, and change those limits at any time without prior notice to you. We may also, in our sole discretion, impose frequency limits on the number of transactions to an individual Recipient or to all Recipients in the aggregate, as well as daily or monthly limits as we deem appropriate.

**Permissible Customers and Payments.** You represent and warrant to us that all Recipient bank accounts are domiciled in the United States. You may not submit a Payment Transaction Request that would require the processing

of an international ACH transaction (IAT) or any other type of cross border payment. You shall comply with all applicable state and federal laws when making a Payment Transaction Request and using the Digital Disbursement Service . The Digital Disbursement Service is designed for your own proprietary payments only. You are prohibited from using the Digital Disbursement Service to make payments on behalf of a customer or other third party or any other unlawful payment. In no event shall we be liable for any claims for damages resulting from your requesting, or our processing, of these types of impermissible disbursement payments.

**Payment Review.** In our discretion, we may place a hold on a Payment Transaction Request for as long as reasonably required to conduct an appropriate inquiry regarding you, the Recipient, the requested disbursement payment and other relevant circumstances and factors. In addition, we reserve the right in our sole discretion to suspend or cancel any Payment Transaction if your Settlement Account or your use of the Digital Disbursement Service is not in good standing, as determined by us in our sole discretion.

**Compliance with Service Documentation.** You are responsible for ensuring that your use of the Digital Disbursement Service and each Payment Transaction Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation and the Materials for the Digital Disbursement Service .

#### RECIPIENT AUTHORIZATION FOR PAYMENT

You shall only initiate a Payment Transaction Request to a Recipient using a mobile phone number if that recipient has expressly consented to you to receive text messages from you and us relating to the disbursement payment. You may document these consents in writing or by a recorded oral conversation. You also are responsible for obtaining any other consent from your customers, as required by your privacy policy or applicable law, for the sharing of customer information with us as necessary to make the disbursement payment to the Recipient. Upon our request, you will share documentation evidencing these consents with us.

#### CONFIDENTIALITY AND SECURITY OF DATA IN PAYMENT TRANSACTION MEMO FIELD

You shall not enter any confidential or proprietary information into the payment transaction memo field of your Payment Transaction Request (including full bank account numbers or social security number) as information from this field will be displayed in the Digital Disbursement Service email/text message communications to recipients and other persons. This payment transaction memo field information will not be encrypted within the Digital Disbursement Service or in various communications sent to recipient and other persons in connection with the Digital Disbursement Service , and this information may be subject to inadvertent disclosure. You bear sole responsibility for compliance with any federal or state laws relating to information security or privacy with respect to information you place in the memo field.

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#### **ELECTRONIC BILL PAYMENT CONSOLIDATION**

Our Electronic Bill Payment Consolidation Services consolidate, reformat and deliver remittance information and other data related to payments received from Bill Payment Service Providers for credit to your account. Detailed information regarding the Services is available in the applicable User Documentation.

You agree that you will authorize Bill Payment Service Providers to deliver payments, remittance information and other related data to us for us to provide these Services to you. We will credit payments received from Bill Payment Service Providers to your account. If you elect to receive Reversals, we will debit your account for the amount of the Reversal and send such funds to the Bill Payment Service Provider.

You may also elect to have information of another company/organization reported through these Services. If you do so, you agree that you and the other company/organization will authorize the Bill Payment Service Providers to deliver payments, remittance information and other related data to us for us to provide these Services to you.

Remittance information and other data related to payments will be delivered to you in a mutually acceptable form and manner.

If you are unable to post any payments to your customers' accounts, you must promptly return such payments to us. You shall pay us immediately for the amount of any returned payments which we previously credited to your account.

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## **ELECTRONIC DATA INTERCHANGE (EDI)**

Our EDI Services allow you to disburse funds and/or deliver payment-related information to your receivers, electronically or by paper, by sending payment requests or payment-related information to us as described in the applicable User Documentation. These Services also allow you to access payments-related and remittance-related information in mutually acceptable formats received from your receivers and, where available, to match specified receivables and payables against payments. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

For the web-based remittance advice delivery service, you are responsible for enrollment of your receivers on the service. During enrollment you will review and verify the accuracy of all enrollment information provided by your receivers on the specified Website. Upon completion of enrollment, you authorize us to deliver the confidential passwords and identifiers to your enrolled receiver to access the specified Website. Your receiver must keep such passwords and identifiers confidential. We will be fully protected in relying on the correct user identification codes and passwords.

### SENDING PAYMENTS AND RELATED INFORMATION

When you wish to pay your receivers, you transmit a data file to us, containing instructions for your payments, in the format and by the cutoff times specified in the applicable User Documentation. When we receive a file from you under an EDI Service, we perform certain edits on the data, translate it into the appropriate format and/or medium and send the data to the payment system specified by you, except that we may use any means of transmission, funds transfer system, clearing house or intermediary bank we reasonably select. On the specified dates, we issue your payments in the required formats.

You control the content of any payment-related information you send to us and are solely responsible for the accuracy of such information. You are solely responsible for secure storage of all data relating to such information so that it can be made available to individual receivers upon request. You should reference the User Documentation for the applicable payment service to determine specific requirements for the duration of time required for data storage.

For the web-based remittance advice delivery service, we act as an intermediary to make data and information available to or from you or your enrolled receivers reasonably promptly after receipt of such information. We make the information available to your enrolled receivers on the specified Website within one Business Day of receipt. The information will be available on the specified Website for the time periods specified in the applicable User Documentation. We will not alter the content of any information that we receive from you or the receivers. We are not responsible for the accuracy of any of the information that we receive.

Payment requests originated via the EDI Services will be subject to the terms and conditions for the underlying payment services (Check Issuance and Document Printing, ACH and/or Wire Transfer and International Electronic Funds Transfer) as described in their respective sections of this Booklet.

### RECEIVING REMITTANCE INFORMATION

Remittance information can be delivered to you in a mutually acceptable form and manner and will be covered under the Information Reporting section of this Booklet.

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## **ELECTRONIC FOREIGN EXCHANGE**

Our Electronic Foreign Exchange Services allow you to initiate FX Requests over the internet or by telephone. By accessing our Website, you can request that we provide an FX Transaction quotation, and by accepting our quotation you can electronically enter into FX Transactions, all in accordance with the instructions provided in the applicable User Documentation. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

### AUTHORIZED PERSONS



Before using an Electronic Foreign Exchange Service, you give us, by completing the applicable application, a written list of the persons authorized by you, including the security administrators, to perform certain duties in connection with the Electronic Foreign Exchange Service.

#### EFFECTIVENESS OF FX TRANSACTIONS

You deliver FX Requests to us through the Service and we send you a quotation that you can accept electronically. You must follow all system instructions, procedures and warnings delivered to you on the Website provided for the Service. Once we receive your acceptance of our quote, we send you our deal acknowledgment in accordance with the applicable User Documentation, and the FX Transaction will be binding and effective. The FX Transaction is not completed until we send this acknowledgment. You are responsible for contacting us outside the Service if you have not received our electronic acknowledgment within the time specified in the applicable User Documentation (or in the absence of such specification within a reasonable time). We will book FX Transactions at our New York office. Notwithstanding anything to the contrary in this Booklet, we reserve the right to withdraw the Service or terminate your access to the Service at any time without notice.

#### ACCOUNT DEBITS

You must have *Collected and Available Funds in your account* which, when added to funds which may be made available under a line of credit, are sufficient to cover your FX Requests. You may initiate an FX Request only if the offsetting debit to your account, including the available line of credit, will not cause you to exceed the account balance according to your records. If your records and ours disagree regarding the account balance, our records will control for purposes of our processing the FX Request.

Unless you have available funds under a line of credit with us, you are obligated to pay us the amount of any FX Request once we receive your FX Request. We will debit the account you specify for the amount of your payment before we process your FX Request. If, for any Business Day, we receive more than one FX Request and/or other items payable from your account, we may debit your account for such FX Requests and items in any sequence we determine in our sole discretion.

If you have available funds under a line of credit with us, we will debit your specified account for the amount of your payment on the settlement date of the FX Transaction. Prior to the settlement date, you can request a change to the specified settlement account for the FX Transaction by using the Website for the Service. We will not be obligated to implement such a change, and the change will not be effective until we have had a reasonable opportunity to review and act upon your request.

#### REJECTION OF FX REQUESTS

We may reject any FX Request which does not comply with the requirements of this Booklet or the applicable User Documentation, including any processing limits described in such User Documentation, or which we have been unable to verify through use of the Security Procedure. We also may reject any FX Request which exceeds the *Collected and Available Funds* (including funds made available under a line of credit) on deposit with us in the applicable account. Notice of rejection is given to you by telephone, by electronic means, by facsimile or, in event such notice cannot be given by any of those means, by mail. Notices of rejection will be effective when given.

#### CONFIRMATIONS AND SETTLEMENTS

You agree that FX Transactions effected through the Service are automatically confirmed and do not require any further confirmation. Foreign exchange transactions effected by a method other than the Service may also be confirmed on the Website for the Service in accordance with the User Documentation. Your electronic confirmation of each such foreign exchange transaction shall have the same effect as if you had received a written confirmation from us and had reviewed, manually signed and returned the signed confirmation to us.

#### INTERRUPTION OF COMMUNICATIONS

In the event of a service interruption involving the Service, you may effect FX Transactions, confirm FX Transactions, and specify settlement instructions by contacting one of our trading rooms or operations centers by telephone as designated in the applicable User Documentation.

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## **ELECTRONIC STOP PAYMENT**

Our Electronic Stop Payment Services allow you to electronically place or cancel a Stop Payment Request. This is in addition to your ability to make stop payment requests in person, by telephone or in writing as described in your Account Agreement.

A Stop Payment Request will not be effective until we review our records for the time period specified in the applicable User Documentation, determine that the check has not been paid during that period and respond to you with an online status of your request of "accepted" (rather than "rejected" or "pending").

A Stop Payment Request terminates at the end of the period designated in the applicable User Documentation, unless the Stop Payment Request is renewed or canceled earlier. A Stop Payment Request is canceled automatically when the account on which the check is drawn is closed or transferred.

### **REQUESTING STOP PAYMENTS**

You will include in each Stop Payment Request the Magnetic Ink Character Recognition (MICR) serial number and exact amount (dollars and cents) of the check for which payment is being stopped and the account number on which the check is drawn. You understand and agree that we can only stop a check that shows exactly the same MICR serial number and amount as that included in the related Stop Payment Request since our computer system identifies a check on the basis of the MICR serial number and the exact amount of the check.

You will review your account statements prior to transmitting any Stop Payment Request. You will not transmit any Stop Payment Request relating to a check that has been shown to be paid on such statements. If a check does not appear as paid on a statement with the correct check serial number due to defective or damaged MICR information on the check, we are not liable for processing the check.

In some cases, we may pay a check even if a Stop Payment Request is in effect. For example, if one of our branches (or banking centers) or affiliates becomes a "holder in due course" of the check that you asked us to stop, we may still pay the check.

The procedures for placing and acknowledging Stop Payment Requests are described in the applicable User Documentation.

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## **IMAGE SERVICES**

Our Image Services will make available to you digital images of checks, drafts, deposited items, returned items, notices of debit adjustments (with respect to this section, "debits") and/or notices of credit adjustments and deposit slips (with respect to this section "credits") with respect to specified accounts established with us. (Such Services do not include Image Lockbox Services, which are provided in connection with our Lockbox Services.) Digital images will be made available to you at such times as may be set forth in the applicable User Documentation or as otherwise established by us.

Images may be made available to you by Website, file transmission or by CD-ROM/DVDs. Images available via Website include checks, drafts, deposited items, returned items, debits and credits. Images available via file transmission include checks, drafts, deposited items, returned items, debits and credits. Digital images made available via CD-ROM/DVDs, which may be accessed through the use of CD-ROM/DVD software that we provide to you, include checks, drafts, deposited items, debits and credits. If you elect to receive Account Reconciliation reports and/or Demand Deposit Account (DDA) statements on a CD-ROM/DVD, images of such reports and/or statements will also be made available to you by CD-ROM/DVD or image transmission.

If an image of a check or draft is missing or is illegible, we will provide you with a copy upon your request. Your request must include the account number, the check serial number, the exact amount (dollars and cents) of the payment and the date the payment was made. We may assess a fee for copies provided to you. We will not be liable for failure to provide copies by a given time or for failure to provide copies we are not reasonably able to provide.

Notwithstanding the Limitation of Liabilities section of this Booklet, we will not be liable for damages arising under any Image Service in excess of the amount of the check, draft or miscellaneous debit giving rise to your claim. Any such claim must include the account number, the check serial number, the exact amount (dollars and cents) of the

payment, the date the payment was made, the name of the payee, a detailed explanation of how the claimed loss occurred and the name, address and phone number of the payee.

Notwithstanding the Suspension and Termination section of this Booklet, in the case of an Image Service using CD-ROM/DVDs, termination of such service upon 30 days notice may not be effective earlier than the first day of the statement period immediately following the statement period during which such notice is given.

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## **INFORMATION REPORTING**

Our Information Reporting Services make certain account, transaction and related information available to help you control and manage your accounts. This may include information generated from other Services you use. You may have information reported directly to you or, with certain of our Information Reporting Services, reported at your direction to another financial institution or other entity. Information reported on a current day basis is subject to updating and, therefore, at any point in time may not reflect the information on our records at such time. In addition, such information may be subject to adjustment upon final posting. Detailed information regarding an Information Reporting Service is available in the applicable User Documentation.

### ACCOUNTS OF OTHER COMPANIES/ORGANIZATIONS

You may elect to have accounts of another company/organization reported to you with any of our Information Reporting Services. You agree that, for each such account, the company/organization will provide us with its written authorization, in a form acceptable to us, for us to make its account information available to you. However, you do not need to provide us such written authorization if the other company/organization is a U.S. Subsidiary and its accounts are domiciled in the United States of America. In that case, you represent and warrant that such other company/organization is a U.S. Subsidiary and that it has authorized us to make its account information available to you.

### ACCOUNTS AT OTHER BANKS

You may also elect to have your accounts, or accounts of another company/organization, that are maintained at another financial institution reported through certain of our Information Reporting Services. If you do so, you agree that you and the other company/organization will authorize such other financial institution to make the reporting information available to us and to take all other actions necessary for us to provide Information Reporting Services to you. We shall not be responsible for the accuracy or timeliness of any information provided to us by any such financial institution.

### THIRD-PARTY INFORMATION

If you gain, through your use of one or more Services, access to any information relating to any person other than us, you or any of your Subsidiaries which have authorized your receipt of such information, you agree that you will treat such third-party information as strictly confidential and you shall not disclose it to any person outside your company or to any persons within your company except those who have a need to know. Further, you shall ensure that adequate measures have been taken to prevent the unauthorized use of any such third-party information. You agree that you will not use any such third-party information for your own purposes other than in a communication to us relating to the Service.

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## **LOCKBOX**

Our Lockbox Services involve the processing of checks and other payment instruments, such as drafts, that are received at a Lockbox Address or by special arrangement with us, excluding without limitation the processing of cash, stock certificates and tangible valuables. With a Lockbox Service, you instruct your customers to mail checks and other payment instruments you want to have processed under a Service to the Lockbox Address. We are not liable to you for losses you suffer if anything other than checks or other payment instruments are sent to the Lockbox Address. We and/or our agents will have unrestricted and exclusive access to the mail (which may be accessed in image form) sent to the Lockbox Address.

If we receive any mail containing your lockbox number at our lockbox operations location (instead of the Lockbox Address), we may handle the mail and reserve the right to deposit the items as if they had been received at the Lockbox Address.

## PROCESSING

We will handle checks received at the Lockbox Address according to the applicable Account Agreement, applicable User Documentation and our availability schedule, as if the checks were delivered by you to us for deposit to your designated account, except as modified by this Booklet.

For image lockbox, all envelopes will be opened and scanned once received at our lockbox processing site. Images will then be used to identify your lockbox address and to process each transaction for deposit using your predetermined lockbox processing instructions. For paper lockbox, we will open the envelopes picked up from the Lockbox Address and remove the contents. Checks and other documents contained in the envelopes will be inspected and handled in the manner specified in the set-up documents for the applicable Lockbox Address. We capture and report information related to the lockbox processing, where available, if you have specified this option in the set-up documents. As appropriate, we will endorse all checks we process on your behalf and deposit them in the account you designate for the applicable Service.

If we process an unsigned check as instructed in the set-up documents, and the check is paid, but the account owner does not authorize payment, you agree to indemnify us, the drawee bank (which may include us) and any intervening collecting bank for any liability or expense incurred by us or such other bank due to the payment and collection of the check.

If this option is available and if you instruct us not to process a check bearing a handwritten or typed notation "Payment in Full" or words of similar import on the face of the check, you understand that we have adopted procedures designed to detect checks bearing such notations; however, we will not be liable to you for losses you suffer if we fail to detect checks bearing such notations.

Unless we agree otherwise, each Business Day we will prepare and send remittance materials (images via internet, electronic file and/or paper packages) relating to the Lockbox Address to you at the address you specify for that Lockbox Address. For the wholesale Lockbox Service, the return of paper documents may include, but is not limited to, any checks (which checks may be in the form of Image Replacement Documents) not processed in accordance with the set-up documents along with requested remittance materials in the form of copies, versus the originals.

If you subscribe to the Image Lockbox Service, unless we agree otherwise, we will retain images of processed lockbox checks, remittance documents and correspondence as well as original remittance documents for an archive period as we communicate to you from time to time. The images will be sent to you via an encrypted CD-ROM or other encrypted medium as specified in the User Documentation. Upon receipt, you must promptly notify us if such CD-ROM contains a media defect or is unreadable in its entirety. Subject to the terms herein regarding the retention of lockbox images, we will use reasonable efforts to replace the CD-ROM, which shall be our sole obligation and your sole remedy with respect to defects in the CD-ROM. If you elect to not receive an encrypted CD-ROM of the lockbox images, we will have no obligation to provide copies of such items, other than a copy of the check image.

## ACCEPTABLE PAYEES

For the Lockbox Address, you will provide to us the names of Acceptable Payees in writing. We will process a check only if it is made payable to an Acceptable Payee and if the check is otherwise processable. In some jurisdictions outside the United States, an Acceptable Payee is limited to you and limited variations of your name. In all other jurisdictions, including the United States, you warrant that each Acceptable Payee is either you or your affiliate. If an Acceptable Payee is your affiliate, then you also warrant that such Acceptable Payee has authorized checks payable to it to be credited to the account you designate for a Lockbox Service. We may require written authorization from any such Acceptable Payee. We may treat as an Acceptable Payee any variation of any Acceptable Payee's name that we deem to be reasonable.

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## **NOTIFICATION SERVICE**

Our Notification Services, where available, allow you to receive certain types of Notices. The types of Notices relating to a particular Service are further described in the User Documentation.

You agree Notices are in addition to and not a replacement of or substitution for the Services received by you under this Booklet or any other agreement between you and us. As set forth in the User Documentation, your system administrator(s) shall instruct us with respect to your use of the Notification Services.

You acknowledge and agree that Notices are provided as a convenience and as such you (a) acknowledge and agree that you may not rely on the receipt or expected receipt of a Notice, or the contents (or lack thereof) of any Notice, to relieve you of any of your obligations or duties under the terms of this Booklet or otherwise, and (b) must continue to use the Services in compliance with the applicable terms of this Booklet or such other agreement between you and us. Notwithstanding any terms to the contrary, you agree that we shall not be liable in any case: (i) for any failure to provide, or any delay in providing, any Notice, (ii) if any Notice is intercepted or received by an unauthorized person or entity, and (iii) if any Notice is inaccurate or incorrect in any way.

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## **PAYMENT PROCESSING SERVICE**

When you enroll to use the Payment Processing Services, you will choose to enroll as a Disburser. With our Payment Service, if you are a Disburser you may request us to originate on your behalf payments to Collectors. The capitalized ACH terms appearing in italics below are defined in the NACHA Rules. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

### YOUR RESPONSIBILITIES

If you are a Disburser:

- You must create and transmit to us or our third party processor a Transaction Request for each Entry you want us to originate on your behalf. You must make certain that each Transaction Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation.
- You must retransmit any Transaction Request or other message initially transmitted to us or our third party processor through the Payment Service if you have not received an acknowledgment message from us or our third party processor within the time period specified in the applicable User Documentation.
- You authorize us or our third party processor to originate credits and debits to your Transaction Account through the ACH network in accordance with this Booklet and the NACHA Rules.
- You must comply with the NACHA Rules for all Transaction Requests and Entries, whether or not a Transaction Request or Entry is sent through the ACH network. We act as the *Originator*, on your behalf, and *Originating Depository Financial Institution (ODFI)* with respect to Entries. You will deliver Transaction Requests to us as provided in the User Documentation and the NACHA Rules. The NACHA Rules govern if they conflict with this Booklet or User Documentation, except that the file specification requirements in the User Documentation govern if they conflict with the NACHA Rules.
- Before using the Payment Service, you must give us a written list, in a form acceptable to us, of the persons authorized by you to verify the authenticity of Transaction Requests, Entries and Reversal/Deletion Requests in accordance with the Security Procedure and to perform certain other duties in connection with such Service.
- You must pay us with Collected and Available Funds for all Transaction Requests and credit Entries before the settlement date. If you pay us using one of our Wire Transfer Services, the terms and conditions of the Wire Transfers and International Electronic Funds Transfers section of this Booklet will apply. If you pay us using one of our Automated Clearing House (ACH) Services, the terms and conditions of the Automated Clearing House (ACH) section of this Booklet will apply.

When you enroll to use the Payment Processing Services, you will become a member of the Network. If you are a Disburser you must comply with the Network operating rules. The operating rules are available for your review at <https://secure.paymode.com/policies/operatingrules.htm>.

### OUR RESPONSIBILITIES

If you are a Disburser:

- We will send Entries on your behalf and in accordance with your Transaction Request through the ACH system or processed directly to Transaction Accounts with us, all in accordance with the User Documentation. We may send Entries to any ACH processor selected by us or directly to another bank.

- We will send an Entry to the ACH processor for settlement on the date you select in the applicable set-up documentation, if we receive the Transaction Request by the applicable processing deadlines specified in the User Documentation for the Payment Service and, unless we agree in writing otherwise, we have received Collected and Available Funds from you for the Entry. We may treat Transaction Requests we receive from you for processing after a deadline as if received on the next Business Day. Transaction Requests will be deemed received by us when we receive the complete file at the location specified in the User Documentation.
- We will debit your Transaction Account for the amount of the Transaction Request.
- We will make available to your Collectors any remittance information received from you, as set forth below.
- We will give you secure access to the status and history of payments made by you through use of the Payment Service.
- At your request, we will contact those entities you identify to discuss with them enrolling as Collectors, as described in the User Documentation.

#### PROVISIONAL PAYMENTS

You agree to comply with the NACHA Rules for all Transaction Requests and Entries. You agree to be bound by the provision of the NACHA Rules providing that payment of a credit Entry by the *Receiving Depository Financial Institution (RDFI)* to the *Receiver* is provisional until the *RDFI* receives final settlement for the Entry. If final settlement is not received, the *RDFI* is entitled to a refund from the *Receiver* of the amount credited. This means that the *Receiver* will not have been paid.

Our payment of any debit Entry, returned credit Entry or credit Reversal is provisional until we receive final settlement for the Entry or Reversal. If final settlement is not received, we are entitled to a refund and we may charge your Transaction Account for the amount previously credited. We may delay the availability of any amount credited for a debit Entry or credit Reversal if we believe that there may not be sufficient funds in your Transaction Account to cover any chargeback or return of the Entry or Reversal.

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#### **POSITIVE PAY**

Our Positive Pay Services allow you to identify exception items, to request photocopies and/or electronic images of exception items and to instruct us whether to pay or return those items. The options and features available for our Positive Pay Services are described in the applicable User Documentation. In many locations, if you send us an issue file, your information may be made available at the teller line. This is called "Teller Positive Pay," which helps identify fraudulent checks that are presented for payment or deposit at many of our banking centers. Where available, you also have the option to include payee names with the information available at the teller line. This service is called "Payee Positive Pay." With Teller Positive Pay, or Payee Positive Pay, where available, the decision whether to pay such an item may be made by us at the teller line. Where available, you can also identify ACH Entries as exception items. Please refer to the terms and conditions specified in the ACH Positive Pay section of this Booklet.

On each Business Day, we provide you a report of checks presented to us for payment on the prior Business Day and which we have identified as exceptions based on information you have provided to us and as more fully described in the applicable User Documentation. Exceptions are determined by comparing checks presented to us (either by other depository institutions or, where applicable, for cashing at one of our banking centers) with lists of checks issued or canceled by you which you transmit electronically to us each Business Day by the time specified in the applicable User Documentation. Alternatively, where available, you may choose an option under which we report all checks presented for payment, in which case we will treat all such checks as exception items.

On the same day we report exception items to you, you must notify us, by the deadline specified in the applicable User Documentation, which checks you want us to pay or which to dishonor and return. If you fail to notify us by the deadline, we will handle the exception items in accordance with the prescribed default procedure (which you may choose where the choice is available). Where required, you will indicate which checks you want us to return, having been deemed by you to be fraudulent. Our deadlines, default procedures and procedures for acknowledging pay and return requests are described in the applicable User Documentation. In order to assist you in making your decision whether we should pay or return exception items, you may request a copy of any exception item.

## AUTHORIZED PERSONS

Before using a Positive Pay Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

## ONLINE OPTION

You may access the daily reports of exception items via one of our Websites. Using that system, you must then notify us by the appropriate deadlines which exception items to pay or which to return. Notwithstanding any courtesy alerts we may provide to you regarding reports of exception items, you are responsible for checking the applicable Website for daily reports of exception items and notifying us by the appropriate deadlines which exception items to pay or which to return.

You may request photocopies of exception items, which we will fax to you, as more fully described in the applicable User Documentation. Where available, you may arrange to receive and display electronic images of exception items.

## MANUAL OPTION

Where available, we will provide you a report of exception items. You must then notify us by the appropriate deadlines which items to pay or which to return.

## ACKNOWLEDGMENTS

You authorize us to return checks or to pay checks in accordance with your instructions and the default procedure in the applicable User Documentation. We will have no liability for payment of a check which is unauthorized or fraudulent if (i) the check is included in a report of exception items, (ii) you have not selected a return default for exception items and (iii) you do not give us timely instructions to return the check.

You acknowledge that our Positive Pay Services do not preclude our standard check processing procedures, which may cause a check to be dishonored even if your instructions or the default procedure do not otherwise require us to return such check.

You acknowledge that, if you have our Teller Positive Pay Service, the decision whether to pay or not pay an item may be made by us at a banking center.

If you decline to use the Teller Positive Pay Service offered by us, or fail to meet the applicable issue file deadlines in the User Documentation, you also acknowledge that, as between you and us, you will bear the full loss on checks which are drawn on your accounts with us and paid or deposited by us in good faith if the checks are counterfeits or bear unauthorized alterations to the amounts or unauthorized maker signatures, even if such checks would otherwise be exception items.

You acknowledge that our Positive Pay Services are intended to be used to identify and return checks which you suspect in good faith are fraudulent. They are not intended to be used as a substitute for stop payment orders on checks which are not suspected in good faith to be fraudulent. If we suspect or deem, in our sole discretion, that you are using these Services contrary to those intentions, we may require you to provide evidence that checks we return pursuant to your instructions or the return default, if applicable, were in fact fraudulent. In addition, we may hold you liable for losses we sustain on checks which we are requested to return under these Services and which you do not reasonably establish as fraudulent checks.

We will use reasonable efforts under the circumstances to respond promptly to proper requests for copies of exception items if image items are unavailable, but you acknowledge that our failure to provide copies does not extend the deadlines by which you must notify us of your pay/no-pay decisions.

You acknowledge that you must fulfill your responsibilities in connection with a Positive Pay Service on each Business Day.

In the event we are required to utilize our business continuity procedures, we will, if feasible, apply the default procedure in the applicable User Documentation. In some cases, we may attempt to contact you.

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## **RECEIVABLES MATCHING**

The Receivables Matching Service (the "Service") consolidates and formats receivables information, facilitates your reconciliation of this receivables information with payments received from your payers for credit to your deposit

account with us, and provides outputs of electronic data reports regarding your receivables and related payments. The term “**receivables information**” shall refer to information regarding your outstanding or paid receivables, invoices, remittance data, payment advices or other related data for which you are to receive payment.

Receivables information can be delivered to us by you and your payers through a number of channels, including our Website, by email to a designated email address for the Service, by lockbox, and by other channels described in the User Documentation. The Service will provide you with receivables and payment data in the formats and manner described in the User Documentation, including identification of each incoming payment that matches or relates to previously submitted receivable.

The Service also permits you to access through the Website or other mutually agreed online access channels in order to view information concerning receipt matching which may include payment-related, receivables-related and/or open receivables information delivered to us.

Detailed information regarding the Service is available in the applicable User Documentation.

#### YOUR RESPONSIBILITIES

Before you submit to us your first request to use the Service, you are required to designate one or more accounts with us as the collection account(s) under the Service (each an “Account”).

You agree and acknowledge that you will authorize and instruct your payers to deliver receivables information to us in the formats and manner established by us in the User Documentation or otherwise. It is your sole responsibility to request each of your relevant payers to provide the receivables information that you may require and/or that is necessary for the functioning of the Service. We have no knowledge or control over the process of the delivery of such receivables information. We have no obligation (i) to confirm or verify the accuracy, completeness, authenticity or validity of the receivables information received from you or your payers, and (ii) we have no obligation to confirm or to verify the identity of the sender of receivables information or a related payment.

You also may submit to the Service monthly account statements and other data regarding your accounts that are maintained at another financial institution. If you do so, you are responsible for providing such information or for authorizing such financial institution to submit information to us and to take all other actions necessary for us to provide these Services to you. We shall not be responsible for the accuracy or timeliness of any information provided to us by any such financial institution.

You hereby authorize us to extract data in various formats from the receivables information received from you or the payers, and to translate the data into the appropriate formats for use within the Service. The Service will seek to use the extracted data to match receivables information against the payments credited to your Account. This matching will be done according to the rules and standards as set forth in the applicable User Documentation, rules or standards requested by you within the Service and approved us, or as otherwise established by us for the Service from time to time.

We may establish requirements regarding the channel and format for the sending of receivables information to us, including permissible email channels. We reserve the right to reject and/or not process any receivables information that is sent to us that is not compliant with the formats, standards or other requirements set forth in the User Documentation.

You agree and acknowledge that the receivables information and payment information to be available for matching on a current business day is subject to certain cut-off times and delays in updating and, therefore, at any point in time the information reported in the Service may not reflect all information within our systems, operations, or records at such time.

You may access the extracted data from the receivables information and the matched payments using one of our Websites. You are responsible for taking actions to manage and review the payments and receivables information matching. We are not responsible for any damages as a result of any error made due to the actions taken by you through the use of Service or the Website.

The Service makes available to you certain information regarding your accounts, receivables transaction(s) and related information in order to assist you in managing your reconciliation of incoming funds against outstanding receivables information. You acknowledge that such reporting is not intended to be used as substitute for your review of your bank



statement of your Accounts and your obligations herein and/or deposit account agreement to alert us of any errors or discrepancies on your Accounts.

#### SERVICE INSTRUCTIONS: SINGLE ADMINISTRATOR INDEMNIFICATION

You authorize us to act on any instruction regarding the Service that is provided to us by one of your Users or that is provided by any other person where the instruction is communicated in a session verified with a user name and password issued to one of your User(s). You acknowledge and agree that by using the Service one of your Users may submit an instruction for the Service, and we will act on such instruction, without a review, confirmation or approval by a second (different) User.

You acknowledge that the Service does not offer you an option of dual administration or dual user authorization with respect to all Service related instructions sent to us. You are requesting access to and use of the Service notwithstanding the lack of dual administration and dual user requirements, and we agree to permit such access and use of the Service in this manner in consideration of the following agreements:

- a) You agree that we shall have no responsibility or liability for any use or misuse of the Service, or of services, accounts, or information accessed via the Service, directly or indirectly, that would not have occurred had the Service offered dual administration and dual user requirements. For the avoidance of doubt, you hereby waive any and all claims you may have against us in connection with any loss, theft, misappropriation, cost, expense, damage or liability you may suffer or incur as a result, directly or indirectly, of the lack of dual administration and dual user authorization for your access to the Service.
- b) You agree to indemnify us against and hold us harmless from and defend us against any and all liabilities, claims, costs, expenses and damages of any nature (including legal expenses) arising out of or relating to disputes or legal actions by parties other than you and us, in connection with any use or misuse of the Service, or of services, accounts, or information accessed via the Service, directly or indirectly, in the absence of dual administration and dual user authorization for your access to the Service. This indemnity shall survive any termination of the Service.

#### RECEIVABLES AND PAYMENT INFORMATION DOWNLOADED BY YOU

You may use the Service to download electronic data file(s) of receivables and payments information. In the event you elect to download receivables and payments information, you are responsible for your use of the data in your accounts receivable, accounting or other internal system. You agree and acknowledge that our provision of this download capability does not create any additional duty of ours either with regard to identifying discrepancies or errors in the downloaded information or with regard to your responsibilities regarding accurate record keeping.

#### OUR RESPONSIBILITIES

The receipt of payments from your payers and the crediting of funds to the Account are subject to terms and conditions set forth in herein and in the applicable Account Agreement.

We will use reasonable efforts to accept and process the receivable information received from you or your payers, to extract data from the submitted receivables information, match the receivables information against the payments credited to the Account, and provide the receivables information and payment reporting to you. We also will use reasonable efforts to identify exception items within the Service and report those to you. We shall not be responsible for the completeness, accuracy or timeliness of any receivables information provided to us or extracted by us from the submitted receivables. In the event that such receivables information is incomplete, incorrect, vague or ambiguous or provided in a form that is unacceptable to us, we are entitled to reject such information and/or not process it further within the Service.

We will provide you with a Website through which you can (i) view the payments and the receivables information sent to us by you and your payers and (ii) manage certain receivables information and reports. We will use reasonable effort to make data and information available to you as soon as reasonably practicable through the Website.

We shall not be liable for any Damages (as defined below) arising from, or as a result of, any delay or failure on our part to provide the Service or any error, action, or omission on the part of you in using the Service or your payers in providing the receivables information.

We are not responsible for the accuracy, timeliness and reconciliation of the receivables information accessed in connection with the Service. You expressly agree and acknowledge that all features utilized, and all actions taken, by you in connection with the Service are taken in your sole discretion and under your sole responsibility.

#### SUPPLEMENTAL LIMITATION OF LIABILITIES: INDEMNITIES

Our duty and obligations under these Services will be fully discharged following the reporting of the receivables information to you.

In relation to any receivables information to be sent to us via e-mail by you or one of your payers, you fully agree that we are authorized, but not obliged, to rely upon and act in accordance with any e-mail communication received by us purporting to be a copy of a transmission or communication given or purporting to be given on your behalf or your payers behalf without inquiring on our part as to the source of the transmission or communication or the identity of the person making or purporting to make such transmission or communication and regardless of the circumstances prevailing at the time of such transmission or communication. We shall be entitled to treat each such transmission or communication as fully authorized by and binding upon your sending the transmissions or communications and we shall be entitled (but not bound) to take such steps in connection with or in reliance upon such transmissions or communications as we may reasonably consider appropriate. In consideration for our acting in accordance with this provision, you agree and undertake to indemnify us and to keep us indemnified against all losses, claims, actions, proceeding, demands, damages, costs and expenses incurred or sustained by us of whatever nature and arising from our reliance on any such e-mail communication, excluding cost or damage attributable to our gross negligence or intentional misconduct.

You acknowledge and agree that (i) we are making no representations or warranties of any kind regarding the content of any reports of receivables information provided through the Service, and (ii) you and your payers are transmitting receivables information through the Service at your own risk. We disclaim any and all warranties of any kind (whether express or implied) including but not limited to any warranties of merchantability or fitness for a particular purpose with respect the Service and the receivables information provided to you through the Service.

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#### **RE-PRESENTMENT CHECK (RCK)**

Our RCK Services allow you to collect eligible RCK checks that have been returned for insufficient or uncollected funds, using the ACH Services within the United States of America, as described in the applicable User Documentation. The creation of the RCK Entries on your behalf by us using the ACH Services will be subject to the terms and conditions of the ACH section of this Booklet, including but not limited to the Security Procedures requirements described in that section. The capitalized ACH terms appearing in italics below are defined in the NACHA Rules.

#### YOUR RESPONSIBILITIES

You authorize us to create RCK Entries on your behalf as provided in the User Documentation and the NACHA Rules. You are deemed to be the Originator under the NACHA Rules, and on each day you use a Service, you represent and warrant that (i) you have obtained all necessary authorizations from the Receiver prior to the initiation of any corresponding ACH Entry for a RCK and (ii) you accept as Originator all liability corresponding to the representations and warranties we as ODFI make under the NACHA Rules regarding RCK.

You shall pay us for the amount of any returned debit Entries (including rejected debit Entries) or any adjustment Entries accepted by us and which we have previously credited to your account. Such amounts shall be immediately due and payable by you to us. Returned debit Entries appear on your reports to the extent agreed by you and us, and you agree that we do not need to send a separate notice of debit Entries which are returned unpaid.

#### COMPLIANCE WITH NACHA RCK RULES AND LAWS

You agree to comply with the NACHA Rules for all Entries whether or not an Entry is sent through the ACH network. You act as an Originator and we act as an ODFI with respect to Entries. The NACHA Rules govern if they conflict with this Booklet, except that the file specification requirements in the User Documentation govern if they conflict with the NACHA Rules.

Each time you use an RCK Service (i) you warrant that you have obtained the appropriate authorization from each Receiver and the Entries conform to the authorization and comply with the NACHA Rules and (ii) you make the same warranties to us as we make under Section 2.2 or any successor section of the NACHA Rules.

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## **TAX PAYMENTS**

Our Tax Payment Services allow you to instruct us, using a touchtone telephone, our Software on your computer, our Website, and any such method as may be described in the applicable User Documentation, to pay any of your taxes which are reported or filed using the tax forms as more fully described and specified in such applicable User Documentation. Based on your Tax Payment Instructions, we prepare and remit your tax deposits. Each of these Services is described in the applicable User Documentation. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

### CUTOFF TIMES

You must comply with the deadlines specified in the applicable User Documentation for initiation of Tax Payment Instructions. If a Service allows you to send instructions to us after the cutoff time, or on a non-Business Day, we may treat these instructions as if we received them on the next Business Day.

### COMMUNICATION EXPENSE AND RISK

Transmission of Tax Payment Instructions to us will be at your expense, except that we may provide a toll-free number telephone service. If that service is disrupted for any reason, you have the responsibility and risk of using alternative means of communicating Tax Payment Instructions to us accurately and in time for us to perform any Tax Payment Service.

### REQUIRED INFORMATION

You will furnish us with all required information and authorizations at the times, in the manner and with the content specified in the applicable User Documentation.

### TAX FORMS AND REMITTANCES

After we have received complete Tax Payment Instructions from you, we prepare the related tax forms (which may be on a magnetic tape or by electronic transmission as authorized by the Internal Revenue Service or other tax authority, as applicable) for submission to the appropriate tax authority.

If permitted by the input method, you may specify a settlement date in accordance with the User Documentation. If you use a touchtone phone as your input method, you may request a specified settlement date by calling the designated customer representative for the applicable Tax Payment Service.

For purposes of these Services, settlement date means the date you specify that the taxing authority's account is to be credited. If you do not specify a settlement date, we will pay the amount you specify on or before the tax due date. If you specify the settlement date, payment will be made on the settlement date.

### ACCOUNT DEBITS

If you do not specify a settlement date, we debit your account for any tax payment on the Business Day of transmission. If you specify a settlement date, we generally debit your account on the settlement date unless you are prefunding your tax payments. Prefunding means that you pay for all tax payments by such time before the settlement date as we may specify. At our discretion, we may at any time without notice debit your account on the Business Day that Tax Payment Instructions are transmitted to us (or on any other later date). If we debit the funds on the transmission date (or any other date before the payment date), we hold the funds as a deposit liability to you, and not as trust funds, until the date when we remit the funds to the appropriate tax authority. We will not pay you interest on the funds.

We reserve the right to debit your account and to make a tax payment on your behalf earlier than the tax due date if the information in your Tax Payment Instruction is unclear or inadequate to permit us to determine the later due date under the applicable Tax Payment Service or if we otherwise reasonably decide that any delay in the payment of the tax may expose you to liability for a tax penalty. In such case we will not be liable to you for any lost use of funds.

## REJECTION OF INSTRUCTIONS

We may reject your instructions during or immediately after transmission to us if they do not comply with the requirements of this Booklet or the applicable User Documentation or which we have been unable to verify through use of the Security Procedure. You will be informed of any such rejection only as specified in the applicable User Documentation, and no other notice of rejection will be provided.

In addition, we may decline to perform any Tax Payment Service or to report any tax, file any tax form, or pay any related tax for you, even if we have received instructions to do so, if the tax payment and our related service fees and charges exceed the Collected and Available Funds on deposit in your account or your ACH processing limit. If we reject a Tax Payment Instruction for that reason, we will promptly notify you by telephone or facsimile transmission in which case we will not be liable to you for the tax payment, any interest on the amount of your tax liability, or for any tax penalty imposed on you in connection with the tax liability. You agree these means of communication are a reasonable means of notifying you.

## CANCELLATION

Subject to the provisions in the User Documentation, you may cancel a Tax Payment Instruction prior to disconnection of the telephone call in the case of an instruction initiated by touchtone telephone or prior to transmission to us of an instruction initiated through your computer or our Website.

Thereafter, a Tax Payment Instruction may be canceled only if:

- The tax payment has not been remitted, credited or otherwise made available to a tax authority
- A request to cancel provides sufficient information for us to effect the request
- The request is received by us by telephone or, at the option of either you or us, in writing (including facsimile transmissions) in time (but in no event later than the deadline specified in the applicable User Documentation) to afford us a reasonable opportunity to effect the request

## OVERPAYMENTS

If we make an overpayment of your tax liability due to our error, we will recredit your account for the amount of the overpayment, and you agree to take such actions as we reasonably request to obtain a refund of the overpayment and to arrange for payment of such refund to us. In any event, you agree to repay us for any overpayment upon the earlier of (i) your recovery of such overpayment or (ii) the application of the related tax credit to another of your tax payment obligations.

## RECORDS AND NOTICE OF ERRORS

We will provide you with statements and confirmations containing information about your tax payments in accordance with and subject to the applicable User Documentation.

Nothing in this Booklet relieves you of any duty imposed by law or contract regarding the maintaining of records or from employing adequate audit, account and review practices customarily followed by similar businesses. You will promptly review for accuracy all records, information and statements delivered from time to time to you by us.

You must send us written notice, with a statement of relevant facts, within 14 days after you receive the first notice or statement indicating a discrepancy between our records and yours. If you fail to give the required notice, we will not be liable for any loss of interest or for any compensation for any other loss or cost relating to an unauthorized or erroneous debit to your account or because of any other discrepancy in the notice or account statement. You must notify us promptly by telephone, confirmed in writing, if you learn or discover from any source other than a notice or statement from us of information concerning an unauthorized or erroneous debit to your account.

## SUPPLEMENTAL LIMITATION OF LIABILITIES

For each Tax Payment Service, this section supplements the Limitation of Liabilities section of this Booklet.

If any Tax Payment Service is interrupted for any reason and you are unable to complete transmission of your Tax Payment Instruction to us, you will not be relieved of your obligation to make any tax payment otherwise contemplated to be made by such Service. We will not incur any liability if you fail to make any required tax payment by other means in the event of such interruption.

Notwithstanding anything to the contrary, if you initiate a Tax Payment Instruction using an “expedited payment request”, as specified in the applicable User Documentation, such “expedited payment request” is subject to our prior approval, at our sole discretion. If we do approve your use of such an “expedited payment request”, and you comply with the specific instructions and procedures set forth in the applicable User Documentation, we will make a reasonable effort to act on the Tax Payment Instruction initiated using such “expedited payment request,” but we will have no liability if it is not effected.

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## TAXPAY AND BILLPAY

With this Service, you may initiate payments of certain bills and taxes provided through our designated Website, as described herein or in the applicable User Documentation. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein. You may only access the Service through the our designated Website and use the Service to request us to make bill payments and tax payments on your behalf to Registered Payees that are eligible to receive such payments as determined by their inclusion in the Payee Database. Bill and tax payments will be processed by electronic payment means only.

### TAX AND BILL PAYMENTS

**Scheduling Payment Request.** To make a payment to a Registered Payee, you may use the Service to schedule a Payment Request and select the Settlement Date. We begin processing your Payment Request on the business day before the Settlement Date, but we debit your Payment Account on the Settlement Date.. You must enter the Payment Request on or before the Business Day before the Settlement Date. You are solely responsible for scheduling Payment Requests and selecting a Settlement Date for each payment that allows sufficient time for the payment to be delivered on or prior to the date on which the payment is due to the Registered Payee. We make no representation or warranty to you that a Payment Request will be received by the Registered Payee or credited to the Registered Payee’s bank account on any specific date or within any specific delivery time. Regardless of the Settlement Date selected by you, we shall have no liability to you or your Registered Payee in the event that you incur a late fee or other financial liability to a Registered Payee arising from a delayed, undelivered, or late payment.

**Payment Method and Transaction Limits.** You may, through the Service, request that we process a Payment Request as electronic funds transfer payment. We may, in our sole discretion, impose limits on the amount of money sent through the Service, on a per-transaction and/or a cumulative basis, and change those limits at any time without prior notice to you.

**Processing Payment Requests.** You hereby authorize us to debit your Payment Account for the amount of each Payment Request and remit funds in accordance with your Payment Request through electronic funds transfer. You are responsible for maintaining collected and available funds in the Payment Account in an amount sufficient to pay for all debits to fund the Payment Requests on or before the Settlement Date. We are not obligated to process any Payment Request, even if we have done so in the past, without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand. We may post these debits to your Payment Account even if the debits cause your Payment Account to have a negative intraday balance or to be in an overdraft position. On or before the Settlement Date funds deducted from your Payment Account will be held in a master bank account or general liability account belonging to us. You acknowledge and agree that you have no ownership interest or right to the funds in this bank account. This bank account arrangement does not create a trust or other fiduciary obligations on the part of us to you.

**Returned Transactions.** If a Registered Payee or the Registered Payee’s bank returns a Payment Request for any reason then we will credit the returned Payment Request to your Payment Account. You agree that we shall not have any liability for any returned Payment Request or any resulting loss or damage that you may incur.

**Payment Cancellation Requests.** You may cancel, reschedule or modify a Scheduled Payment Request prior to the time that we begin processing it as described in the User Documentation. You may only cancel, reschedule or modify a Scheduled Payment Request through the Service Website. Once we have begun processing a Payment Request, it cannot be cancelled, rescheduled or modified by you. In addition, we reserve the right in our sole discretion to suspend or cancel any Scheduled Payment Request including if your Payment Account or your use of the Service is not in good

standing, as determined by us in our sole discretion. We will credit back to the Payment Account any debits previously made to fund a cancelled Scheduled Payment Request.

**Payment Review.** In our discretion, we may place a hold on a Payment Request for as long as reasonably required to conduct an appropriate inquiry regarding you, the Registered Payee, payment history, and other relevant circumstances and factors. Depending on the results of this review, we may process the Payment Request, reverse or cancel the Payment Request, or hold the Payment Request and related funds pending instructions from a government agency. At any time, a Payment Request may be reversed or canceled by us in our sole discretion and without prior notice to you.

**Compliance with Laws, Rules and Regulations:** You shall comply with all applicable laws, payment system rules and other regulations with respect to your use of the Service.

**Compliance with Service Documentation.** You are responsible for ensuring that each Payment Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation for the Service. If the Service allows you to send instructions to us after the cutoff time, or on a non-Business Day, we may treat these instructions as if we received them on the next Business Day

#### REGISTERED PAYEE DATABASE

A third party company operates an online database containing payment routing and other information regarding Registered Payees. We do not operate, monitor, audit, or control the Payee Database and we are not responsible for the accuracy of information that is stored in the Payee Database. The Payee Database is not part of the Service. When making a Payment Transaction, you may look-up your payees for bill payments and tax payments in the Payee Database to see if they are Registered Payee.

The Service may obtain payment routing information for your Registered Payees from the Payee Database. We may at our option process a Payment Request to the Registered Payee based upon the account and routing number information provided by the Registered Payee without further investigation or confirmation by us. You are solely responsible for any Payment Request that is processed by the Service using the Registered Payee data contained in the Payee Database.

#### SINGLE USER INDEMNIFICATION

We very strongly recommend that you implement and use a segregation-of-duties model, implementing dual controls, ("Dual Payment Controls") in connection with all authorizations to initiate and approve / release Payment Requests via the Service. This recommendation serves to help protect you from loss, theft, misappropriation or other unauthorized use of the Service and/or information or funds accessed via the Service, directly or indirectly. This recommendation also reflects industry best practices. When you setup the Service, your authorized administrators on the Service have authority, acting together, to setup or modify users on the Service. During the user setup process, your administrators have the option to allow a single user, acting alone, to enter, approve and release Payment Requests or your administrators may require two users, acting together, to enter, approve and release Payment Requests. You are in sole control of the setup of your users and you bear all responsibilities and risk if you elect to set up a single user with permissions to act alone when entering, approving and releasing a Payment Request.

You agree to indemnify us against and hold us harmless from and defend us against any and all liabilities, claims, costs, expenses and damages of any nature (including legal expenses) arising out of or relating to or in connection with any use or misuse of the Service or of information or funds accessed via the Service, directly or indirectly, in the absence of your full implementation and use at all times of Dual Payment Controls.

#### SUPPLEMENTAL LIMITED WARRANTY/DISCLAIMER

YOU ACKNOWLEDGE AND AGREE THAT WE ARE MAKING NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE COMPLETENESS OR ACCURACY OF THE CONTENT OF THE PAYEE DATABASE. WE DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND (WHETHER EXPRESS OR IMPLIED) INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THE SERVICE AND THE PAYEE DATABASE. WE WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY LOSSES, COSTS, EXPENSES OR DAMAGES INCURRED BY YOU OR YOUR REGISTERED PAYEES WITH RESPECT TO THE USE OF THE PAYEE DATABASE AS MADE AVAILABLE THROUGH THE SERVICE.

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## **WIRE TRANSFERS AND INTERNATIONAL ELECTRONIC FUNDS TRANSFERS**

This section applies to our U.S. domestic and worldwide wire and internal funds transfer services and to our International Electronic Funds Transfer Services outside the United States of America. It does not apply to ACH Services transacted within the United States of America, which are covered in the Automated Clearing House (ACH) section of this Booklet. This section together with the entirety of the General Provisions section of this Booklet, including without limitation the terms related to Security Procedures, forms the agreement between you and us with respect to the Services defined herein.

Wire Transfer and International Electronic Funds Transfer Services permit you to transfer funds electronically and, as appropriate, to transmit related messages as more fully described in the applicable User Documentation. These transfers are typically from your accounts with us to other accounts at our bank, at our affiliated banks or at other eligible banks. These transfers may also include transfers to your accounts with us from your accounts at other banks. These transfers may be made according to a specific request from you or according to your standing instructions (which may include daily sweeps from your accounts at our affiliated banks to your account with us). They also may be low-value single payments as well as batch payments made according to multiple requests within a single electronic data file for transfers to or from your accounts.

### MULTIBANK

The Multibank Service permits you to relay through us your instructions to another bank to wire transfer funds from one of your accounts held at that other bank (as used in this section, "multibank instructions"). Before using the Multibank Service, you must provide us with the account number and bank name for each account to be debited using this Service. You also must provide the bank holding the debit account with express, written authorization (with a copy to us where requested) to act on instructions we send to it under this Service. You agree that we may rely on that authorization until we have had a reasonable opportunity to act on notice that it has been revoked.

Multibank instructions are not payment orders to us, and we have no obligation to execute, transmit or accept any payment orders made to us under the Multibank Service.

If we receive any multibank instruction via SWIFT, we will relay your instructions to the receiving bank, subject to business day schedules for us, SWIFT, and the receiving bank. We will have no liability arising out of or relating to our forwarding, or any rejection by the other bank of, any such instruction which is not in the SWIFT format required by the other bank for such instruction. Your multibank instructions to us via SWIFT must be sent to the SWIFT address specified by us to you from time to time.

If we receive any multibank instructions other than via SWIFT, we will either, (i) where feasible, create a SWIFT formatted message from your instruction and relay it by SWIFT to the other bank, or (ii) use whatever means or medium we deem appropriate, including use of third-party facilities, to reformat and transmit your payment order to another bank, and we have no duty to do so if your request is defective, incomplete, erroneous or inconsistent with the terms of this Booklet. We may act on your multibank instructions as we reasonably consider appropriate notwithstanding any error, omission, defect or lack of clarity in its terms and even if the instructions appear to duplicate other multibank requests. You agree that your indemnity of us, as set forth in the Protection From Third Parties section of this Booklet, applies to any claims by another bank based on our sending a multibank instruction containing any error, omission, defect or lack of clarity.

If you wish to cancel or amend a payment order set forth in a multibank instruction, you must contact the bank to which the payment order is directed and act in accordance with its procedures.

Reports on multibank instructions which we have processed may be included in an Information Reporting Service if you have arranged such reports from the bank that is subject to such instructions.

### COMPLIANCE WITH RULES AND LAWS

You agree to comply with all applicable payment system rules, including the national payment system rules and any other applicable laws and regulations of the receiving country of your transaction, including but not limited to NACHA rules for low-value payments processed within the United States. You also agree to comply with the authorization and notice requirements applicable to any Request to debit another person's account.

### AUTHORIZED PERSONS

Before using a Wire Transfer Service or an International Electronic Funds Transfer Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

#### ACCOUNT DEBITS

You must have Collected and Available Funds in your account which, when added to funds which may be made available under a line of credit, are sufficient to cover your Requests. You may initiate a Request only if the offsetting debit to your account, including the available line of credit, will not cause you to exceed the account balance according to your records. If your records and ours disagree regarding the account balance, our records will control for purposes of our processing the Request.

You are obligated to pay us the amount of any Request once we act on, other than to reject, your Request. At our discretion, we may at any time without notice require payment before we process your Request. Even if we have done so in the past, we are not obligated to process any Request without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand.

Prior to initiating any Wire Transfer Service Request to debit an account of a third party, you must provide us with documents, in a form acceptable to us, evidencing the third party's authorization.

You will pay us for the amount of any returned or rejected debit transactions, or any adjustments, which we previously credited to your account.

If, for any Business Day, we receive more than one Request and/or other items payable from your account, we may debit your account for such Requests and items in any sequence we determine in our sole discretion.

#### ACTING ON REQUESTS

We will use any means of transmission, funds transfer system, clearing house or intermediary bank we reasonably select to transfer funds.

After we receive a Request by the applicable processing deadline (as specified in the applicable User Documentation), but no later than the value date stated in your Request (if such date is not earlier than the day such Request is received), we will act upon such Request by making applicable accounting entries or by transmitting payment instructions to the applicable bank or other party. If applicable, our acting on your Request will also be subject to the business day schedule of any of our banking centers or affiliates holding an account to be debited or credited under a Service. We may treat Requests we receive after a deadline as if we received them on the next Business Day. International Electronic Funds Transfer Services Requests will be deemed received by us when we receive the complete electronic data file at the location specified in the applicable User Documentation.

#### REJECTION OF REQUESTS

We may reject any Request which does not comply with the requirements of this Booklet or the applicable User Documentation, including any processing limits described in such User Documentation, or which we have been unable to verify through use of the Security Procedure. We also may reject any Request which exceeds the Collected and Available Funds (including funds made available under a line of credit) on deposit with us in the applicable account. We may also reject any Request if it may be returned for any reason under the applicable national payment system rules of the receiving country of your transaction. Notice of rejection may be given to you by telephone, by electronic means, by facsimile or by mail, depending upon the method of origination. Notices of rejection will be effective when given.

#### CANCELLATION OR AMENDMENT

We have no obligation to cancel or amend Requests after we receive them or to cancel or amend any particular funds transfer requested by a standing instruction which is in effect, however, if you send us a Request instructing us to cancel or amend a prior Request and we are able to verify the authenticity of the cancellation or amendment Request using the Security Procedure, we will make a reasonable effort to act on that Request, but we will not be liable if it is not effected. You agree to indemnify us against and hold us harmless from any and all liabilities, claims, costs, expenses and damages of any nature, including Legal Expenses, we incur in connection with your Request to cancel or amend. Your obligations under this provision will survive termination of these Wire Transfer and International Electronic Funds Transfer Services.

#### PROVISIONAL PAYMENTS



Payment by us for any transaction we credit to your account is provisional until we receive final settlement for the transaction. If final settlement is not received, we are entitled to a refund and we may charge your account for the amount credited. We may delay the availability of any amount credited for a transaction if we believe that there may not be sufficient funds in your account to cover chargeback or return of the transaction.

INCONSISTENCY OF NAME AND NUMBER

A beneficiary's bank (including us when we are the beneficiary's bank) may make payment to a beneficiary based solely on the account or other identifying number. We or an intermediary bank may send a Request to an intermediary bank or beneficiary's bank based solely on the bank identifying number. We, any intermediary bank and any beneficiary's banks may do so even if the Requests include names inconsistent with the account or other identifying number as long as the inconsistency is not known by us or such other bank. Neither we nor any other bank has a duty to determine whether a Request contains an inconsistent name and number.

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## Electronic Trade Services

Our Electronic Trade Services includes, but is not limited to, allowing you to:

- Initiate collections
- Instruct us to issue standby and commercial letters of credit and guarantees
- Instruct us to issue bank payment obligations
- Initiate open account transactions
- Receive advice of our receipt of purchase orders naming you as the supplier
- Receive advice of our receipt, confirmation, or payment, of commercial letters of credit advised and standby letters of credit advised naming you as beneficiary
- Request full or partial transfers of your commercial letters of credit or full transfers of your standby letters of credit
- Prepare documents in connection with your commercial letters of credit
- Access reports on letter of credit transactions, open account transactions, collections and bankers' acceptances
- Access images of your relevant documents as they relate to your letter of credit transactions, collections and open account transactions
- Request supply chain financing transactions in the roles of either a buyer or a seller

Detailed information regarding each Service is found in the applicable User Documentation.

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### COLLECTIONS

#### OUTGOING COLLECTIONS

**Over the Counter Collections.** Reports concerning your over the counter collections are made available under the Information Reporting section of Electronic Trade Services in this Booklet.

**Direct Collections.** Our Electronic Trade Services Direct Collections Service includes, but is not limited to, allowing you to initiate a collection (as that term is defined in the Uniform Rules for Collections) by delivering an instruction to a collecting bank.

The instruction will be on a form prescribed by us, but we will not have any responsibility or liability for the terms and conditions of any instruction; you accept all such responsibility and liability. Each direct collection will be governed by the Uniform Rules for Collections. You will promptly transmit to us a copy of the completed direct collection form and, upon our request, will provide to us copies of the underlying documentation or other information.

You represent and warrant to us as of the date you transmit the instruction form to us that the direct collection is not prohibited under the foreign asset control or other regulations of the United States of America or the applicable laws of any other jurisdictions.

Upon our receipt of any payment of a direct collection, the amounts received (less related charges, disbursements and/or expenses) will be paid to you, except that if we are required to return any such payment received upon the insolvency, bankruptcy or reorganization of the presenting bank or collecting bank or other third party or for any other reason, you will repay to us the amount paid to you together with interest thereon from the date we returned the payment and so notified you at the rate specified by us in our schedule of charges. Unpaid items and related documents received by us may be returned to you by regular mail at the address specified in the Authorization and Agreement Certification form which accompanied this Booklet or such other address as may be notified by you in writing.

#### INCOMING COLLECTIONS

Our Electronic Trade Services Incoming Collections Service includes, but is not limited to, allowing you to (i) request us to receive documentary time drafts, sight drafts or bills of exchange drawn on your appropriate account as part of your trade transactions and (ii) authorize us to make such payments. Such drafts are payable at sight or at a future date. All

such drafts received by us shall either be in the customary form of such drafts, or contain on the face of the instrument the words "draft" or "bill of exchange." Each draft must designate us as collecting and/or presenting bank to make presentation to you for acceptance.

You appoint us as your true and lawful attorney-in fact to act in your name, place and stead, solely for the purpose of signing your acceptance on drafts in accordance with the procedures outlined below. You hereby grant to us all powers necessary for us to sign your acceptance and thereby bind you to such acceptance. We will date your acceptance, specifying your name, and will sign as your agent and attorney-in-fact. We are also authorized to sign your name on your behalf without stating your name or our capacity hereunder. This appointment and grant is deemed coupled with an interest and may be revoked only by written notice of termination.

You will indemnify us against and hold us harmless from and defend us against any and all liabilities, claims, costs, expenses and damages of any nature (including Legal Expenses) that may directly or indirectly result or arise from or be incurred in connection with:

- Any acceptance or other actions performed by us as attorney-in-fact, except to the extent directly caused by our gross negligence or willful misconduct
- Any dishonor of a draft by you; and/or
- Any breach of or default under this Incoming Collections Service by you

We shall, within a reasonable time after receipt of your authorization to accept the draft, accept such draft on your behalf by signing your acceptance on such draft. Within a reasonable time thereafter, we will send an electronic notification to you. Such notification will include your name, address and reference number, the amount of the draft, its payment tenor, the maturity date, the drawer's name and the presenter's name. You authorize us to accept, pay or reject incoming collections on your behalf.

All drafts which we accept on your behalf, in the capacity as your attorney-in-fact, shall conclusively be deemed to have been accepted in fact by you fully and for all purposes, as if you had signed or executed the acceptance and such draft.

You authorize us to debit your appropriate account for authorized payments.

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## **STANDBY AND COMMERCIAL LETTERS OF CREDIT AND GUARANTEES ISSUED**

Our Electronic Trade Services Standby, Commercial Letters of Credit and Guarantees Issued Service includes, but is not limited to, allowing you to request us, by electronic transmission, to issue a commercial or standby letter of credit or a guarantee. If electronic transmission is unavailable, you may request us to issue such letters of credit or guarantees by fax transmission. Each letter of credit or guarantee which we agree to issue will be for your account or the account of another entity you designate. Each commercial letter of credit we issue will be subject to the UCP and, when applicable, the eUCP, each standby letter of credit we issue will be subject to the ISP98 and each guarantee will be subject to URDG758 and/or such governing law as may be approved from time to time. A letter of credit may be issued by any of our authorized offices or affiliates within or outside the United States of America. A guarantee may be issued by any of our authorized offices or affiliates outside the United States of America.

More detailed terms and conditions concerning the Electronic Trade Services Standby, Commercial Letters of Credit and Guarantees Issued Service can be found in the Master Standby Letter of Credit Agreement and/or the Master Commercial Letter of Credit Agreement and/or the Master Guarantee Issuance Agreement (collectively, the Master Agreements ). Prior to using the Electronic Trade Services Standby, Commercial Letters of Credit and Guarantees Issued Service you will have to execute the applicable Master Agreement. To the extent a discrepancy occurs between this Booklet and your executed Master Agreement(s) , such discrepancy will be resolved by giving precedence to the respective Master Agreement.

### YOUR RESPONSIBILITIES

You represent and warrant to us as of the date of your issuance request of each commercial letter of credit and each drawing that you or the importer has obtained all applicable and/or required licenses and other governmental approvals required for the import, export, shipping, storage of, financing of or payment for the goods and documents described in the letter of credit. You further represent and warrant to us, for each commercial and standby letter of credit issued,

that you have the authority to enter into such letter of credit and that the letter of credit will not violate or conflict with any of the provisions of the applicable constituent documents or any other agreement or undertaking to which you are a party. The transactions underlying the letter of credit are not prohibited under the foreign asset control or other regulations or laws of the United States of America or the applicable regulations or laws of any other jurisdiction. You will obtain, or cause to be obtained, insurance covering fire and other usual risks on all goods described in each commercial letter of credit issued by us.

You will reimburse us upon demand all monies paid by us under or in respect of each such letter of credit or guarantee, including payments on any draft, acceptance, order, instrument or demand drawn or presented under the letter of credit or guarantee. You will pay us on demand interest on all amounts paid by us or any other nominated bank under each letter of credit or guarantee from the date of such payment until we receive reimbursement at a rate per annum specified in the applicable User Documentation. You will reimburse us in the currency in which the letter of credit or guarantee is denominated (or, at our option, the equivalent of the denominated currency amount in U.S. Dollars or the currency of the country in which the letter of credit or guarantee was issued at the rate of exchange quoted by us in the city in which the letter of credit or guarantee was issued for the sale of the denominated currency against U.S. Dollars or such other currency on the date on which the denominated currency amount is paid by us). Regardless of the expiration of the letter of credit or guarantee, you will remain liable for all such amounts until we are released from liability to all persons entitled to draw or demand payment under the letter of credit or guarantee.

As a condition to our agreement to issue a letter of credit or guarantee, we may require you at any time to make with us a cash deposit, which may not accrue interest or earnings credit, and to grant us a security interest in the underlying goods and documents of title and/or any other property or accounts as we reasonably determine as security for your obligations to us.

You will pay us Legal Expenses incurred by us in connection with each letter of credit or guarantee including without limitation our defense of any proceeding initiated by you to enjoin payment or negotiation by us of a letter of credit or guarantee even if you are awarded such relief, provided only that we have acted in good faith in defending such action.

If you request the issuance of a letter of credit or guarantee listing one of your Subsidiaries or another entity as the account party, each such request will be considered a request by you for the issuance of a letter of credit or guarantee, and you will assume all liabilities and obligations with respect to such letter of credit or guarantee. You represent and warrant to us that you will derive substantial economic benefit from each underlying transaction relating to each request for the issuance of a letter of credit or guarantee listing your Subsidiary or another person as the account party. Your obligations under each letter of credit or guarantee will not be released or discharged if:

- We fail to collect any payment under such letter of credit or guarantee directly from the Subsidiary or such other entity.
- Any bankruptcy, reorganization, insolvency, receivership, moratorium or other such action effecting creditors generally is filed by or against the Subsidiary or such other entity.
- We receive payment from the Subsidiary or such other entity, but it is subsequently rescinded or must be returned by us.

#### OUR RESPONSIBILITIES

If we accept your request, we will issue the commercial or standby letter of credit or guarantee as described in your electronic or fax (if electronic is unavailable) transmission and pursuant to this Booklet and the UCP (with regard to commercial letters of credit), ISP98 (with regard to standby letters of credit) and URDG758 and/or such governing law as may be approved from time to time (with regard to guarantees). We will pay each commercial letter of credit pursuant to its terms, this Booklet and the UCP. We will pay each standby letter of credit pursuant to its terms, this Booklet and the ISP98. We will pay each guarantee pursuant to its terms and this Booklet and URDG758 and/or such governing law as may be approved from time to time.

#### CHANGE OF LAW OR REGULATION

If, subsequent to the issuance date of a letter of credit or guarantee, we determine that the introduction of or any change in the interpretation of any law, rule, regulation or guideline or the request of a central bank or other

governmental authority will increase our costs relative to our providing the Electronic Trade Services Standby, Commercial Letters of Credit and Guarantees Issued Service, as set forth below, then, on demand, you will pay us additional amounts sufficient (as determined by us) to compensate us for such increased cost. Such increased costs could include: (i) reserve, deposit, assessment or similar requirements or (ii) increases in capital adequacy requirements.

#### DEPOSIT ON TERMINATION EVENT

If there occurs an event which permits us, under the Suspension and Termination section of this Booklet, to terminate this Service immediately, you will deposit with us, on demand and as cash security for your obligations to us, an amount equal to the aggregate undrawn amount of the letters of credit and guarantees issued by us in the same currency as the letter of credit or guarantee, or, at our option, its equivalent in U.S. Dollars or the currency of the country in which the letter of credit or guarantee was issued. You will not withdraw any amount so deposited except to the extent such amount exceeds the undrawn and unreimbursed amount of the letter(s) of credit and guarantees. If the amount deposited by you under this Booklet for a letter of credit or guarantee is in a currency different than the currency in which such letter of credit or guarantee is payable and the amount so deposited becomes less than the value of the undrawn amount of the letter of credit or guarantee because of any variation in rates of exchange, you will deposit with us additional amounts in such other currency so that the total amount deposited by you under this Booklet is not less than the equivalent value of the undrawn amount of the letter of credit or guarantee, determined by using the rate of exchange quoted by us on the date of our latest demand.

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#### **BANK PAYMENT OBLIGATION - BUYER**

Our Bank Payment Obligation (“BPO”) Service provides you with the processing, handling, submission, receiving, reporting and comparison of data in connection with BPOs and related underlying trade transactions. The BPO is communicated in an ISO20022 certified BPO XML message exchanged between banks via SWIFTNet. In addition to delivering process efficiencies, the Service offers you and your seller opportunities for payment assurance, financing, sovereign, economic, and obligor bank risk mitigation, as the situation warrants. The BPO may be on immediate or deferred payment terms.

All BPOs (and all transactions thereunder) must be subject to the URBPO. Capitalized terms used in this BPO Service description but not otherwise defined have the meanings ascribed to them in the URBPO. While not all-inclusive, the following summarizes our BPO Services:

**Establishing a Baseline.** You will electronically transmit to us, in accordance with applicable User Documentation, purchase order data and data for the BPO conditions, either concurrently, or first purchase order data and then data for the BPO conditions. When we receive the required data, at our discretion, we will submit them to a Transaction Matching Application (“TMA”). The seller will also be confirming the purchase order data and the data for the BPO conditions to the Recipient Bank for submission to the TMA. If the submitted data matches on the TMA, the Baseline is an Established Baseline. At this point in time the BPO is effective and irrevocable but conditional and Client will receive from us, via electronic transmission, a notification of BPO issuance and a Baseline Match Report establishing a Baseline.

**Matching.** After seller arranges for the relevant Data Set to be submitted to Recipient Bank, and in turn Recipient Bank submits them to TMA for matching, you may receive from us at our option, via electronic transmission, a BPO Data Set Match Notification attaching a Data Set Match Report. The Notification, among other things, will ask for your instructions on accepting any Data Mismatches and commensurate deductions or increases in submission value or alternatively, whether you wish to reject the submission. We will then submit your instructions to the TMA. Notwithstanding the foregoing, we reserve all rights to review Data Mismatches and reject or accept them in our sole discretion. Upon a successful TMA Data Set match or upon our acceptance of Data Mismatches, the BPO will become a direct payment obligation which is due and payable, and we will honor according to the agreed payment terms.

**Settlement.** If the terms of the BPO call for immediate, at sight payment, we will debit your account or settle with you as per your instructions for the BPO amount and remit the funds to Recipient Bank. In the case of a deferred payment BPO, we will notify you via electronic transmission that the BPO has been honored, the BPO amount, and the

date upon which the BPO will mature. We will then settle with you at maturity by debiting your account with us or per your instructions.

With regard to the Bank Payment Obligation Service, more detailed terms and conditions can be found in the applicable Bank Payment Obligation documentation to be entered into by you and us. To the extent a conflict exists between this Amendment and the applicable Bank Payment Obligation documentation the terms and conditions in the Bank Payment Obligation documentation will govern.

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## **OPEN ACCOUNT**

Our Electronic Trade Services Open Account Service permits you electronically to (i) inform us of your purchase order details, instruct us on examining required documents for compliance with your purchase orders and instruct us to pay the presenting party and (ii) provide notification to your vendors of open account transactions initiated through electronic means.

**Purchase Orders.** You will electronically transmit to us, in accordance with applicable User Documentation, files of purchase orders you have sent to your vendors with instructions to present documents to us. The electronic files will be in such format(s) and transmitted through such channel(s) as you have selected and we have approved. If you are not requesting us to issue a commercial letter of credit, each transaction will be flagged as an “open account” payment type.

When we receive required documents, we will review them according to your purchase order terms. If and as provided by the open account payment type selected by you, we will match the documents against the pertinent purchase orders housed on our electronic database in accordance with the parameters established by you and accepted by us. If you have sufficient Collected and Available Funds in the account you have designated, we will pay the presenting vendors as provided under the open account payment type selected by you from the following three types:

- **Importer matching** – you match the documents against your copy of the pertinent purchase order and instruct us how much to pay to the presenter and when to pay.
- **Bank matching** – we match the documents against our electronic file of the pertinent purchase order, following the parameters established by you; we then electronically inform you, indicating whether they are compliant or non-compliant, and await your payment instructions.
- **Auto-pay** – we match the documents as described above, and, if we determine they are compliant, make payment to the presenter; if we determine that the documents are non-compliant, we make payment only upon your express instructions.

**Notification of Open Account Transactions.** With respect to open account notification letters, we will notify, by Electronic Trade Services, fax, courier or mail as instructed by you, your vendors of (i) our receipt of such notices naming them as vendor and (ii) any payments made pursuant to drawings under such open account transactions.

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## **STANDBY LETTERS OF CREDIT-ADVISED (CONFIRMED/UNCONFIRMED)**

Our Electronic Trade Services Standby Letter of Credit-Advised Service includes, but is not limited to, allowing you to receive advice, by electronic transmission, of (i) our receipt of any standby letter of credit naming you as beneficiary; (ii) our confirmation of any such letter of credit; (iii) the status of any documents or payments with regard to any Standby Letter of Credit-Advised; and (iv) any payment made pursuant to a drawing under any such letter of credit.

You may elect to have Standby Letters of Credit-Advised of a Subsidiary or other entity reported to you with our Electronic Trade Services Standby Letter of Credit-Advised Service. You agree that the Subsidiary or other entity will provide us with a written authorization, in a form acceptable to us, for us to make that Subsidiary or other entity's information available to you.

**General.** The Standby Letter of Credit-Advised and the Full Transfer (as described below) must be subject to UCP or ISP98, and our rights hereunder are in addition to rights we have under UCP or ISP98, as applicable.

**Full Transfer.** You may request the transfer of all of your rights as beneficiary of a Standby Letter of Credit-Advised by submitting to us, for each transfer, a request providing the following information:

- Standby Letter of Credit number

- Name of issuing bank
- Our advice number
- Name and address of second beneficiary's advising bank
- Name and address of second beneficiary
- Date of application

If we approve the transfer, we will place the appropriate endorsement on the Standby Letter of Credit-Advised and send it to the second beneficiary or send the second beneficiary a transferred letter of credit document prepared by us. The second beneficiary will have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. You must provide us the original Standby Letter of Credit-Advised and any existing amendments. You understand that we may, at our sole discretion, refuse to approve any Full Transfer to a second beneficiary. You acknowledge that due to conditions of the original Standby Letter of Credit-Advised, certain proprietary information may be disclosed to the second beneficiary and/or to the applicant under the original Standby Letter of Credit-Advised. We will have no liability to you in the event of such disclosure and, in such event, you will indemnify and hold us harmless from all claims of third parties. You acknowledge that your rights as beneficiary in the original Standby Letter of Credit-Advised are irrevocably transferred to the second beneficiary(ies) who shall have sole rights. In that connection, your approval is not required for us to honor a discrepant presentation made by the second beneficiary.

For our transfer fee, we may debit your account(s) with us, which you may designate subject to our reasonable approval. You also agree to pay us on demand any expenses which may be incurred by us in connection with this transfer.

**Partial Transfers.** We do not permit partial transfers of Standby Letters of Credit-Advised.

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## **COMMERCIAL LETTERS OF CREDIT-ADVISED (CONFIRMED/UNCONFIRMED)**

Our Electronic Trade Services Commercial Letter of Credit-Advised Service includes, but is not limited to, allowing you to receive advice, by electronic transmission, of (i) our receipt of any commercial letters of credit naming you as beneficiary; (ii) our confirmation of any such letter of credit; (iii) the status of any presentations or payments with regard to any Commercial Letter of Credit-Advised; and (iv) notification of any payment pursuant to a presentation under any such letter of credit. The Commercial Letter of Credit-Advised Service also facilitates electronic preparation of required documents under such advised letters of credit using electronic data captured through our electronic advising process.

You may elect to have Commercial Letters of Credit-Advised of a Subsidiary or other entity reported to you with our Commercial Letter of Credit-Advised Service. You agree that the Subsidiary or other entity will provide us with a written authorization, in a form acceptable to us, for us to make that Subsidiary or other entity's information available to you.

You may prepare required documents based on your Commercial Letter of Credit-Advised details. You may then edit and locally print those documents and courier them to us for presentation.

**General.** All Commercial Letters of Credit-Advised (and any transactions thereunder, including transfers) must be subject to the UCP and our rights herein are in addition to rights we have under the UCP.

### REQUESTS FOR TRANSFERS

**Partial Transfers.** You may request the partial transfer of your rights as beneficiary, with or without substitution of invoices, of Commercial Letters of Credit-Advised by submitting to us, for each transfer, a request providing the following information:

- Date of application
- Whether the transfer is with or without substitution of invoices and/or drafts
- Whether you refuse to allow amendments to be passed automatically to the second beneficiary without your consent

- Our Commercial Letter of Credit-Advised reference number
- Name of issuing bank
- Name and address of second beneficiary
- Name and address of second beneficiary's advising bank
- Amount to be transferred
- Description of merchandise subject to the transfer
- Unit price (if any)
- Expiration date for the transferred Commercial Letter of Credit-Advised
- Latest shipment date for the transferred Commercial Letter of Credit-Advised
- Number of days after shipment within which documents must be presented for the transferred Commercial Letter of Credit-Advised
- Insurance percentage (if applicable) for the transferred Commercial Letter of Credit-Advised

If we approve the transfer, we will advise the second beneficiary of the terms and conditions of the transferred credit by full text teletransmission, mail/airmail or courier (as we deem appropriate).

With respect to all partial transfers, whether with or without substitution of invoices, you may refuse to allow us to notify the second beneficiary(ies) of any future amendment(s) received under the original Commercial Letter of Credit-Advised.

If you elect transfer with substitution of invoices, then, on our first demand, you will deliver to us within one (1) Business Day your draft, commercial invoice and any other required documents in compliance with the terms of the original Commercial Letter of Credit-Advised. The draft and documents are in substitution of those presented by the second beneficiary. When (i) the documents of the second beneficiary and the substitution documents from the first beneficiary are determined to comply with the terms of the Commercial Letter of Credit-Advised or, if determined to be discrepant, are taken up by the issuing bank and (ii) we are in receipt of funds, we will pay you in accordance with your instructions for the amount of the difference between your draft and the draft of the second beneficiary, less any fees due and payable to us in connection therewith. If you fail, at our first demand, to deliver to us your drafts, invoices and other required documents as stated above, you acknowledge our right to present invoices and other documents received from the second beneficiary in accordance with the instructions of the original Commercial Letter of Credit-Advised. You also understand that we will not pay you the difference between the amount of the draft of the second beneficiary and the amount authorized to be paid to you under the original Commercial Letter of Credit-Advised.

**Full Transfers.** You may request the transfer of all of your rights as beneficiary, without substitution of invoices, of Commercial Letters of Credit-Advised by submitting to us, for each transfer, a request providing the following information:

- Date of application
- Our Commercial Letter of Credit-Advised reference number
- Commercial Letter of Credit-Advised number (issuing bank's number)
- Name of issuing bank
- Name and address of second beneficiary
- Name and address of second beneficiary's advising bank
- Amount to be transferred

If we approve the transfer, we will place the appropriate endorsement on the Commercial Letter of Credit-Advised and send it to the second beneficiary or send the second beneficiary a transferred letter of credit document prepared by us. The second beneficiary will have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes.



For any transfer, you must provide us the original Commercial Letter of Credit-Advised and any existing amendments. You understand that we may, at our sole discretion, refuse to approve any full or partial transfer to a second beneficiary. You acknowledge that due to conditions of the original Commercial Letter of Credit-Advised, certain proprietary information may be disclosed to the second beneficiary and/or to the buyer under the original Commercial Letter of Credit-Advised. We will have no liability to you in the event of such disclosure and, in such event, you will indemnify and hold us harmless from all claims of third parties. You acknowledge that your rights as beneficiary in the original Commercial Letter of Credit-Advised (up to the amount shown in your request with respect to partial transfers) are irrevocably transferred to the second beneficiary(ies) who shall have sole rights (but only up to the amount shown in your request in the case of a partial transfer). In that connection, your approval is not required for us to honor a discrepant presentation made by the second beneficiary.

For our transfer fee, we may debit your account(s) with us, which you may designate subject to our reasonable approval. You also agree to pay us on demand any expenses which may be incurred by us in connection with this transfer.

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## **INFORMATION REPORTING AND IMAGE ACCESS**

We will make available to you, subject to the terms of the Information Reporting section of this Booklet, reports including, but not necessarily limited to, standby letter of credit transactions issued and/or advised, commercial letter of credit transactions issued and/or advised, bankers' acceptances, collections and open account transactions, as more fully described in the applicable User Documentation.

We will also make available to you images including, but not necessarily limited to, your relevant documents as they relate to your letter of credit transactions, collections and open account transactions, as more fully described in the applicable User Documentation.

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## **SUPPLEMENTAL CD-ROM/ DVD<sub>s</sub> SOFTWARE LICENSE PROVISIONS**

This section supplements the Software License Agreement, entered into between you and us as a supplement to the Software License section of the Booklet, with respect to Software we provide for the Image Services, under which we provide you with CD-ROM/DVDs, and shall control in the event of conflict between it and the balance of the Software License Agreement. This section does not apply to the Image Lockbox Service. If we provide you a CD-ROM/DVD which contains a media defect or is unreadable in its entirety, you must notify us in writing of such defect within 30 days after the CD-ROM/DVD creation date appearing on the CD-ROM/DVD. If you provide us with such notice within such time period, we will use reasonable efforts to replace the CD-ROM/DVD. You acknowledge and agree that this shall be our sole obligation and your sole remedy with respect to any such defects in the CD-ROM/DVD.

Notwithstanding anything to the contrary in the Suspension and Termination section of the Booklet, if an Image Service under which we provide you with CD-ROM/DVDs is terminated for a reason other than your breach of any terms and conditions in this Amendment, you may continue to use the Software and Materials for such Service after termination of such Service for six months, or for such longer period as Bank approves, subject to the terms of this section or such other software license agreement as we, at our election, require you to sign for this purpose. At the end of such six-month or longer period, the license for your use of such Software and Materials will then terminate automatically.

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## **SUPPLY CHAIN**

### **SUPPLY CHAIN BUYER**

Our Electronic Trade Services Supply Chain Service permits you electronically to (1) upload invoices that you have approved for payment, (2) make these uploaded invoices available to your vendor for early financing, (3) make payments on these uploaded invoices and (4) inquire and report on the status of these uploaded invoices.

**Invoice Upload.** You will electronically transmit to us, in accordance with applicable User Documentation, files of invoices that you have approved for payment on a future date and which you wish us to make available to your vendors for early financing. The electronic files will be in such format(s) and transmitted through such channel(s) as you have selected and we have approved.

**Approval of Uploaded Invoices and Payment.** Once invoices have been made available to the vendor, we will, at our discretion, respond to their request for early financing and will pay the vendors accordingly. On the maturity date of the invoice, we will collect funds from the account you have designated. If your vendor decides not to discount an invoice, you will, at maturity date, make payment to them through us.

**Reporting.** Information reporting is available to you on the status of each invoice and payment related to each such invoice as further described in the applicable User Documentation.

#### SUPPLY CHAIN SELLER

Our Electronic Trade Services Supply Chain Service permits you electronically to (1) select invoices that you wish to be considered for early financing and (2) inquire and report on the status of these selected invoices.

**Invoice Selection.** You will have visibility into approved invoices that are available for discounting which you can group together and electronically request us to finance. On receipt of a request from you, we will discount these invoices at an agreed upon rate from the date of discount until maturity. We are not obligated to discount each invoice, and will treat them on a case by case basis. If you decide not to discount an invoice, you will, at maturity date, receive payment from your buyer through us.

**Reporting.** Information reporting is available to you on the status of each invoice and payment related to each such invoice as further described in the applicable User Documentation.

With regards to all Services covered by our Electronic Trade Services Supply Chain Service, more detailed terms and conditions can be found in the applicable Supply Chain Service Documentation to be entered into by you, us and your vendor or buyer, as applicable. To the extent a conflict exists between this Booklet and the applicable Supply Chain Service Documentation, the terms and conditions in the Supply Chain Service Documentation will govern.

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### **SUPPLEMENTAL LIMITATION OF LIABILITIES AND INDEMNIFICATION FOR ALL ELECTRONIC TRADE**

For each Electronic Trade Service, this section supplements the Limitation of Liability section of this Booklet.

You have sole responsibility for determining the level of security you require and assessing the suitability of the security procedures for these Services. We have no duty to investigate the authenticity of any application, instruction or other communication you provide us using an Electronic Trade Service. Also, we will have no liability to you for acting upon any application, amendment or other communication purportedly transmitted by you, even if such application, amendment or message:

- Contains inaccurate or erroneous information.
- Constitutes unauthorized or fraudulent use of an Electronic Trade Service.
- Includes instructions to pay money or otherwise debit or credit any account.
- Relates to the disposition of any money, securities or documents.
- Purports to bind you to any agreement or other arrangement with us or with other persons or to commit you to any other type of transaction or arrangement.

We are authorized, but not obliged, to rely upon and act in accordance with any application, instruction, consent or other communication by fax or other electronic transmission (including without limitation any transmission by use of our Software or a Website) received by us purporting to be a communication on your behalf without inquiry on our part as to the source of the transmission or the identity of the person purporting to send such communication. We are also authorized, but not obliged, to rely upon and act in accordance with any application, instruction, consent or other communication by telephone, purporting to be a communication on your behalf by an authorized person designated by you.

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## General Provisions

THE ENTIRETY OF THIS GENERAL PROVISIONS SECTION OF THIS BOOKLET TOGETHER WITH THE APPLICABLE SERVICE SECTIONS HEREIN FORMS THE AGREEMENT BETWEEN YOU AND US WITH RESPECT TO THE SERVICES DEFINED THROUGHOUT THIS BOOKLET.

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### ACCESSING SERVICES VIA THE INTERNET

We may make certain Services available via one or more Websites. In addition to any other terms and conditions applicable to your use of such Websites, you agree as follows:

We reserve the right to suspend your access to, and use of, a Website upon notice of a violation of any of the terms and conditions applicable to such access and use. In addition, we may suspend your access to, and/or use of, a Website immediately, or revoke the access of any authorized user or administrator, without notice where such action may be required to prevent interference with or disruption to services to other customers, to protect the integrity of our systems, as a result of a failure to comply with any requests for information or documentation, or as may be required by law or regulation.

Websites shall be used only for lawful purposes. Without limiting the foregoing, you agree not to use a Website in any way that would:

- infringe any third party copyright, patent, trademark, service mark, trade secret or other proprietary rights or rights of publicity or privacy
- be fraudulent or involve the use of counterfeit or stolen items
- violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, unfair competition, anti-discrimination, defamation or false advertising)
- violate any contractual provision by which you are bound
- be false, misleading or inaccurate
- create liability for us or any service provider(s) or cause us to lose (in whole or in part) the services of any service provider
- be defamatory, trade libelous, unlawfully threatening or unlawfully harassing
- interfere with or disrupt computer networks connected to the network(s) used by you
- interfere with or disrupt the use by any other customer of the Website and/or of any services accessed via the Website

Violations of system and network security are prohibited, including but not limited to unauthorized access to, or use of, systems or data. You agree not to attempt to probe, scan or test the vulnerability of a system or to breach security or authentication measures or to seek to interfere with any system or network security. We will investigate violations of system and/or network security and may involve law enforcement if criminal conduct is suspected. Indirect or attempted violations of these terms and conditions by you, and any actual or attempted violations by a third party on your behalf, shall be considered violations by you.

You agree to follow all our procedures and requirements with respect to security in accessing and using a Website and not to misrepresent your identity. Where passwords or other access information may be required, you are solely responsible for the security of such access information and will hold us harmless from any unauthorized access to or use of systems that may result from your failure to properly maintain the security of such access information.

You agree to cooperate with us and any service provider(s) with regard to your access to, and use of, a Website, including providing such technical assistance and information as we may reasonably request.

You agree to access and use Websites only for the purpose intended and not for any purpose of commercial exploitation.

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## CHANGES TO A SERVICE

You may request us at any time to change the processing instructions for any Service. We are not obligated to implement any requested changes until we have had a reasonable opportunity to act upon them. In making changes, we are entitled to rely on requests purporting to be from you. For certain changes, we may require that your requests be in writing, in a form and manner acceptable to us, or be from an authorized person you designate. In addition, certain requests for changes may be subject to our approval.

We may change, add or delete any of the terms and conditions applicable to any or all Services upon 30 days prior notice to you in writing or by electronic means. Your continued use of or failure to terminate any Service, after the effective date of the change, will indicate your agreement to the change.

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## COMMUNICATIONS

Any written notice or other written communication to be given under the terms of this Booklet will be addressed to the applicable address specified on the Authorization and Agreement form you return to us, except as you or we specify otherwise in writing in conjunction with your accounts or particular Services. Notices are effective upon receipt, except as otherwise provided in this Booklet or any Materials.

You agree that we may electronically monitor and/or record any telephone communications with you in those countries which permit that practice. If our records about any such communication are different from yours, our records will govern.

If you choose to use unencrypted electronic mail to initiate payment requests or other instructions or otherwise communicate with us, your use of such electronic mail with respect to a Service will be subject to the terms and conditions of this Booklet and will comply with the applicable User Documentation. You further agree to bear the risk that such electronic mail may be corrupted, modified, garbled or hacked or its confidentiality may be breached by a third party and the risk that we will rely on such mail, which appears to be from you but which is unauthorized, and that such reliance will result in a loss. In addition, you agree that we may rely on the integrity of facsimile transmissions that you send us and you agree to bear the risk that the information we receive differs from that sent to us, and that such reliance will result in a loss.

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## CONFIDENTIALITY

### OUR OBLIGATION

We will maintain the confidentiality of information obtained from you in connection with Services we provide under this Booklet in accordance with our normal procedures for safeguarding customer information and the policy reflected in the Bank of America Corporation Code of Ethics, except as otherwise provided herein.

### YOUR OBLIGATION

You acknowledge our claim to proprietary rights in the Materials and that the Materials constitute our "trade secrets" or trade secrets of our licensors or vendors. You understand that all Materials are confidential and you will:

- Safeguard the Materials at all times.
- Establish and maintain procedures to assure the confidentiality of the Materials and any password or code subsequently changed by you.
- Use the Materials only for the purposes for which we provide them.
- Notify us promptly by telephone, confirmed in writing, if any Materials are lost or their confidentiality is compromised.
- You will not, nor will you allow anyone else to, do any of the following without our prior consent:
- Disclose any Materials to any person or entity, except to your employees and agents with a need to know the Materials.
- Make any copies, in whole or in part, of any Materials in whatever form or medium (electronic, printed or otherwise) in which they may exist from time to time, except as provided in the Software License section.
- Translate, reverse engineer, disassemble or decompile any Software or security devices.

These confidentiality obligations continue after a Service you are using is terminated.

You have sole responsibility for the custody, control and use of all Materials. You agree that no individual will be allowed to initiate a request or other instruction contemplated in this Booklet or to have access to any Materials without proper supervision and strict security controls. If a Service requires use of user identification codes or passwords, we will be fully protected in relying on the correct user identification codes and passwords, as described in the relevant User Documentation.

#### GENERAL

This section does not limit either party's ability to disclose information (i) that the other party has approved by prior writing for disclosure; (ii) that is disclosed to its professional advisors or auditors; (iii) that is or becomes public other than through a breach of these confidentiality obligations, (iv) that was in its possession or available to it from a third party prior to its receipt of it in connection with any Service, (v) which is obtained by it from a third party who is not known by it to be bound by a confidentiality agreement with respect to that information, (vi) as required or requested by any securities exchange or regulatory body to which either party is subject or submits or (vii) as otherwise required to be disclosed by law or by legal or governmental process.

*In addition, you agree (i) that we may disclose to our offices, affiliates, officers, employees and agents with a need to know any information we obtain about you and (ii) that those offices, affiliates, officers, employees and agents may disclose such information as permitted under the immediately preceding paragraph.*

You acknowledge and agree that data processing related to Services covered by this Booklet and your associated accounts, or the partial or complete delivery of certain Services, may take place in countries other than those where you and your accounts with us are located. You further understand that information concerning your relationship with us may be available on our electronic data system both for information management purposes and in order to enable you to benefit from our electronic banking services. You understand and agree that, as a result, your banking relationship information may be available to some of our offices, affiliates, officers, employees and agents outside the country or countries where you and your accounts are located. You authorize us to transmit your banking relationship information across national borders, notwithstanding the banking secrecy laws of any of the countries involved, as necessary or appropriate to provide any Services.

It is possible that in providing the Services we will transmit Personal Data. We will only transmit Personal Data to our locations, to locations of our affiliates or to others in order to provide the Services. We may contract with others to provide data transmission or storage services to us. In that case, we will require that they treat Personal Data solely in accordance with our instructions. You agree to comply with any directions we may give you from time to time with respect to the Personal Data.

Neither party will use the other's name or refer to the other party directly or indirectly in any solicitation, marketing material, advertisement, news release or other release to any publication without receiving the other party's specific prior written approval for each such use or release, except that we may use your name as a reference in service proposals if we obtain your prior oral approval for such use. In addition, the Bank may develop and use case studies related to and describing completed transactions between Bank and Client (the "Case Study") and use the Case Study in Bank's service proposals, marketing materials and Website. Prior to publishing or distributing the Case Study, Bank will provide a copy of the Case Study to Client for review and consent.

This section also does not limit our ability or that of our affiliates to access and use transaction data related to any Service provided to you in connection with the management of our or their business.

These obligations continue after any Service you are using is terminated.

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#### **CURRENCY EXCHANGE RATES**

If a transaction does not contain currency exchange rates obtained from our daily rate sheet or from one of our FX Advisors, then your funds will be exchanged for such other currency at a current rate of exchange on or before the transfer or debit date, as the case may be, in accordance with our normal procedures (including applicable User Documentation). If we assign an exchange rate to your transaction, such exchange rate will be determined by us in our sole discretion based upon such factors as we determine relevant, including but not limited to, market conditions, exchange rates charged by other parties, desired rates of return, market risk, credit risk, and other market and

economic factors. You acknowledge that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day, as reported in The Wall Street Journal or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from our exchange rates. You acknowledge that assigned exchange rates may include fees, costs, charges or other mark ups as determined by us in our sole discretion. We do not accept any liability for our exchange rates. Any and all liability for our exchange rates is disclaimed, including without limitation, direct, indirect or consequential loss, and any liability if our exchange rates are different from rates offered or reported by third parties, and/or offered by us at a different time, at a different location, for a different transaction amount, or involving a different payment media (including but not limited to bank-notes, checks, wire transfers, etc.). You should assume we have an economic incentive to be a counterparty to any transaction with you. Currency exchange rates fluctuate over time, and you acknowledge and accept the risks of such fluctuations: (i) in the case of Requests, between the time you initiate a Request and the time the transfer is either completed or is unwound due to a cancellation, amendment, rejection or return, (ii) in the case of checks, between the time you request us to create a check and the time we debit your account to cover such check and/or the time we re-credit your account if the check is stopped in accordance with the applicable stop payment procedures and (iii) in the case of drafts, between the time you print a draft, or request us to print a draft, and the time we transfer funds from your account to cover such draft.

#### PRE-HEDGING DISCLOSURE:

From time to time in connection with our market making and other activities, we may engage in pre-hedging activities to facilitate customer transactions and hedge the associated market risk. Such trading may include pre-execution hedging transactions. These transactions will be designed to be reasonable in relation to the risks associated with the potential transaction with you. However, no assurance can be given that these transactions will not affect the price of the underlying currency. In each of these instances, our trading activity could affect the market for the relevant currencies and consequently, your cost or proceeds. When our hedging and risk liquidation activity is completed at prices that are superior (or inferior) to the agreed upon execution price or benchmark, we will keep the positive (negative) difference as a profit (loss) in connection with the transactions. You will have no interest in any profits.

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### **NOTICE OF ACCOUNT STATEMENT DISCREPANCIES**

Information concerning payments and other transactions on your accounts will be reflected in your account statements and, in some cases, in the form of written or electronic advices or reports that are produced by the Service and/or through the use of other Services provided by us to you. You must send us written notice, with a statement of relevant facts, within 14 days after you receive the first notice or statement indicating a discrepancy between our records and yours. If you fail to give the required notice, we will not be liable for any loss of interest or for compensation for any other loss or cost relating to an unauthorized or erroneous debit to your accounts or any other discrepancy reflected in the notice or account statement. You must notify us promptly by telephone or other electronic means approved by us for such purpose, and promptly confirm such notice in writing, of information concerning an unauthorized or erroneous debit to your accounts if you learn about or discover it from any source other than a statement, advice or report from us.

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### **E-STATEMENTS**

If you use a Website, you will receive e-Statements electronically, unless you opt out. If you are not currently receiving e-Statements, we reserve the right to switch you to receipt of e-Statements unless you notify us that you wish to opt out. You may opt out by contacting your treasury services representative. You agree that this Booklet constitutes an agreement under the Uniform Electronic Transactions Act pursuant to applicable state law.

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### **FACSIMILE SIGNATURES**

In some countries, businesses use a variety of techniques to produce a facsimile signature manually or by means of a device or machine (each generally called a facsimile signature) as a convenient method for signing checks, documents and other items. If you choose to use a facsimile signature, you must provide us with a specimen of each facsimile signature.

You are responsible for any withdrawal from your deposit account that bears or reasonably appears to us to bear your facsimile signature, regardless of by whom or by what means the signature was placed on the check. If you choose to use a facsimile signature, you are responsible, and we may pay a withdrawal and debit your account for any such withdrawal, even if (i) you have not presented us with a specimen facsimile signature; (ii) the size, color or style of the check is different from that of the check you use; or (iii) the size, color or style of the facsimile signature is different from that of the facsimile signature you use.

You agree to compensate us for all losses, claims, damages or expenses, including Legal Expenses, that result from our payment of a withdrawal bearing a facsimile that reasonably resembles your facsimile signature.

You are responsible for taking security measures and implementing procedures to prevent the forgery, theft or fraudulent or unauthorized use of your facsimile signature.

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## **THIRD PARTY VENDORS**

This section describes the terms and conditions under which you are permitted to utilize any Subsidiary or other person, including a Third Party Vendor, to access any of the Services provided to you by us (which may include the Third Party Vendor's receipt, access to, and/or handling of any related sensitive information) through the use of a remote access software package, a Website, data file transmission, mail delivery service, mobile access or telephone, as applicable.

### SUPPLEMENTAL LIMITATION OF LIABILITIES

We will not be responsible for the acts or omissions of you or your officers, employees or agents, including any Third Party Vendors retained by you (including but not limited to the amount, accuracy, timeliness or authorization of any instructions or information) or the acts or omissions of any other person or entity, including but not limited to any clearing house association or processor, any U.S. Federal Reserve Bank or any other country's central bank, any other financial institution or any Supplier, and no such person or entity will be deemed our agent.

If you permit any Subsidiary or other person, including a Third Party Vendor, to access any of the Services provided to you (which may include the Third Party Vendor's receipt, access to, and/or handling of any related sensitive information or PHI) through the use of a remote access software package, a Website, data file transmission, mail delivery service, mobile access or telephone, we will not be responsible or liable for such Subsidiary's, person's or Third Party Vendor's use or misuse of the Services or related accounts or any such party's access to, use, misuse or loss of any PHI or other sensitive information; provided we have complied with any applicable Security Procedure.. We may and will treat all instructions and information received by us through this arrangement as provided by and for the benefit of you and subject to all our rights under this Booklet with respect to the pertinent Services.

### THIRD PARTY VENDOR USAGE OF TREASURY SERVICES

### YOUR REPRESENTATIONS, WARRANTIES, AND AGREEMENT SURROUNDING THIRD PARTY VENDORS.

You represent and warrant to us that you obtain a business benefit by allowing a Third Party Vendor to use, on your behalf, one or more of the Services provided to you by us (which may include the Vendor's receipt, access to, and / or handling of any related sensitive information or PHI), and that you have made available to each Third Party Vendor the Booklet and all applicable User Documentation.

You will provide and maintain a list of all such Third Party Vendors in a form and in a manner acceptable to us. We may act under the Booklet as a Third Party Vendor instructs us and you agree that such Third Party Vendor will be acting as your agent with respect to the Services. You further agree that you will cause a Third Party Vendor to use the Services on your behalf in accordance with the terms and conditions of the Booklet and all applicable User Documentation and that such Third Party Vendor shall have no other right to use a Service or to derive any benefit under the Booklet. You agree that you are fully responsible for ensuring that all appropriate information protection, privacy, and cross border data movement and similar policies and procedures are implemented and followed by all such Third Party Vendors used by you, and that they comply at all times with applicable law. You shall provide us with information about any such Third Party Vendor as we reasonably request.

You will indemnify us and hold us harmless from and against any and all liabilities, losses, claims, costs, expenses and damages of any nature (including but not limited to the allocated cost of staff counsel, reasonable attorneys' fees and

any fees and expenses incurred in enforcing the Booklet) (cumulatively, a "Loss") in any way relating to any action or inaction of a Third Party Vendor, unless such Loss is attributable to our gross negligence or intentional misconduct.

We may, at our sole discretion, either decline to act upon any instruction or communication received from any Third Party Vendor or terminate or suspend your use of the underlying Service, if, in our sole discretion, we determine that a Third Party Vendor may pose a risk to our operations or a Third Party Vendor or you breach any term herein or the applicable User Documentation. In the event you terminate your relationship with a Third Party Vendor it is your sole responsibility to terminate such Third Party Vendor's access to the Services (including access to any related PHI or other sensitive information).

In the event of a conflict between like terms in another agreement between you and us, then the terms of this section shall prevail, but only to the extent necessary to resolve such conflict.

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## **GENERAL MATTERS**

### **AGREEMENT**

Except with respect to terms governing a Website to which you agree when you use a Service through such Website, this Booklet constitutes and represents the entire agreement between you and us regarding the Services we provide you anywhere in the world and supersedes and extinguishes all prior agreements, understandings, representations, warranties and arrangements of any nature (including requests for proposals and other sales material), whether oral or written, between you and us relating to any such Service (including any International Treasury Services Terms and Conditions booklet, but excluding the current Account Agreement). Except as otherwise expressly provided in this Booklet, this Booklet will be controlling in the event of any conflict between it and any relevant User Documentation, any other document or written or oral statement (including but not limited to any Account Agreement, except as applicable law requires otherwise), but excluding terms governing a Website as noted above. Current User Documentation is available upon request.

This Booklet is binding upon each of your and our respective successors and permitted assigns. You may with our prior written consent, assign any of your rights or duties described in this Booklet. This Booklet is not for the benefit of any other person, and no other person has any right under this Booklet against you or us, and nothing contained in this Booklet creates any agency, fiduciary, joint venture or partnership relationship between you and us.

NOTICE OF FINAL AGREEMENT. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

### **GENERAL OBLIGATIONS**

We are responsible only for performing the Services expressly provided for in this Booklet. We may contract with an outside vendor in providing any of these Services.

With respect to any Service, we will provide you with assistance by telephone at the numbers and during the hours specified by us in writing from time to time.

You are responsible for maintaining the security of your data and ensuring that it is adequately backed-up. We are not responsible for your loss of your data.

### **ORAL INSTRUCTIONS**

Except as otherwise provided in this Booklet with respect to compliance with any applicable Security Procedure, we may rely on oral instructions from any person who identifies himself or herself by a name which is included on a written list from you of persons authorized to give such instructions. You will update this list from time to time as necessary to reflect any changes in authorized persons. Except as otherwise expressly stated in this Booklet, we are not required to act on any instruction from any person or to give notices to any person.

### **SEVERABILITY: NO WAIVER**

If any provision of this Booklet or the application of any such provision to any person or set of circumstances is determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Booklet, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid,



unlawful, void or unenforceable, are not impaired or otherwise affected and continue to be valid and enforceable to the fullest extent permitted by law.

No delay or failure to exercise any right or remedy under this Booklet is deemed to be a waiver of such right or remedy. No waiver of a single breach or default under this Booklet is a waiver of any other breach or default. Any waiver under this Booklet must be in writing.

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## **GOVERNING LAW**

Except as otherwise expressly provided in this Booklet for a particular Service, with respect to each Service, this Booklet is governed by and interpreted according to (i) U.S. federal law and (ii) the law of (A) the state in the United States of America in which the account (or the principal account, in the case of multiple accounts) associated with such Service is located or, if there is no such state or no account associated with such Service, (B) the State of New York, without reference to the principles of conflicts of law of the U.S. and of such state.

If you are headquartered, or are using a Service, outside the United States of America, and if requested by us, you must appoint an agent for service of process in England, Hong Kong, Singapore and/or the United States of America, and you irrevocably agree that any writ, summons, order, judgment or other document relating to or in conjunction with any proceeding, suit or action may be served on you in such jurisdiction.

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## **SECURITY PROCEDURE**

You agree to use the applicable Security Procedure as described in the Materials in connection with your use of a Service for your data delivery type or Service for the purpose of verifying the authenticity of any (i) electronic funds transfers or payments instructions, including, without limitation, cancellations, amendments or reversals thereto; and (ii) any instructions, data, transactions or other information sent between you and us (collectively "transactions"). The purpose of the Security Procedure is to verify the authenticity of any such transactions between you and us or our third party processor and not to detect any errors in the transmission or content of any such transactions. Each time you use a Service, you represent and warrant that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of any such transactions. You agree that we or our third party processor may act on any transactions, the authenticity of which we or our third party processor, as applicable, have verified through use of the Security Procedure.

You agree that we may act on transactions, including, without limitation, electronic funds transfers and payments requests, even if they are unauthorized, if we act in good faith and comply with the applicable Security Procedure and any written agreement with you restricting our action on such transactions. In such cases, we may enforce or retain your payment to us for such transactions; provided, however, we may not enforce or retain payment if you prove that the unauthorized transactions were not caused by a person (i) entrusted at any time to act for you with respect to any such transactions or the applicable Security Procedure, (ii) who obtained access to your premises, computer equipment or transmitting facilities or (iii) who obtained, from a source controlled by you, information (such as keys and passwords) which facilitated breach of the applicable Security Procedure.

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## **LIMITATION OF LIABILITIES**

### ALL SERVICES OTHER THAN ELECTRONIC FUNDS TRANSFER SERVICES

We are liable to you only for actual damages incurred as a direct result of our failure to exercise reasonable care in providing a Service.

### ELECTRONIC FUNDS TRANSFER SERVICES

For Requests and Entries which are subject to UCC 4A, we are liable only for damages required to be paid under UCC 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in this Booklet.

For all Requests and Entries not subject to UCC4A and for all other obligations under the Electronic Funds Transfer Services sections, our liability is limited to actual damages, resulting directly from our willful misconduct or our failure to exercise reasonable care, not exceeding the following, as applicable: (i) in case of an excessive debit to your account, the amount of the excess plus compensation equivalent to interest; (ii) in case of payment to an account not specified by you, the amount of the payment plus compensation equivalent to interest; (iii) in case of any delay in crediting a debit Entry or RCC to your account, the amount of compensation equivalent to interest for the period of delay; or (iv) in

all other cases, the actual damages incurred by you. You will use reasonable efforts to assist us in recovering the amount of any overpayment for which we are liable.

If we are obligated to pay interest compensation, we will pay such compensation or credit your account, as we determine, upon your written request. We calculate compensation for the relevant period as specified in the Account Agreement or as advised by your customer services representative.

If you transmit a Request to us by way of a funds-transfer system or other third-party communications system not specifically required by us, the system is deemed to be your agent for that purpose. We are not liable to you for any discrepancy between the terms you transmit to such system and the terms it then transmits to us.

#### ALL SERVICES

In no event will we be liable for any indirect, consequential or punitive loss, damage, cost or expense of any nature or any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of or corruption to your data, loss of operation time or loss of contracts, even if advised of the possibility of such loss, damage, cost or expense.

We will not be responsible for the acts or omissions of you or your officers, employees or agents (including but not limited to the amount, accuracy, timeliness or authorization of any instructions or information from you) or the acts or omissions of any other person or entity, including but not limited to any clearing house association or processor, any U.S. Federal Reserve Bank or any other country's central bank, any other financial institution or any Supplier, and no such person or entity will be deemed our agent.

If you permit any Subsidiary or other person to access one of our Service installations on your premises through use of a remote access software package, we will not be responsible or liable for such Subsidiary or person's use or misuse of our Services or access to accounts owned by you and for which you did not authorize that Subsidiary or person to have access via your installation. We may and will treat all instructions and information received by us through this arrangement as provided by and for the benefit of you and subject to all our rights under this Booklet with respect to the pertinent Services.

We will not be liable for and will be excused from any failure or delay in performing our obligations for any Service if such failure or delay is caused by circumstances beyond our control, including any natural disaster (such as earthquakes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute), legal constraint or governmental action or inaction, breakdown or failure of equipment (including Internet failure), breakdown of any Supplier, or your act, omission, negligence or fault.

We also will not be liable for any failure to act on our part if we reasonably believed that our action would have violated any law, rule, regulation or court order or decree.

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#### **OVERDRAFTS**

With respect to a Service, we may, at our sole discretion, allow an overdraft to occur in your account. Except as we agree or advise you otherwise in writing, you must repay us immediately, without demand, the amount of such overdraft plus any overdraft charges. In such cases, the fact that we previously allowed an overdraft to occur does not obligate us to do so in the future. Additional terms and conditions contained in your Account Agreement may apply.

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#### **PAYMENT FOR SERVICES**

You must maintain and designate account(s) with us which we will use for debiting or crediting with respect to all payments and deposits and related adjustments and charges. Except as otherwise provided, you must have Collected and Available Funds on deposit in your account(s) sufficient to cover such obligations. For purposes of satisfying your payment obligations, we may consider any overdraft line of credit or other arrangement you have with us.

#### SERVICE CHARGES

You will pay us for each Service you use according to our schedule of charges currently in effect for you, except as we agree otherwise (in writing) from time to time. At your request, we will provide you a copy of the current schedule of charges for the applicable Service. All charges are subject to change upon 30 days prior written notice to you (unless otherwise agreed in writing), except that any increase in charges to offset any increase in fees charged to us by any Supplier for services used in delivering any Service may become effective in less than 30 days.

You will pay us for Software support in excess of that contemplated in the General Provisions sections of this Booklet. The charges for such extra support will be as specified by us before such charges are incurred or as otherwise agreed by you and us from time to time.

We will, on a monthly basis, debit your account with us for payment of charges due, unless you arrange another payment procedure acceptable to us.

#### TAXES

All Service charges are exclusive of sales, value-added and use taxes, stamp and other duties and other governmental charges imposed on any Service or Materials and not based on our net income. Such taxes, duties and charges are payable by you.

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### **PROTECTION FROM THIRD PARTIES**

To the extent permitted by law, you will indemnify us against and hold us harmless from and defend us against any and all liabilities, claims, costs, expenses and damages of any nature (including Legal Expenses) arising out of or relating to disputes or enforcement of laws, fines or rules, legal actions, by parties other than you and us concerning any Service. The obligations contained in the preceding sentence will continue after a Service you are using is terminated. This section does not apply to any cost or damage attributable to our gross negligence or intentional misconduct.

Further, with respect to any Service where we receive payment from a third party on your behalf, the amounts received (less related charges, disbursements and/or expenses) will be paid to you, except that if we are required to return any such payment received upon the insolvency, bankruptcy or reorganization of such third party or for any other reason, you will repay to us the amount paid to you together with interest thereon from the date we returned the payment and so notified you at the rate specified by us in our schedule of charges with regard to the applicable Service.

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### **REPRESENTATIONS AND WARRANTIES**

On and as of each day we provide any Service to you, you represent and warrant to us that:

- Your agreement to each provision contained in this Booklet is a duly authorized, legal, valid, binding and enforceable obligation.
- The debiting of any account as provided in this Booklet is not inconsistent with any restriction on the use of that account.
- All approvals and authorizations required to permit the execution and delivery of the Agreement and Authorization form and any other necessary documentation, and the performance and consummation by you of the transactions contemplated under each Service, have been obtained, including but not limited to due authorization from each applicable third party to allow you to transfer funds and access information from such party's account.
- Neither your performance of your obligations nor your use of any Service will facilitate illegal transactions, for example those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., or otherwise violate any law, rule, regulation, judgment, decree or order applicable to you.
- The Services you receive pursuant to this Booklet are for business use only and are not primarily for personal, family or household use.
- There is no lawsuit, tax claim or other dispute pending or threatened against you which, if lost, would impair your financial condition or ability to pay us under the terms of this Booklet.

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### **RESOLUTION OF DISPUTES**

We try to resolve our clients' Service problems or disputes as quickly as possible. In most cases, we can resolve a problem by telephone.

Any dispute or controversy concerning your use of Services described in this Booklet will be decided by binding arbitration conducted in the United States of America (except as you and we expressly agree otherwise) in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Under these procedures, the dispute is submitted to a neutral person for determination in place of a trial before a judge or jury. Judgment upon the award made by the arbitrator may be entered in any court having jurisdiction.

Without regard to the foregoing, any dispute or controversy that arises from an Electronic Funds Transfer Service will be decided by a judge without a jury in a United States of America federal or state court (except as you and we expressly agree otherwise in writing). **This means that in these instances you waive any right to a trial by jury in any action or proceeding and agree that such action or proceeding will be tried before a judge without a jury.**

Either you or we may exercise self-help remedies or obtain provisional or ancillary remedies from a court. You or we may exercise or obtain these remedies at any time, even while the arbitration or trial by a judge is pending. By exercising or obtaining any such remedies, neither you nor we waive the right to request that a dispute or controversy be decided by arbitration or trial by a judge.

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## SOFTWARE LICENSE

This section applies to all Software we provide to you after you return the Agreement and Authorization form unless we provide you a separate license agreement for specific Software (including a “click-wrap” Software license you may obtain from us by downloading from our Website).

### LICENSE

For each Software application we provide to you for one or more Services, we grant you a non-exclusive, revocable, non-transferable license for the use of that Software and any Materials related to the Software that we provide to you. Each license is granted solely for use in object code form only in connection with one or more Services. You may use the Software only in accordance with the applicable User Documentation.

The Software, its source code, the Materials and all copyright, patent, trademark, trade secret and other rights in them are and will remain the exclusive property of us or our licensors. You will secure and protect the Software and Materials (including all copies) in a manner consistent with the maintenance of our rights and those of our licensors. In order to protect those rights, you will reproduce and incorporate copyright notices and all other proprietary legends prescribed by us in any permitted copies. You may not remove, obscure or otherwise tamper with or alter any such notices or legends affixed to or otherwise contained in the Software or Materials (or copies). You will also take appropriate action to instruct and obligate your representatives who are permitted access to the Software and/or Materials (including copies) to comply with your obligations to protect the Software and Materials.

We are obligated to provide you only with those updates, upgrades or new releases of Software which we make generally available to our other customers who license the same Software. Any corrections, updates, upgrades or new releases that we provide to you must be installed by you promptly or by such later time as we specify, and will be deemed part of the Software upon delivery to you. We will provide support only for the most current version of Software we have provided to you.

You will, at your expense, cause a computer to be installed and kept in good condition and working order at your site for use of the Software. The computer and its components must be equipment which is acceptable, as specified by us from time to time.

At our option, we may assist you with the installation of Software on your computer and/or with the training of persons who will use the Software, but we will not bear any responsibility for (i) such training or (ii) the proper installation or use of the Software. Except as you and we may agree otherwise, you will be deemed to have accepted the Software upon its installation.

If we have provided you with Software to be installed on your computer, you may not install the Software on more than one computer or electronically distribute it to any other computer, without our prior written approval and the payment of any fees that we may assess. You may move the Software to another computer replacing the one on which the Software was originally installed or to another site, but only after you give us notice, in writing or by electronic means approved by us for such purpose, specifying the new computer and site. If we have provided you with Software to be installed on your network server, you may not electronically distribute, or allow anyone else to electronically distribute, the Software except from the network server on which it is installed to workstations on that network. You will provide us notice, in writing or by electronic means approved by us for such purpose, each time you install the Software on more than one computer (subject to our prior written approval) or electronically distribute the Software to

a workstation on that network, as applicable, in each case indicating the location and the date of such installation or distribution.

You may not (i) sell, assign, transfer, license, sublicense or publish the Software or Materials (including any permitted copies), (ii) disclose, display or otherwise make available the Software or Materials (including any permitted copies) to third parties, or (iii) copy, or allow anyone else to copy, the Software or Materials, without our prior written approval, except that you may make two copies of the Software for backup and/or archival purposes. In the event that we provide you with our prior written approval to make an additional copy of the Software, you will (i) pay us any fees assessed by us and (ii) provide us notice, in writing or by electronic means approved by us for such purpose, of the location and the date of such copy.

You will provide us with reasonable access to the Software and Materials at your site to provide assistance or to verify the status or location of the Software and Materials. In addition, we may audit your site and have access to the Software and Materials provided to you to confirm compliance with this Software License section. Furthermore, we may audit your site and have access to such Software and Materials if you fail to provide us with any notices or reports, or if we reasonably believe you are using unauthorized copies of the Software and/or Materials, using the Software and/or Materials in an unauthorized manner, and/or otherwise failing to comply with any of the terms and conditions of this Booklet.

You may not alter, repair, modify or adapt any Software or Materials, including, but not limited to, translating, reverse engineering, decompiling, disassembling or creating derivative works from it.

You will inform our client support unit of all errors, difficulties or other problems with the Software of which you become aware. We may make reasonable efforts to fix or provide workarounds for any material errors reported to us and to provide you with support and consultation concerning the Software. Any such efforts, support and consultation will be determined by us, in our sole discretion. You will cooperate with us in the expeditious resolution of such errors, difficulties or other problems by providing us, on request, a listing of input, output and all other data which we may reasonably request in order to reproduce operating conditions similar to those present when such errors, difficulties or other problems were discovered.

Your license to the Software and Materials will terminate automatically if you breach a material term of this Software License section or the license, or if the Services for which you are using the Software are terminated. In addition, in the event of a breach of your confidentiality obligations with respect to the Software, we may seek any remedy provided by law or equity.

#### LIMITED WARRANTY/DISCLAIMERS

You acknowledge that the Software and Materials have not been produced to meet your specific requirements and have not been tested in every possible combination and operating environment. You are responsible for satisfying yourself that the Software and Materials are satisfactory for your purposes.

You further understand and agree that we make no representation concerning the completeness, accuracy, timeliness, operation or performance of the Software and/or Materials or their compatibility with any hardware. You acknowledge and agree that the operation of the Software may not be uninterrupted or error-free and that the Software and Materials are provided on an "AS IS" basis.

We warrant that the Software will substantially conform to the documentation provided with the Software for a period of 30 days after delivery to you, provided that (i) the Software has been used by you in strict compliance with the terms and conditions of this Booklet and the Materials, (ii) the Software has not been modified in any way by you, and (iii) you promptly notify us and reproduce for us any defects, errors or bugs in the Software which result in the Software not substantially conforming to such documentation. In the event that such warranty is breached, we shall, at our option, (i) use reasonable efforts to correct or work around any such defects, errors or bugs or (ii) accept return of the Software and refund any license fees paid by you for the Software.

You agree that the foregoing is your sole and exclusive remedy for breach of warranty and our sole obligation in connection with the performance or operation of the Software and Materials.

Except as specifically stated above and in the Infringement Indemnity subsection below and notwithstanding any other provision in this Booklet or otherwise, we make no representation or warranty, express or implied, written or oral, and,

to the full extent permitted by law, disclaim all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose, regarding the Software, the Materials, any CD-ROM/DVDs provided to you, and all other property, services or rights covered by this Booklet.

To the extent permitted by applicable law, and except as otherwise provided in this section, we will not be liable for damages of any kind arising out of the provision of, use of, or inability to use, the Software and/or Materials.

You agree that the United Nations Convention on Contracts for the International Sales of Goods will not apply to our provision to you or your use of any Software and/or Materials.

#### INFRINGEMENT INDEMNITY

Notwithstanding your indemnity of us in the Protection From Third Parties section of this Booklet and except as otherwise provided in this Booklet, we will defend at our own expense or settle any action brought against you to the extent it is based on a third party claim that your use of the Software and/or Materials provided by us to you pursuant to this Booklet infringe any Berne Convention country copyright or any United States of America or United Kingdom patent, trade secret or trademark of any third party, and we will pay all costs and damages finally awarded in any such action.

Our obligations under this indemnity are subject to (i) prompt notice from you of any such claim or action, (ii) your not having made any admission of liability or agreed to any settlement or compromise, (iii) your providing to us, in a prompt and timely manner, the documents, information and assistance we reasonably request, (iv) our having sole control of defending such claim or action, (v) your having used the current version of the Software and Materials, as provided to you by us, in compliance with the terms and conditions of this Booklet, (vi) your using the Software and Materials only in the manner for which the Software and Materials were designed, (vii) your not modifying the Software and Materials, and (viii) your not incorporating the Software and Materials with products not approved by us. You acknowledge and agree that our obligations under this indemnity are our only obligations to you with respect to any infringement claim in connection with your use of the Software and/or Materials.

#### EXPORT CONTROLS

You understand and acknowledge that any obligations that we may have to provide Software, any Materials, data, technical assistance, training and related technical data, and any media in which any of the foregoing is contained (all of which shall be collectively referred to as "Data") will be subject in all respects to all applicable laws and regulations as shall from time to time govern the export or diversion of certain products and technology to and from certain countries. You warrant and agree that you will comply in all respects with the export and reexport restrictions applicable to the Data shipped and/or provided to you and that you will comply with all applicable laws and regulations governing the export and diversion of the Data.

#### IMAGE SERVICES - SUPPLEMENTAL CD-ROM/DVDs SOFTWARE LICENSE PROVISIONS

This subsection supplements this Software License section with respect to Software we provide for the Image Services, under which we provide you with CD-ROM/DVDs, and shall control in the event of conflict between it and the balance of the Software License section. This subsection does not apply to the Image Lockbox Service. If we provide you a CD-ROM/DVD which contains a media defect or is unreadable in its entirety, you must notify us in writing of such defect within 30 days after the CD-ROM/DVD creation date appearing on the CD ROM/DVD. If you provide us with such notice within such time period, we will use reasonable efforts to replace the CD-ROM/DVD. You acknowledge and agree that this shall be our sole obligation and your sole remedy with respect to any such defects in the CD-ROM/DVD.

Notwithstanding anything to the contrary in the Suspension and Termination section of this Booklet, if an Image Service under which we provide you with CD-ROM/DVDs is terminated for a reason other than your breach of any terms and conditions in this Booklet, you may continue to use the Software and Materials for such Service after termination of such Service for six months, or for such longer period as we approve, subject to the terms of this Software License section or such other software license agreement as we, at our election, require you to sign for this purpose. At the end of such six-month or longer period, the license for your use of such Software and Materials will then terminate automatically.

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## SUSPENSION AND TERMINATION

If at any time we believe (i) that our provision of any Service to you may create a risk of financial loss for us or result in an unacceptable credit exposure to us, or (ii) that an account associated with any Service may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our sole discretion, immediately, without prior notice to you, suspend or modify our provision of any such Service until such time that such risk, exposure, or activity is eliminated or otherwise resolved, notwithstanding anything to the contrary in this Booklet. Either you or we may terminate any or all Services upon 30 calendar days prior written notice to the other party. Notwithstanding the foregoing sentence, we may terminate any or all Services effective immediately, and we will send you notice of the termination, if any of the following occurs:

- You breach any of the terms and conditions in this Booklet or any other agreement with us.
- You terminate, liquidate or dissolve your business or dispose of a substantial portion of your assets.
- You fail generally to pay your debts as they become due.
- You, voluntarily or involuntarily, become the subject of any bankruptcy, insolvency, reorganization or other similar proceeding.
- You initiate any composition with your creditors.
- You experience a material adverse change in your financial condition or your ability to perform your obligations under the terms and conditions in this Booklet.
- Any guaranty of your obligations to us terminates, is revoked or its validity is contested by the guarantor, or any of the events set forth in the above five bullet points attributable to you occur to the guarantor.
- The account necessary to provide any Service is closed.
- If a Service you are using is terminated for any reason, you will do the following:
  - Immediately stop using any Materials relating to the terminated Service.
  - Erase or delete any Software we have provided relating to the terminated Service to the extent it is stored in your computers.
  - At our option, either return to us or destroy all Materials relating to the terminated Service and certify to us that you have done so.

These obligations will continue after a Service you are using has been terminated.

Termination of a Service you use does not affect your payment obligations for services we provide to you before the Service is terminated, and any such termination is in addition to our other rights under applicable law and under the terms of this Booklet. Also, termination of any Service you use does not release you or us from any of our respective obligations which arose or became effective before such termination. Upon termination, all amounts owed by you and outstanding will become immediately due and payable.

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## Glossary of Terms

The following are some important terms that appear in this Booklet.

**Acceptable Payee.** Your name and any other payee name you provide to us as an acceptable payee for checks to be processed under the Lockbox Services.

**Account Agreement.** The current signature card, International Account Agreement or SAOTC and the publication(s), as amended from time to time, we provide you containing terms and conditions applicable to each deposit, savings or current account for which you use a Service.

**ACH Managed Processing** means that all credit Entries are required to be prefunded and settlement of debit Entries will receive delayed availability as further described in the applicable User Documentation

**ACH Services** mean those Services, including ACH Managed Processing, that allow you to transfer funds to or from your accounts by initiating Entries which may be sent through the ACH system or processed directly to accounts with us.

**Alias Based Identifier.** Email address or mobile phone number, or other Bank approved identifier, which we may establish in our sole discretion from time to time, and used to identify a recipient and the associated bank deposit account and routing information for processing Digital Disbursement Payment Transactions to Registered Recipients.

**Arrives By Date.** An estimated date by which a payment will arrive at the Vendor, as generated by the Service based on information you provide and the Process Date you establish for the Payment Transaction within the Service.

**ATM.** Automated teller machine.

**Bank Approved Channel** – Any electronic or other channel approved for use in accessing the Service as described in User Documentation.

**Bills.** Invoices, bills and other statements of account that you receive from Vendors which you seek to pay using the Service.

**Bill Payment Feature.** The feature of the Service whereby you request us to make a payment to a designated Vendor. We may make such payment by originating an ACH credit entry to the account of the Vendor, issuing a check drawn by you and payable to the Vendor, or by other electronic method. When we

make a bill payment we will send with the payment any remittance information you provide.

**Bill Payment Service Provider.** Any entity, which may include us, you authorize to deliver payments, remittance information and other related data from your customers to us for the Electronic Bill Payment Consolidation Services.

**Business Day.** Each day on which the bank or bank office providing or facilitating a Service is open for business related to that Service.

**Cardholder.** Your employee or any other person who you designate in writing and who we approve to receive a Commercially Prepaid Card. If you or a Cardholder makes a Commercial Prepaid Card available to another party, that person will also be considered a Cardholder.

**Check 21.** The Check Clearing Act for the 21st Century Act, 12 CFR 229 or any successor legislation. Any IRD created and deposited to your account must comply with all the requirements mandated by Check 21.

**Check Issuance Request.** Using the Check Issuance Service, a message transmitted from you to us requesting us to issue a check on your behalf drawn on either accounts you maintain with us or accounts designated and owned by us.

**clearXchange™.** A payment company that facilitates electronic payments by maintaining a record of the Alias Based Identifier of a Recipient and the bank name and routing number associated with such Alias Based Identifier. The term clearXchange™ as used in this Amendment includes any other payment company that provides similar services and is designated by us in the future as a service provider or payment network for use in connection with the Service.

**Collected and Available Funds.** Funds in an account equal to the ledger balance minus float which, in our reasonable determination, are not subject to a hold, dispute or legal process preventing their withdrawal.

**Collector.** A non-consumer that is a member of the Network and receives payments and remittance information from Disbursers.

**Commercial Prepaid Card.** A pre-paid magnetic strip-based plastic card issued by us for a Cardholder's purchase of goods or services or for cash withdrawals.

**Controlled Disbursement Account.** One or more demand deposit accounts maintained by you with us and used in connection with our Controlled Disbursement Services.



**Controlled Disbursement Point.** Each bank office designated by us through which checks issued under the Controlled Disbursement Service will be cleared or routed.

**Currency.** When used in connection with the Safe Connect Service, U.S. denominated cash and any such other currency as is set forth in the User Documentation.

**Disburser.** A non-consumer that uses the Payment Service to send Transaction Requests to us and on whose behalf we originate an Entry to a Collector.

**Document Printing Request.** Using the Document Printing Service, a message transmitted electronically from you to us or our third party processor requesting us to print and mail on your behalf statements, invoices and other documents.

**Documents.** Documents that are not Bills that you wish to store and manage electronically through the Service.

**ECCHO.** The Electronic Check Clearing House Organization.

**Effective Entry Date.** The date specified, in accordance with the NACHA Rules, on the Entry by the Originator on which the Originator intends the Entry to be settled. (Originator is defined in the NACHA Rules.)

**Electronic Funds Transfer Services.** ACH Services, International Electronic Funds Transfer Services and Wire Transfer Services.

**Electronic Image.** An image conforming to the applicable industry standards for Images.

**Entries.** Entries has the meaning provided in the NACHA Rules and also includes any data for Entries and any prenotification.

**EPN Rules** means the Electronic Payments Network Rules of Membership and the Operating rules, or such later revisions as may be adopted, and includes, but is not limited to, the Rules pertaining to UPICs (EPN UPIC Rules), all collectively referred to as the EPN Rules.

**e-Statements.** Statements with respect to which you opt for electronic delivery and which are selected by you as outlined in the applicable User Documentation.

**eUCP.** The rules for electronic presentation of documents under the UCP.

**Federal Reserve Operating Circular 3.** The Federal Reserve Board's Operating Circular 3, Collection of Cash Items and Returned Checks.

**Fedwire Regulations.** Subpart B of Regulation J of the Board of Governors of the Federal Reserve System of the United States of America, as amended from time to time.

**FX Request.** A request by means permitted under the Electronic Foreign Exchange Services to enter into an FX Transaction.

**FX Transaction.** A transaction between you and us, permitted under the Electronic Foreign Exchange Services, for the purchase of one currency in exchange for the sale of another currency (including without limitation any foreign exchange spot, swap or outright forward transaction or option), including any transaction that effects the pre-delivery, extension, rollover or splitting of such a transaction.

**ICL.** An image cash letter.

**Image.** An Electronic Image or a Paper Image. With regard to an Image of an original paper check, the check image that is deposited with us pursuant to the Commercial Deposits section of this Booklet shall be a "check" and/or an "item" (as applicable) for all purposes under such Booklet section, any Account Agreement between you and us relating to the collection of checks generally, the Uniform Commercial Code, the Expedited Funds Availability Act, Regulation CC, any other federal or state check law, and federal and clearinghouse rules, to the same extent as that original is a "check" or an "item," as applicable.

**International Account Agreement.** A form of Account Agreement used in some countries.

**International Electronic Funds Transfer Services.** Electronic payment services for transfers to or from your account outside the United States of America or to or from your account in the United States of America to or from an account in a different country. These services include low-value single payments as well as batch payments made according to multiple requests within a single electronic data file.

**Invoice Management Feature.** The feature of the Service whereby you receive Bills from Vendors via the Service or whereby you upload invoices from Vendors into the Service. You may use the Service to upload and manage these Bills.

**IRD.** When used in connection with the Commercial Deposits section of this Booklet, an "Image Replacement Document" or substitute check, as set forth in Check 21, which provides that a properly prepared substitute check that meets the requirements

for legal equivalence is the legal equivalent of the original for all purposes.

**ISP98.** The “International Standby Practices 1998” developed by the Institute of International Banking Law & Practice and endorsed and published by the International Chamber of Commerce or such later revision as may be adopted and be in effect on the date the subject standby letter of credit is issued.

**Legal Expenses.** Reasonable lawyer’s fees, allocated costs of staff counsel (unless prohibited by applicable law), fees and expenses of litigation and any other fees and expenses incurred in enforcing any provision of this Booklet.

**Lockbox Address.** The post office address we assign to you or we accept from you for the Lockbox Services.

**Materials.** The Software, user identification codes, passwords, codes, keys, test keys, security devices, embedded algorithms, digital signatures and certificates, other similar devices and information, User Documentation and related documentation we provide to you.

**NACHA Rules.** The rules of the National Automated Clearing House Association (including any other clearing house rules applicable to automated clearing house transactions), as amended from time to time.

**Network.** The third-party owned PayMode® network made up of Disbursers and Payers, using the Payment and Invoice Processing Services, as well as Collectors and Billers.

**Notice(s).** In connection with the Notification Services, notices provided by us to you that are associated with and related to the Services provided by us to you under the terms of this Booklet or other agreement between you and us.

**Paper Image.** An Image that is a paper reproduction of the related physical check (the original paper item or substitute check created from an image of the original paper item) created with image technology.

**Payee Database.** A database of contact information and payment routing information for Registered Payees that is operated by a third party provider (other than the Bank).

**Paying Agent.** An entity as defined in 31 C.F.R. Section 321(i) of the U.S. Treasury Department’s regulations.

**Payment Account.** One or more demand deposit accounts maintained by you with us and used in connection with the Service.

**Payment Advice.** Using the Bank-Printed Drafts Services, an electronic message transmitted by you to us advising us to create a draft on your behalf.

**Payment Request.** A request by you to us to initiate a bill payment or tax payment on your behalf to a Registered Payee by means of an electronic funds transfer payment.

**Payment Transaction.** A request by you to us to initiate a payment on your behalf to a Recipient using a Service and/or a request by you to us to initiate a bill payment on your behalf to a Vendor by means of an ACH credit entry, other electronic funds transfer, or a check payment.

**Payment Transaction Request.** A message transmitted electronically from you to us through the Service requesting us to initiate a Payment Transaction.

**Personal Data.** Information we receive from you in connection with the Services consisting of an individual’s bank accounts or other financial data or identifying a living individual.

**PIN.** A personal identification number which a Cardholder may receive when activating a Commercial Prepaid Card.

**Process Date.** The date that you designate in the Payment Transaction Request for the processing of a Payment Transaction. Funds will be deducted from your Settlement Account on or after this date.

**RCK.** A “Re-Presented Check Entry” as defined in the NACHA Rules.

**Recipient.** A customer of a U.S. based bank or credit union to whom you seek to make a disbursement payment using the Service.

**Regulation CC.** The Federal Reserve Board’s Regulation CC, Availability of Funds and Collection of Checks.

**Regulation J.** The Federal Reserve Board’s Regulation J, Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire.

**Registered Payee.** Any biller or taxing authority that registers its payment information with the Payee Database, for the purpose of receiving payments, that can be processed through the Service.

**Registered Recipient.** A Recipient that registers with clearXchange or a bank that participates in clearXchange and provides his/her bank deposit account and routing information to be associated with his/her Alias Based Identifier.

**Registered Vendor.** A Vendor that registers its payment information with the Vendor Database that can be accessed through the Service.

**Request.** A request by means permitted under the relevant Wire Transfer Service or International Electronic Funds Transfer Service to transfer funds to or from a specified account or beneficiary (including standing instructions) or to amend or cancel a prior request to transfer funds.

**Reversal/Deletion Request.** A request for a Reversal or a request to delete a previously delivered Entry.

**Reversals.** Data for reversing Entries. For the Electronic Bill Payment Consolidation Services, it includes data from a Bill Payment Service Provider for reversing a payment from one of its customers that was delivered to us by the Bill Payment Service Provider.

**Safe.** When used in connection with the Safe Connect Service, the equipment (and related software and accessories) installed at the Safe Location and used by you for depositing Currency. The Safe counts, records and reports the Currency deposited into and accepted by it.

**Safe Connect Service.** The service described in the Commercial Deposits section of this Booklet, whereby through your use of a Safe installed at a Safe Location, we receive Safe Feeds concerning your deposits into such Safe, and afford such deposits credit, which may be provisional, as described in this Booklet and in the User Documentation.

**Safe Deposits.** When used in connection with the Safe Connect Service, deposits of Currency made by you and accepted into the Safe, with respect to which we have received a Safe Feed.

**Safe Feed.** When used in connection with the Safe Connect Service, an electronic file transmission received by us from the Transportation Provider, which Feed (i) originated from a Safe, (ii) was sent from the Safe to the Transportation Provider, (iii) was then forwarded intact to us and received intact by us, and (iv) reports the purported value of all Currency accepted into the Currency validating portion of such

Safe since the transmission of the last Safe Feed, or the first such Feed, as applicable.

**Safe Location.** When used in connection with the Safe Connect Service, the location(s), to be mutually agreed by you and us, at which the Safe may be located.

**SAOTC.** Each form of Standard Account Opening Terms and Conditions used in certain countries as an Account Agreement.

**Savings Bonds.** U.S. savings bonds that each meet the definitional requirements set forth in the Savings Bonds Provisions.

**Savings Bonds Provisions.** Relevant regulations and guidelines of the Bureau of Public Debt of the U.S. Department of the Treasury, the Federal Reserve Operating Circular 3, the ECCHO Operating Rules, and such other statutory, regulatory, clearinghouse, association and other requirements and terms (including image exchange rules), as applicable, regarding the acceptance, transmission, deposit, exchange and/or processing of Savings Bonds by way of the transmission of the images of such Savings Bonds.

**Security Procedure.** Unless we agree otherwise with you, the applicable security procedure described in the Materials for your data delivery type or Service for verifying the authenticity of any (i) electronic funds transfers or payments instructions, including, without limitation, cancellations, amendments or reversals thereto; and (ii) any instructions, data, transactions or other information sent between you and us.

**Scheduled Payment Request.** A Payment Request that you have scheduled using the Service prior to the Settlement Date.

**Scheduled Payment Transaction.** A Payment Transaction that you have scheduled through the Bill Payment Feature prior to the Process Date.

**Service.** With respect to a Bank of America Corporation subsidiary bank, a treasury management service provided in a specific Bank location and covered by this Booklet.

**Service Inbox.** An electronic mail inbox that is accessible by you only through the Service and which you may use to receive Bills and Documents from Vendors.

**Settlement Account.** One or more demand deposit accounts maintained by you with us and used in connection with the Service.

**Settlement Date.** The date that you request that we send payments of bills and taxes initiated by you as Payment Requests. This is the date on which we will debit your Payment Account and initiate the outgoing payment. This is not the date that the payment will be received by the Registered Payee.

**Payee Database.** A database of contact information and payment routing information for Registered Payees that is operated by a third party provider (other than the Bank).

**PHI:** Shall have the same meaning as the term "protected health information" under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and its implementing regulations.

**Software.** Web-based applications accessed via a Website and/or the programs and data files provided by us for use on a computer in connection with one or more particular Services.

**Standalone Account.** One or more demand deposit accounts maintained by you with us that is not linked to another account as part of a treasury service relationship or that is not linked as a sub-account to another account in a treasury service relationship.

**Statements.** Account statements, account analysis, pricing information and other information relating to account activity or services, transactional activity and/or cash management services with us and/or our affiliates.

**Stop Payment Request.** A message you send us using the Electronic Stop Payment Services, the Check Issuance and Document Printing Services or the Client-Printed Drafts Services to request that payment be stopped on a check or draft which, in the case of the Electronic Stop Payment Services, must be drawn on an eligible account you have with us.

**Subsidiary.** Any entity in which more than 50% of the ownership interest is owned, directly or indirectly, by you. The term "Subsidiary" does not include affiliates or other entities in which 50% or less of the ownership interest is owned, directly or indirectly, by you.

**Supplier.** Any private or common carrier communication or transmission facility, any time-sharing supplier or any mail or courier service.

**SWIFT.** The international electronic message-transfer service known as the Society for Worldwide Interbank Financial Telecommunication.

**Tax Payment Instruction.** An instruction by means permitted under the relevant Tax Payment Service to pay any taxes using any of the tax forms specified in the applicable User Documentation.

**Third Party Vendor:** Any third party vendor (including but not limited to, such third party vendor's agent, subcontractor, affiliate, representative and/or assignee) used by you to perform certain actions with respect to the Services.

**Transaction.** The purchase or reservation of goods or services or a cash advance made or facilitated by use of a Commercial Prepaid Card.

**Transaction Account.** One or more demand deposit accounts maintained by you with us or another financial institution and used in connection with the Payment and Invoice Processing Services.

**Transaction Request.** Using the Payment Service, a message transmitted electronically from you as a Disburser to us or our third party processor requesting us to originate an Entry to a Collector on your behalf.

**Transportation Provider.** When used in connection with Safe Connect Service, the armored carrier which you engage to transport Safe Currency from the Safe to the Vault Location.

**UCC.** The Uniform Commercial Code.

**UCC 4A.** Article 4A of the Uniform Commercial Code - Funds Transfers, as adopted by the state in the United States of America whose law applies to a Service, as amended from time to time.

**UCP.** The Uniform Customs and Practices for Documentary Credits, 2007 Revision, ICC Publication No. 600 or such later revision as may be adopted by the International Chamber of Commerce and be in effect on the date the subject letter of credit is issued; eUCP. The Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation published by the International Chamber of Commerce that is in effect on the date the Letter of Credit is issued.

**Unauthorized Use.** Use of a Card Account, Card or Convenience Check by a person (i) who is not your Cardholder, employee or agent, (ii) who does not have actual, implied or apparent authority to use the Card Account and (iii) whose use does not benefit you directly or indirectly.

**Uniform Rules for Collections.** The Uniform Rules for Collections, ICC Publication No. 522, or such later

revision as may be adopted by the International Chamber of Commerce and be applicable to a collection.

**Unqualified Return.** An Unqualified Return Item Deposit as defined by the Federal Reserve Board.

**UPIC** means the Universal Payment Identification Code, which is a unique number that identifies both an eligible account at a UPIC Participant, and the UPIC Participant that holds the eligible account. Capitalized terms in this Booklet, not otherwise defined, are defined in the EPN Rules.

**URDG758.** The Uniform Rules for Demand Guarantees International Chamber of Commerce (ICC) Publication No. 758, or such later revision as may be adopted by the International Chamber of Commerce and be applicable to any guarantee.

**URBPO.** The Uniform Rules for Bank Payment Obligations promulgated by the International Chamber of Commerce.

**URC.** The Uniform Rules for Collections, ICC Publication No. 522, or such later revision as may be adopted by the International Chamber of Commerce and be applicable to a collection.

**User Documentation.** Any written information we provide you, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service, as provided by a particular banking center or office. User Documentation may vary from one jurisdiction to another. Current User Documentation is available upon your request.

**Vault Location.** When used in connection with the Safe Connect Service, the vault facility where the vaulting and related cash processing services are performed with respect to Safe Deposits.

**Vendor.** A non-consumer business that sent you a Bill requesting payment for goods or services provided by the Vendor to you.

**Vendor Database.** A database of contact information and payment routing information for Registered Vendors that is operated by a third party provider (other than the Bank).

**Website.** Any internet website and/or online access channel for use in accessing one or more Services.

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# **Exhibit C**

# Deposit Agreement and Disclosures

*Effective November 4, 2016*

**Bank of America** 

[bankofamerica.com](http://bankofamerica.com)

Bank of America, N.A. Member FDIC.

Applies in all states.

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**Bank of America** 

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# Welcome to Bank of America

Thank you for opening and keeping an account with us.

Please read this entire agreement carefully so you understand your rights and obligations for your deposit account and deposit relationship with us and keep it in a convenient place for future reference.

In this agreement, "Bank of America", "Bank", "we", "us" and "our" means Bank of America, N.A. "You" and "Your" means each and every owner of the account and each and every other person with authority to withdraw funds from the account or otherwise operate the account.

Our accounts and services are generally available through all of our channels - in our financial centers, through telephone banking and online. However, some accounts and services may not be available at all times, in all locations, or through all channels.

## How to Get Started

After you open your account, please consider these optional services. They can help you manage your account.

- **Debit card** – use your debit card to pay for purchases at merchants that accept debit cards, to make deposits at Bank of America ATMs, and to withdraw cash from ATMs.
- **Direct Deposit** – have your paycheck, retirement benefits, or other source of income deposited electronically into your checking or savings account.
- **Online Banking** – helps you manage and keep better track of your finances. Here are some of the things you can do using Online Banking:
  - Check your account balances and review transaction history.
  - Transfer funds between your accounts or to other Bank of America customers' accounts.
  - Receive your statements and posted checks online, then review or print them at your convenience.
  - Reorder checks and change your address.
  - **Online Bill Pay service** – pay your bills electronically.
  - **Online Alerts** – provide an electronic notice through email or text message about account activity, such as when a direct deposit posts or when your balance drops below an amount you set.
  - **Scheduled Savings Transfers** – helps make saving easier by automatically transferring money from your checking account to your savings account.

- **Keep the Change®** – helps you grow your savings by automatically transferring money from your personal checking to your savings with each eligible debit card purchase.

- **Overdraft Protection Service** from another linked account, such as your savings or credit card account – helps you avoid overdrafts and declined or returned checks and other items by automatically transferring available funds from your linked account to your checking account.

## How to Access Your Account

You can access your account and get information about our accounts and services:

- At our **financial centers** and at **Bank of America ATMs**.
- Through our **Online Banking Service** at [www.bankofamerica.com](http://www.bankofamerica.com)
- By calling **customer service** at the number on your account statement.
- You can locate our nearest financial center or ATM on our website at [www.bankofamerica.com](http://www.bankofamerica.com)

# The Agreement for Your Account

## Binding Contract

This *Deposit Agreement and Disclosures*, the applicable *Schedule of Fees*, the signature card and other account opening documents for your account are part of the binding contract between you and us (this "Agreement") for your deposit account and your deposit relationship with us. They contain the terms of our agreement with you. Please read all of these documents carefully.

This *Deposit Agreement and Disclosures* also summarizes certain laws and regulations that apply to common transactions, provides some disclosures for deposit accounts required by federal law, and establishes terms that cover some transactions or situations that the law either does not cover or allows us to change by this contract. The *Schedule of Fees* lists our accounts and account fees.

When you complete our account opening documents (as an example, you sign our signature card), request an account, or keep your account open, you acknowledge that you have reviewed and understand the terms of this Agreement and you agree to be governed by these terms. You understand that these terms, as we may change or supplement them

periodically, are a binding contract between you and us for your deposit account and your deposit relationship.

Our deposit relationship with you is that of debtor and creditor. This Agreement and the deposit relationship do not create a fiduciary, quasi-fiduciary or special relationship between us. We owe you only a duty of ordinary care. Our internal policies and procedures are solely for our own purposes and do not impose on us a higher standard of care than otherwise would apply by law without such policies or procedures.

We give this Agreement to you when we open your account. You may obtain additional copies of this Agreement at a financial center or by calling the number on your statement.

## Changes to This Agreement

We may change this Agreement at any time. We may add new terms. We may delete or amend existing terms. We may add new accounts and services and discontinue existing accounts or services. We may convert existing accounts and services into new accounts and services.

We ordinarily send you advance notice of an adverse change to this Agreement. However, we may make changes without prior notice unless otherwise required by law. We may, but do not have to, notify you of changes that we make for security reasons or that we believe are either beneficial or not adverse to you.

When we change this Agreement, the then-current version of this Agreement supersedes all prior versions and governs your account.

If you continue to use your account or keep it open, you are deemed to accept and agree to the change and are bound by the change. If you do not agree with a change, you may close your account as provided in this Agreement.

See the *Notices, Statements and Other Communications* section for information about how we provide notice.

## Closing an Account

You or we may close your checking or savings account at any time without advance notice, except that we may require you to give us seven days advance notice when you intend to close your savings or interest bearing checking account by withdrawing your funds. See *Notice of Withdrawal* in the *Other Terms and Services* section. You or we may close your time deposit account at maturity without advance notice. Bank of America may close your account or convert your account to another account type at its discretion due to excessive overdrafts.

If an account was closed and then we reopen it, the account is subject to our standard terms and fees for that type of account. Any waiver that applied before the account was closed does not apply when we reopen the account.

If your account reaches a zero balance, or you apply for an account but never deposit funds into it, we may either keep the account open or close the account without notice.

Sometimes after an account is closed, we receive a deposit for credit to the account or a check or other item for payment from the account. If this happens, we may at our option and without any liability to you: either return the deposit, check or other item; or we may reopen the account and accept the deposit, check or other item for you, even if this overdraws your account.

Sometimes after an account which had funds in it is closed, and while we are still holding the funds from the account, we receive a withdrawal request, check or other item for payment from the account. We may refuse the withdrawal request and return the check or other item. We are not liable for any losses or damage that may result from refusing the withdrawal or dishonoring the check or other item, even if we are still holding funds that would cover the withdrawal, check or other item.

When you ask us to close your account, we may continue to pay transactions as we receive them while we process your closure request. When we complete our closure process, we may close your account, even if your account has a balance and transactions you've told us about are still pending.

If your account is overdrawn when closed, you agree to pay immediately all amounts you owe us, if your account had funds in it when closed, we may:

- hold the funds for your pick up or to pay outstanding or expected items or claims;
- deposit the funds in another of your accounts with us; or
- mail the funds to any of you by check at the address in our records for the account.

If your account earned interest before it closed, your funds stop earning interest when you ask us to close your account, even if we continue to hold the funds. As an example, if we mail funds from an interest bearing account to you by check, then your funds do not earn interest, even if the check is returned to us or is not cashed.

This Agreement continues to govern matters related to your account even after your account closes.

## Governing Law

This Agreement, and your and our rights and obligations under this Agreement, are governed by and interpreted according to federal law and the law of the state where your account is located. However, your rights and obligations for Remittance Transfers shall be governed by and interpreted as described in the *Funds Transfer Services* section. We ordinarily maintain your account at the financial center where we open your account. However, we may transfer your account to another financial cen-

ter in the same state or in a different state. If state and federal law are inconsistent, or if state law is preempted by federal law, federal law governs.

## Explanation of Some Terms

### Definitions

Please keep in mind the following definitions as you review the Agreement.

**Annual Percentage Yield (APY)** is a percentage rate reflecting the total amount of interest paid on the account, based on the interest rate and frequency of compounding.

**Average daily balance** for a statement cycle – we take the balance that we determine is in the account for each day in the statement cycle, add those balances together, and then divide that sum by the number of days in the statement cycle.

**Bank of America, Bank, we, us and our mean** Bank of America, N.A.

**Financial Center** means a branch of Bank of America.

**Business days** – our business days are Monday through Friday, excluding bank holidays. Hours of the business day for a financial center are available at that financial center.

**Collected balance** is the ledger balance for the account minus that portion of funds deposited for which we have not received credit based on the availability schedule we apply to the account. We ordinarily apply the availability schedule provided to us by the Federal Reserve Bank to determine the time that we receive credit for deposited funds.

**Item** includes all orders and instructions for the payment, transfer or withdrawal of funds from an account. As examples, item includes: a check, substitute check, purported substitute check, electronic transaction (including an ACH transaction, ATM withdrawal or transfer, or point of sale transaction), draft, demand draft, remotely created check, remotely created consumer check, image replacement document, undermixed copy, preauthorized draft, preauthorized payment, automatic transfer, telephone-initiated transfer, Online Banking transfer or bill payment instruction, withdrawal slip, in-person transfer or withdrawal, cash ticket, deposit adjustment, or other order of instruction for the payment, transfer, or withdrawal of funds, or an image, digital image or a photocopy of any of the foregoing. Item also includes any written document created or authorized in your name that would be a check or draft but for the fact that it has not been signed. Item may also include a cash-in-check, draft, warrant, or other item deposited to your account, including a deposited item that was returned unpaid.

**Minimum daily balance** – the lowest balance that we determine is in the account during a statement cycle.

**You and your** means each and every owner of the account and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account.

### Headings and Interpretation

We include section and paragraph headings in this Agreement to help you find terms and provisions. The headings are for convenience or reference only. They do not limit the term or provision.

Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

In some sections we give examples. The examples cover some, but not all, of the situations or items that are covered by the section.

## Information About You and Your Account

### Information You Give Us

When you open a deposit account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We may rely on that information until you notify us of a change and we have had a reasonable time to act on the new information.

### Identification

Federal law, including the USA PATRIOT Act, requires all financial institutions to obtain, verify and record information that identifies each customer who opens an account with that financial institution.

When you apply for an account, we will ask for your legal name, address, date of birth and your Tax Identification Number (TIN). We may require one or more forms of unexpired photo identification. We may validate the information you provide to us to ensure we have a reasonable assurance of your identity. We may contact you for additional information. If your account is funded before we verify your information, you may not have access to your funds. If we are not able to verify your identity to our satisfaction, we will not open your account or we may close the account if it was previously funded.

### Bank of America's Privacy Policy for Consumers

Our privacy policy for consumers is described in our publication, *U.S. Consumer Privacy Notice*. We provide our privacy policy to consumers who open a personal account with us. The privacy policy describes our policy on handling customer information and describes the situations when we may disclose information, including some examples.

You can also review our privacy practices on our website at [www.bankofamerica.com/privacy](http://www.bankofamerica.com/privacy).

### Sharing Information with Affiliates

**Accounts Held by Consumers** We may share information that we have about you and your accounts among the Bank of America family of companies. Please refer to our publication, *U.S. Consumer Privacy Notice*, for information about the categories of information we may share among the Bank of America family of companies and how you may tell us not to share certain types of information among our family of companies.

**Accounts Held by Businesses** We may share information about our experiences with you with Bank of America Corporation and its subsidiaries and affiliated companies ("Bank of America Affiliates") and selected third parties. We may also share information that you have provided to us on applications or that we receive from outside sources among the Bank of America Affiliates. However, individuals may tell us not to share information about them from applications or outside sources compiled for purposes of determining eligibility for credit, insurance or other services by either calling us at 1.888.344.5000 or by notifying us at [www.bankofamerica.com/privacy](http://www.bankofamerica.com/privacy).

### Consumer Reports and Other Inquiries

We may make any inquiries that we consider appropriate to help us verify your identity and determine if we should open, maintain, collect or close your account. This may include verification of employment and consumer reports or other reports from account information services and other consumer reporting agencies.

If you ask, we will tell you whether we requested such a report and, if we did request a report, we will tell you the name, address and telephone number of the reporting agency.

### Disclosing Information About You and Your Account

This section applies to both business and personal accounts. We may disclose information about your accounts to consumer reporting agencies and to other persons or agencies who, in our judgment, have a legitimate purpose for obtaining information.

For example, subject to any applicable financial privacy laws or other laws or regulations, we may provide information on you and your accounts:

- to consumer reporting agencies, such as ChexSystems, Inc.;
  - to anyone who we reasonably believe is conducting a legitimate credit inquiry, including inquiries to verify the existence or condition of an account for a third party such as a lender, merchant or consumer reporting agency;
  - in response to any subpoena, summons, court or administrative order, or other legal process which we believe requires our compliance;
  - in connection with collection of indebtedness or to report losses incurred by us;
  - in compliance with any agreement between us and a professional, regulatory or disciplinary body;
  - in connection with potential sales of businesses;
  - to service providers who help us meet your needs by assisting us in providing or offering our products or services; and
  - to other third parties as is described in our publication *U.S. Consumer Privacy Notice* or as required under applicable law or regulation.
- For personal accounts, the terms of our *U.S. Consumer Privacy Notice* governs in the event of a conflict between the terms of this section and the terms of our *U.S. Consumer Privacy Notice*.

**Account Information Services/Consumer Reporting Agencies** If we close your account because of your unsatisfactory handling, we generally report to consumer reporting agencies such as ChexSystems, Inc. your name, address, Taxpayer Identification Number (TIN), driver's license number and the date and reason we closed the account. The consumer reporting agency may supply this information to others. This may adversely impact your ability to establish an account at any financial institution for up to five years from the date of the report.

We may report information about your accounts to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

## Telephone Calls: Calling, Monitoring and Recording

When you give a telephone number directly to us, or place a telephone call to us, you authorize us to place calls to you at that number. You understand that a "telephone number" includes a cell phone number and "calls" include both telephone calls and text messages to or from your phone or cell phone. As examples, we may place calls to you about fraud alerts, deposit holds, and amounts you owe us (collection calls) on your account. When we place calls to you, we may use automatic dialers and artificial, text, or prerecorded messages.

You authorize us to monitor, and to record, telephone conversations and other electronic communications you have with us and with our representatives for reasonable business purposes, including security and quality assurance. We will not remind you that we may be monitoring or recording a call at the outset of the call unless required by law to do so.

You consent and agree in advance to these terms and conditions.

## Release of Information

You can obtain information about your account by many methods, including at a financial center, by telephone, by mail and through Online Banking. We believe we have adopted reasonable security measures for each method, but we cannot ensure against unauthorized inquiries or intrusions. You agree that we are not responsible for the release of information to anyone who has gained possession of your ATM card, debit card or other code or access device or who has learned your identifying characteristics such as personal identification number (PIN), account number or social security number, even if you have not authorized them to obtain the information.

## Account Ownership

### Some General Terms

When you open an account, we may rely on information you give us and we maintain in our records. We determine the type and ownership of the account from this information. When you ask us to make a change to this information or your account, and we agree to the change, the change is not effective until we have had a reasonable time to act on the new information. As an example, if you ask us to change the signers on your account, your requested change is not effective until we have a reasonable time to act on it. If we ask you to give us additional documents or information, and you do not do so promptly, we may close your account.

When we accept a deposit to an account or permit a withdrawal or payment from an account, we may rely upon the form of the account and the terms of this Agreement at the time we process the transaction. We do not have to inquire about the source or ownership of any funds we receive for deposit or about the application of any withdrawal or payment from an account. When we permit a withdrawal or payment from an account at the request of any signer, or the agent of any signer, in accordance with the terms of this Agreement, the withdrawal or payment is a complete release and discharge of the Bank from all claims regarding the withdrawal or payment.

If you instruct us to open an account in the names of one or more people, and we do so, but later determine that one or more of them have not completed our account opening documents or other requirements, you agree to hold us harmless for reliance on your instruction. We may in our discretion for all purposes and circumstances (including determining ownership of the account following the death of any person in whose name the account was opened) either treat the account as being owned by all persons in whose names the account was opened or treat the account as being owned solely by the persons who have signed or completed our account opening documents or other requirements. If we treat the account as owned by all persons in whose names the account was opened, we may permit the non-signing person to withdraw funds or take other action on the account without any liability to you.

We may open an account without regard to whether you are married and without regard to whether the funds on deposit are your community or separate property. We may require you to close the account in order to remove a co-owner, terminate a joint ownership or change a payable on death or trust designation.

### Some Basic Terms for Joint Accounts

If more than one person's name appears in the title of an account without a fiduciary, beneficiary or other designation, then the account is a joint account. All persons whose names appear on the account are co-owners of the account, regardless of whose money is deposited in the account.

Each co-owner acts as the agent of each other co-owner. Each co-owner authorizes each other co-owner to operate the account without the consent or approval of any other co-owner. We may act and rely on the instructions of one co-owner without liability to any other co-owner. So as examples, one co-owner may without the consent or approval of the others:

- add additional persons as co-owners;
- deposit funds and withdraw or transfer part or all of the funds in the account;

- endorse for deposit to the joint account on behalf of any other co-owner an item payable to another co-owner;
- instruct us to stop payment on a check or other item that another co-owner wrote on the account;
- obtain an ATM card or a debit card;
- draw upon an overdraft or other line of credit connected to the account;
- obtain information about the account, including transactions conducted by other co-owners;
- pledge the account as security for any debts; and
- close the account.

Each co-owner is jointly and severally liable to us for all fees, charges, and other amounts owed to us on, and all costs, losses and liabilities related to, this Agreement or the account. Note that our right of setoff described in the *Right of Setoff* section of this Agreement applies to joint accounts.

All joint accounts are presumed to be joint accounts with the right of survivorship, unless the applicable state law does not permit this presumption or we have agreed with you in writing that the account is owned in another capacity. **Right of survivorship means that when a co-owner dies, the funds in the account belongs to the surviving co-owner(s)**, subject to our right to charge the account for any amount the deceased co-owner or a surviving co-owner owes us. The rights of survivorship continue between surviving co-owners and we may pay the funds in the account to any surviving co-owner. The applicable state law may impose requirements that must be met to create a joint account with right of survivorship. You are solely responsible for meeting these requirements.

### Some Basic Terms for "Payable on Death" Accounts

For an individual or joint account, you may choose to make your account payable on your death to one or more payable on death ("POD") beneficiaries. You can make your account a POD account by instructing us to list each POD beneficiary on the account and complying with the applicable state law. The applicable state law usually imposes requirements that must be met to create a POD account. As an example, you may have to include certain words or letters in the account title to create a POD account, such as: "payable on death," "POD," "in trust for," "ITF," "as trustee for," "ATF," "transfer on death," "TOD," or "Totten Trust." You are solely responsible for meeting these requirements. We may treat an account which names a POD beneficiary as a POD account. However, if the applicable requirements are not met, we may treat your account as though there is no POD beneficiary.

During your lifetime, a POD account belongs to you. You may close the account, remove or add one or more POD beneficiaries, change the account type or ownership, and withdraw all or part of the funds in the account. When the account owner or last co-owner dies, we may pay any funds remaining in the account to the then surviving (if any) POD beneficiary(ies), subject to our right to charge the account for any amount a deceased owner, co-owner or POD beneficiary owes us. We may distribute the account balance, subject to any bank claims, to such beneficiaries payable to one or all surviving beneficiaries jointly, or payable individually, in equal shares, to each surviving beneficiary. A POD beneficiary does not acquire an interest in the account until after the death of the account owner or the last co-owner. A POD beneficiary may acquire an interest in the account at that time but only if the POD beneficiary is alive.

### Some Basic Terms for Business and Other Non-Personal Accounts

If the account owner is a corporation, unincorporated association, limited liability company, limited liability partnership, fiduciary, partnership, sole proprietorship or other entity holding an account in any capacity other than an individual capacity, each person signing the signature card or completing other account opening requirements represents and agrees that they:

- are fully authorized to execute all documents or otherwise complete our requirements in their stated capacity;
- have furnished all documents or other information necessary to demonstrate that authority; and
- will furnish other documents and complete other requirements as we may request from time to time.

We may refuse to recognize any resolution affecting the account that is not on our form or that appears to us to be incomplete or improperly executed.

### Transferring Ownership

Your account is for your use only. It is non-transferable and non-negotiable. Ownership of your account is transferable only on our records with our consent.

- You may not grant, transfer or assign any of your rights to your account without our written consent.
- Even if we consent, we may require that you close the account and that the new account owner open a new account in their name.
- We may refuse to acknowledge or accept your attempted pledge or assignment of your account or any interest in it, including a notice of security interest.

## Checking and Savings Accounts

### Types of Accounts

We offer several different types of checking and savings accounts for personal and business customers.

- The *Personal Schedule of Fees* describes our personal accounts and lists applicable fees.
- The *Business Schedule of Fees* describes our business accounts (other than Commercial accounts) and lists applicable fees. The *Business Schedule of Fees* does not apply to Commercial accounts.

### Eligibility for NOW Accounts

NOW accounts are commonly called interest checking accounts. Federal law provides that NOW accounts may only be opened and used by the following customers:

- individuals (including sole proprietors),
- certain nonprofit organizations,
- federal, state or local governmental entities, and
- fiduciaries (such as a bank trust department) where one or more individuals hold the entire beneficial interest in the funds.

If we believe that you are not eligible to own a NOW account, we may either close the account or convert it to another type of account. When we refer in this agreement to checking accounts, the reference includes NOW accounts.

### Demand Deposit Accounts

Demand deposit accounts are commonly called checking accounts. All types of customers can open a demand deposit account. Most demand deposit accounts do not earn interest.

We do offer an interest bearing demand deposit account to business customers. Please ask us for details.

When we refer in this agreement to checking accounts, the reference includes demand deposit accounts.

### How We Calculate Interest on Interest Bearing Checking and Savings Accounts

If you have an interest bearing checking or savings account, then please note the following:

- Your funds earn a variable rate. Your interest rate and annual percentage yield ("APY") may change. At our discretion, we may change the interest rate for your account at any time without notice or limit.

- We compound and credit interest to your account monthly.

- We use the daily balance method to calculate the interest on your account. The daily rate is  $1/365$  — or in a leap year we may use  $1/366$  — of the interest rate.
- For personal checking accounts and personal and business savings accounts, the daily balance method applies a daily periodic rate to the collected balance in the account each day.

- For business checking accounts, the daily balance method applies a daily periodic rate to the collected balance in the account each day (less an amount that we determine applies for reserves applicable generally to transaction accounts under the rules of the Federal Reserve).

- For Public Service Trust Accounts, the daily balance method applies a daily periodic rate to the collected balance in the account each day (less an amount that we determine is required to offset service charges).
- When you deposit a non-cash item (such as a check), interest begins to accrue on the non-cash item no later than the business day on which we receive credit for the non-cash item.

Some checking and savings accounts do not earn interest. The checking and savings accounts that earn interest are described in the *Schedule of Fees* as interest bearing accounts. Other checking and savings accounts do not earn interest. We pay interest only in whole cents.

We set interest rates at our discretion. The interest rate and APY we offer on the same type of account may be higher or lower based on the specific customer, account location or channel through which the account is opened. As an example, an account opened through our Online Banking channel may earn a different rate (either higher or lower) than the same type of account opened in a financial center or by mail. We may also consider your relationship with us in setting interest rates on your account, such as whether you have other accounts with us, your balances with us in your other accounts and how you use services that we offer with accounts.

We occasionally offer interest rate bonuses and other special promotions on specific accounts or to specific customers. These offers do not apply to all accounts, customers, locations or methods of account opening.

You may obtain current interest rates for your account by calling us at the number for customer service on your statement or by asking a financial center associate.

**Balance Tiers** The daily interest rate we pay on some accounts depends on the tier into which the balance in the account falls. A tier is a range of account balances. If you have one of these accounts, your balance earns the interest rate and APY in effect that day for the balance tier associated with your end of day balance. We may set the rate for each tier in any amount.

The interest rate for one tier may be the same rate, or a higher or lower rate, than the rate for a lower tier. We may change the tiers that apply to an account at any time without notice. Different tiers apply to different types of accounts.

### Combined Balance Service

With some checking accounts you can designate your checking account as your primary checking account and then link many of your other accounts to it for pricing. When you link another account for pricing, you can use the balances in the other account to help you meet the combined balance required to avoid the monthly maintenance fee on your primary checking account. The *Schedule of Fees* lists the required combined balance for each checking account to which the service applies and the types of accounts that can be linked for pricing.

You must tell us what other accounts you want us to link to your checking account for pricing. We do not link your other accounts for pricing unless you tell us to do so. To determine what accounts are linked for pricing, please call us.

When an existing account is closed and a new account is opened to replace the existing account, we do not automatically link the new account to your checking account for pricing, even if the existing account was linked. You must tell us to link the new account for pricing.

When we calculate a balance or combined balance, we may ignore accrued interest, funds subject to a hold of any type, and each loan or line of credit that is in default. For each linked account, the period of time that we use as the basis for calculating the balance, and the day that we use to determine the balance, in the linked account may be different from the statement cycle for the primary checking account.

You still need to meet the balance requirements, if applicable, in each linked account to avoid the monthly maintenance fees on those accounts.

You understand that the statement for your primary checking account may include information about each linked account, including the account name, number and balance. We may make this information available to each owner and signer of any linked account. We may also send you a single combined statement that reports activity for your checking account and each deposit account linked to that account, instead of separate statements for each account. See *Combined Statements* in the *Statements and Notices* section.

### Limits on Linking Accounts

Some restrictions apply to what accounts can be linked to checking or pricing, including the following. You may only link an account to one checking account at a time. At least one of the owners of the linked account must also be an owner of the checking account. You may not link personal and business accounts together. You may not link a loan or line of credit that is in default.

We may in our discretion place other restrictions on what accounts can be linked.

### Limits on Withdrawals and Transfers from Savings Accounts

This Agreement and federal law impose limits on the number of certain types of withdrawals and transfers you can make each month from a savings account. Please note that these limits do not apply to withdrawals and transfers you make at one of our financial centers, by mail or at an ATM.

You can make no more than a total of six transactions each monthly statement cycle (or each month if you have a quarterly statement cycle) from among the following:

- Preauthorized transfers from your savings account (including transfers for overdraft protection).
- Telephone transfers or other electronic transmissions from your savings account.
- Online banking transfers or bill payment transfers from your savings account.
- Transfers by check, draft or debit card, if allowed on your savings account.

We count a transaction on the date that we post it to your savings account. This date may be different from the date you authorize, transfer or write the transaction, which means a transaction made during one statement cycle may not be counted until a later statement cycle.

If you exceed the transaction limits on more than an occasional basis, we may revoke your privileges on that account or we may convert your savings account to another type of account, such as a checking account. Your funds may no longer earn interest after we convert your account.

When you use our Online Banking bill payment service, we recommend that you do not use a savings account as your bill payment account because of these limits on transfers.

**Note:** Even if you make no more than 6 transactions, a fee may still apply to some withdrawals or transfers. Please see the *Schedule of Fees* for your account.

## Time Deposit or CD Account

When you open a time deposit account, you agree to leave your funds in the account until the maturity date of the account. We often refer to a time deposit account as a "CD" or a "Certificate of Deposit", even though we do not issue a "certificate".

This Agreement applies to CDs you open under your Individual Retirement Account (IRA) or Coverdell Education Savings Account (CESA) plans. Please see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and the *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional terms of these plans. A time deposit account is neither transferable nor negotiable.

### Types of CDs

We offer several different types of CDs for personal and business customers.

The *Personal Schedule of Fees* describes our personal CDs.

The *Business Schedule of Fees* describes our business CDs.

### How we Calculate Interest on CDs

Your funds earn interest during the term of the time deposit account. We calculate interest as follows:

- Time deposits earn interest at a fixed rate except for Opt-Up® CDs and Variable Rate IRAs. Fixed rate means that the interest rate that we apply to your account on the day we open it will not change for the term of the account.
- For an Opt-Up CD, your interest rate and annual percentage yield may change. The interest rate that we apply to it on the day that we open your Opt-Up CD remains fixed throughout the term of your Opt-Up CD unless you exercise your one-time option to reset the interest rate. This reset option is described in the *Schedule of Fees*.
- For a Variable Rate IRA, your funds earn a variable rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time without notice or limit.
- For terms of 27 days or less, we credit interest to your account at maturity. For terms of 28 days or more, we compound interest monthly and we credit interest to your account monthly and at maturity or disburse it to you according to the interest disbursement option you select.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the ledger balance that we determine is in the

and interest, unless you elected to have your interest disbursed. (See *Disbursing Interest* in this chapter.)

When we automatically renew your CD, the term for the reinvested CD is the same length as the previous term of your account unless we notify you that we are changing the term of the CD. For time deposits with a fixed interest rate, the interest rate and APY for any renewal term is based on the rate we offer on the first day of the new term for the type of CD, amount and term of the reinvested deposit. Unless specifically stated otherwise, any bonus or special promotion we are offering will not apply to automatically renewing accounts.

If at any maturity date we no longer offer time deposit accounts of the same term and type, we may reinvest your funds in a time deposit that we believe offers similar features.

### CDs That Do Not Automatically Renew

Some time deposit accounts do not automatically renew. If your account information states that your time deposit does not automatically renew, then your account does not earn interest after its maturity date.

### Grace Period

The grace period begins on the first day after the maturity date. The grace period is one calendar day for terms of seven through 27 days and seven calendar days for terms of 28 days or more. You may make a deposit or withdrawal, or change the length of the term, once during the grace period and, if you take one of these actions, the grace period ends on that day. If the last day of the grace period is a non-business day (a weekend or bank holiday), then the grace period ends on the last business day before that non-business day. We may pay interest during the grace period based on the rate we offer on the first day of the new term for the type of CD, amount, and term of the deposit.

### Deposits to a CD

You may make an additional deposit to your account during its grace period. Otherwise, for all CDs except Variable Rate IRAs you may not make deposits during the term of the CD.

You may not make a deposit to a time deposit account by wire or automated clearinghouse (ACH) transfer.

### Early Withdrawals

You have contracted to keep your funds on deposit for the stated term. You may not withdraw all or part of a time deposit account except as provided in this Agreement.

At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We generally withdraw interest before principal. Each time we permit you to make an early withdrawal of principal, we may charge you an early withdrawal penalty. If your account has not earned enough interest to cover an early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

We calculate all early withdrawal penalties on the principal amount withdrawn at the interest rate in effect on the account on the withdrawal date. The early withdrawal penalty is:

- For CDs with terms of less than 90 days, the greater amount equal to seven days interest on the amount withdrawn;
- For CDs with terms of 90 days up to 12 months, the penalty is an amount equal to 90 days interest on the amount withdrawn;
- For CDs with terms of 12 months up to 60 months, the penalty is an amount equal to 180 days interest on the amount withdrawn; and
- For CDs with terms of 60 months or longer, the penalty is an amount equal to 365 days interest on the amount withdrawn.

Please note that the term of a CD is the specified period of time you agreed to leave your funds on deposit – not the time remaining until maturity of your CD.

We add to the early withdrawal penalty the amount of any cash bonuses we paid you when you opened or reinvested the account.

If we are required to pay an amount from your CD (e.g. levy or garnishment), we may charge you an early withdrawal penalty, calculated on the amount withdrawn from the CD.

An early withdrawal from an IRA may also be subject to additional federal tax (and possibly additional state and local taxes) if you are under age 59 1/2.

### Closing or Redeeming a CD

We may close or redeem an automatically renewable account at the end of the term. You may close or redeem your account during its grace period.

account each day. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate.

- When you deposit a non-cash item (such as a check), interest begins to accrue on the non-cash item on the business day the deposit is received. Deposits you give us on a weekend or bank holiday are treated as received the next business day.
- The annual percentage yield for your account assumes that interest will remain on deposit until maturity. A withdrawal will reduce earnings.

We generally set interest rates for new time deposit accounts based on the type of CD, the amount you deposit, and the term you select. Rates for new accounts may change daily. We pay interest only in whole cents.

We may also set interest rates based on a specific account or customer, or based on the location or channel through which we open the account. This means that the interest rate and APY we offer on the same type of CD may be higher or lower based on the specific customer, location or method of account opening. For example, a CD opened through our Online Banking channel, may earn a different rate (either higher or lower) than the same type of CD opened in a financial center or by mail. We may offer interest rate bonuses and other special promotions to specific customers or accounts. Interest rate bonuses and other special promotional offers may not apply to all customers, locations or methods of account opening.

You may obtain current rates by calling us at the number for customer service on your statement or by asking a financial center associate.

### Disbursing Interest

You may choose to have us credit your interest to your account. With this option, we reinvest the interest in your account monthly and at maturity.

Alternatively, you may have us regularly disburse the interest from your account by having us credit the interest to a Bank of America checking or savings account or by having us mail a check for the interest.

Depending on the term of your account, disbursement options include monthly, quarterly, semi-annually, annually on the anniversary date, and at maturity.

### CDs That Automatically Renew

Unless your account information states that your time deposit does not automatically renew, we automatically renew your account by reinvesting your funds. We reinvest both principal

## Information About Fees and Charging Your Account

### Fees

You agree to pay for our services in accordance with the fees that apply to your account and your deposit relationship with us.

**Account Fees** Your account is subject to the fees described in the *Schedule of Fees* that applies to your account.

- The *Personal Schedule of Fees* lists account fees that apply to our personal deposit accounts.
- The *Business Schedule of Fees* lists account fees that apply to our business deposit accounts, except for Commercial accounts (the *Business Schedule of Fees* does not apply to Commercial accounts).
- The schedule that applies to your account is part of the binding contract between you and us.

The fees for many of our products and services may vary from state to state or between regions within a state. We charge account fees to you based on the state or region in which the financial center where we maintain your account is located. Account fees are not based on your state of residence or the state where you use or purchase the service. Your account fees and terms may differ from those of other customers with the same type of account, based on our assessment of your overall relationship with us.

**Fees for Other Services** In addition to checking, savings and CD accounts we also offer many other services, such as wire transfers, cashier's checks and bond redemption. You can get current information about these services and the fees that apply to them at a financial center or by calling us at the customer service number shown on your account statement. We may occasionally list fees for some of these services in the *Schedule of Fees*. Fees for these services may vary from state to state. The fees you pay for these services are those charged by us in the state where we sell you the service. We may change these fees at any time without notice.

**How We Set Fees** We set our fees based on many factors, including the value we offer, our competitive position, deterrence of misuse of an account by our customers, consideration of profit and the safety and soundness of the Bank. We may also consider costs in setting fees, but we do not set our fees based only or primarily on the direct or overall costs and expenses associated with providing the particular account or service involved.

**Calculating Balances** When we calculate an account balance or combined balance to determine whether a fee applies to

your account, we may use the balance that we determine is in each account. We may ignore accrued interest and funds subject to a hold of any type. For a balance in an account linked to a checking account, the period of time that we use as the basis for calculating the balance, and the day that we use to determine the balance, in the linked account may be different from the statement cycle for the primary checking account. If a loan or line of credit is linked, we may ignore each loan or line of credit that we determine is in default.

### Charging an Account

We may deduct fees, overdrafts and other amounts you owe us under this Agreement from your accounts with us or our affiliates, except that this provision does not apply to any consumer credit covered by the federal Truth in Lending law. We may make these deductions at any time without prior notice to you or request from you, if these are not enough funds in your account to cover the amounts you owe us, we may overdraw your account, without being liable to you. You agree to pay immediately all fees, overdrafts and other amounts you owe us. We may use deposits you or others make to your account (including deposits of payroll and government benefits) to pay fees, overdrafts and other amounts you owe us.

Some government payments (such as Social Security, Supplemental Security Income, Veterans and other federal or state benefits) may be protected from attachment, levy, garnishment or other legal process under federal or state law, if such protections would otherwise apply to deductions we make for amounts you owe us, to the extent that you may do so by contract, you waive these protections and agree that we may use these funds to pay fees, overdrafts and other amounts you owe us under this Agreement.

Please see the *Right to Setoff* section of the Agreement for more information.

## Insufficient Funds -- Overdrafts and Returned Items

You can avoid fees for overdrafts and declined or returned items by making sure that your account always contains sufficient available funds to cover all of your transactions. We offer services that you can use to help you manage your account and help you avoid overdrafts, such as our Online Banking service and Online Alerts. Please see *How to Get Started* section in the introduction.

We recommend that you enroll in one of the optional Overdraft Protection plans described below. These plans can help you avoid overdrafts and declined or returned items. While fees apply when you use an Overdraft Protection plan, the fees under the plan may be less expensive than the fees for overdrafts and declined or returned items.

### Overdrafts and Declined or Returned Items

When we determine that you do not have enough available funds in your account to cover a check or other item, then we consider the check or other item an insufficient funds item. If you have enrolled in one of the optional Overdraft Protection plans and have enough available funds in the linked account under the Overdraft Protection plan, we transfer funds to cover the item. Otherwise, without notice to you, we either authorize or pay the insufficient funds item and overdraw your account (an overdraft item) or we decline or return the insufficient funds item without payment (a returned item).

We pay overdrafts at our discretion, which means we do not guarantee that we will always, or ever, authorize and pay them. If we overdraw your account to pay items on one or more occasions, we are not obligated to continue paying future insufficient funds items. We may pay all, some, or none of your overdrafts, without notice to you, if we do not authorize and pay an overdraft, then we decline or return the transaction unpaid.

The *Schedule of Fees* for your account explains when we charge you fees for overdrafts and for declined or returned items and the dollar amount of the fees. Please review the *Schedule of Fees* for your account carefully.

If we overdraw your account, you agree to repay us immediately, without notice or demand from us. We ordinarily use deposits you or others make to your account to pay overdrafts, fees and other amounts you owe us.

Sometimes funds in your account are not available to cover your checks and other items. When we determine that funds in your account are subject to a hold, dispute, or legal process, then these funds are not available to cover your checks and other items. We usually make this determination once at the

end of the day when we process items. As examples of holds, holds include deposit holds, holds related to cash withdrawals, and authorization holds we place on the account for debit card transactions.

We may also treat as an insufficient funds item each fee that creates an overdraft and each deposited item returned to us unpaid that creates an overdraft.

For some business accounts, when your account is overdrawn, we also charge you interest on the overdraft amount. Please see the *Schedule of Fees* for your account.

**What are "Items"?** Items include all orders and instructions for the payment, transfer, or withdrawal of funds from your account. As examples, item includes a check, draft, image, substitute check, everyday non-recurring debit card transaction, recurring debit card transaction, ACH transaction, ATM transaction, preauthorized payment, automatic transfer, telephone-initiated transfer, Online Banking transfer or bill payment instruction, withdrawal slip, and in-person payment, transfer or withdrawal instruction. For more examples, please review the definition of items in the *Explanation of Some Terms* section.

**What are everyday non-recurring debit card transactions and what are recurring debit card transactions?** Everyday non-recurring debit card transactions are usually purchases made with your debit card or debit card number on a one-time or day-to-day basis. As examples, you use your debit card for purchases of groceries, gas, or coffee in the morning. Recurring debit card transactions are usually transactions that you set up to occur automatically, such as automatic bill payments. As examples, you give merchants your debit card number to use for rent, mortgage, car, or utility payments.

### Extended Overdrawn Balance Charge

The Extended Overdrawn Balance Charge is an overdraft fee. This fee is in addition to Overdraft Item and NSF: Returned Item fees that may apply to your account for each overdraft or returned item. This additional charge applies to your account when we determine that your account has been overdrawn for 5 or more consecutive business days. You can avoid this fee by promptly covering your overdraft -- deposit or transfer enough available funds to cover your overdraft, plus any fees we assessed, within the first 5 consecutive business days that your account is overdrawn.

Please see the *Schedule of Fees* for your account for more information about this fee.

### Personal Accounts - Overdraft Practices and Settings

We automatically apply our standard overdraft practices to personal accounts. We refer to this as our Standard Overdraft Setting. We also offer an optional Decline All Transactions overdraft setting.

**With our Standard Overdraft Setting,** we do not authorize overdrafts for everyday non-recurring debit card transactions and ATM transactions. This means that we decline everyday non-recurring debit card transactions and ATM transactions when we determine that at the time of the transaction you may not have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. There is an exception for some ATM withdrawals. We may occasionally give you the opportunity at our ATMs to agree to our overdraft practices for a specific ATM withdrawal and, if you agree, we authorize and pay that ATM withdrawal. Please note that overdraft fees can apply to these withdrawals. We tell you at our ATM when this is available. With this overdraft setting, we may authorize and pay overdrafts for other types of transactions. Other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, ACH transactions, preauthorized payments, and automatic and online bill payments. For more examples of other transactions, please review the definition of Items.

**Optional Decline All Transactions Overdraft Setting.** This is an optional overdraft setting that you can ask us to apply to your account. With the Decline All Transactions overdraft setting, you ask us not to authorize or pay any transaction unless we determine that at the time of the transaction you appear to have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. This means that you are telling us to decline or return these transactions unpaid. Please note that returned item fees can apply to declined or returned transactions. With this setting you may be offered the ability to overdraft at the ATM as described above.

**With either overdraft setting,** your account might still become overdrawn. Here is an example of how that could occur. You want to use your debit card to make a purchase and a merchant asks us to authorize the transaction. We authorize the transaction because we determine you have enough available funds in your account at this time. However, we do not receive the debit card transaction from the merchant for processing and posting to your account that day. We do receive another transaction (such as a check you previously wrote) that we process and post that day and that other transaction reduces the available funds in your account below the amount of the

debit card transaction. This means, unless you promptly transfer or deposit enough available funds, when we receive the debit card transaction, it will overdraft your account.

**With either overdraft setting,** you may still incur fees for overdrafts and declined or returned items, including the Extended Overdrawn Balance Charge. Please review the *Schedule of Fees* for your account carefully.

### Business Accounts - Overdraft Practices and Settings

We automatically apply our standard business overdraft setting to business accounts. With our standard business overdraft setting, we may occasionally authorize and pay overdrafts for all types of transactions. For some business accounts, we offer an optional Decline All Transactions overdraft setting that you can ask us to apply to your account. With the Decline All Transactions overdraft setting, you ask us not to authorize or pay any transaction unless we determine that at the time of the transaction you appear to have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. This means that you are telling us to decline or return these transactions unpaid. Please note that returned item fees can apply to declined or returned transactions.

**With either overdraft setting,** you may still incur overdrafts and fees for overdrafts and declined or returned items.

### Posting Orders

We determine the order in which we process and post deposits and other credits and checks and other items to your account. We may pay or authorize some items, and decline or return others, in any order we deem appropriate. When you do not have enough available funds to cover all of the items presented that day, some processing and posting orders can result in more insufficient funds items and more overdraft and returned item fees than other orders. We may choose our processing and posting orders regardless of whether additional fees result. Please see the *Processing and Posting Orders* section for more information.

### Occurrences

An "occurrence" is a day during which your account has at least one overdraft item or returned item. If we transfer your account to another financial center or convert it to a different type of account, your record of overdraft items and returned items continues to apply.

### Overdraft Protection Plans

We recommend that you enroll in one of the optional Overdraft Protection plans described below to help protect your account from overdrafts and declined or returned items. You can enroll in most checking accounts and money market savings accounts in these plans. Please ask us whether your account is eligible. The fees under these plans may be less expensive than the fees for overdrafts and returned items.

The *Schedule of Fees* for your account explains the fees and other charges that apply to Overdraft Protection plans. Please review the *Schedule of Fees* for your account carefully.

Please note the following. Some of these Overdraft Protection plans are not available in all states. If the account you link for overdraft protection is opened in a different state than your primary checking account, there may be limitations on the ability to transfer funds the same day which may result in additional fees. Only one plan can be linked to an account at a time. Some accounts are not eligible for these plans. Under some plans we make transfers in a minimum amount so we might not make a transfer if you do not have at least the minimum transfer amount available under the plan. To have overdraft protection, at least one of the owner(s) of the account must be an owner of the other account. Certain other restrictions apply.

**Overdraft Protection from Another Deposit Account** This plan links your account to another Bank of America deposit account for overdraft protection. The other deposit account can be a second checking account or a savings account. When you do not have enough available funds in your account to cover an item, we may automatically transfer funds from the available balance in your other deposit account to your account. We generally charge an overdraft protection transfer fee for each transfer. Funds you deposit into your other deposit account may not be available immediately for overdraft protection. If you use your savings account for this service, each transfer counts as one of the six limited transactions you are allowed each month from your savings account. We cancel this Overdraft Protection plan if your account or the other deposit account is closed.

Please see the *Schedule of Fees* for more information about overdraft protection from another deposit account.

**Overdraft Protection from Your Credit Card** This plan links an eligible Bank of America credit card to your account for overdraft protection.

When you do not have enough available funds in your account to cover an item, we may automatically advance available funds from your linked credit card account and transfer the funds to your account. An advance is made under, and is subject to, the terms and conditions described in the applicable credit card agreement. We ordinarily do not make an advance if you are in default under your credit card agreement or if the advance would cause you to exceed the amount of credit available for that type of transaction. As examples, we may decide to make advance funds from your credit card account if you fail to make a credit card payment by its due date or if you exceed any credit card limit on your credit card account. The funds advanced are subject to fees and finance charges under your credit card agreement. For some business accounts, we may also charge an additional overdraft protection transfer fee to your account for each transfer.

Please see your credit card agreement for more information about overdraft protection from your credit card account.

**Overdraft Protection from Your Line of Credit** This plan links an eligible Bank of America line of credit to your account for overdraft protection.

When you do not have enough available funds in your account to cover a check or other item, we may automatically advance funds from your linked line of credit and transfer the funds to your account. The advance is made under, and is subject to, the terms and conditions described in the line of credit agreement. We ordinarily make the advance as long as you are not in default under the line of credit agreement and as long as the advance does not cause you to exceed the amount of your available credit on your line of credit. The funds advanced are subject to fees and finance charges under the line of credit agreement. We may also charge an additional overdraft protection transfer fee to your account for each transfer.

Please see your line of credit agreement for more information about overdraft protection from your line of credit.

## Processing and Posting Orders

**Processing Transactions and Posting Orders**  
Posting transactions to your account impacts your account balance. Posting a credit increases your balance. Posting a debit or hold reduces your balance. Credits include teller deposits, direct deposits and credits we make. Holds include deposit holds, debit card authorizations, and holds related to cash withdrawals and electronic transfers. Debits include withdrawals, transfers, payments, checks, one-time and recurring debit card transactions, and fees.

We use automated systems to process transactions and then to post transactions to accounts. When we process multiple transactions for your account on the same day, you agree that we may in our discretion determine our posting orders for the transactions and that we may credit, authorize, accept, pay, decline or return credits, debits and holds in any order at our option.

### Posting Orders

This section summarizes how we generally post some common transactions to your account.

We group the different types of transactions into categories. We use several different categories for holds, credits, and debits. Most categories include more than one transaction type.

After the end of the business day, our automated systems assign each transaction received for that day to a category. We generally post all transactions within a category, using the posting order or orders that apply to that category, before we post any transactions assigned to the next category.

We start with the balance in your account at the beginning of the business day, subtract holds from your balance, and make any adjustments from prior days. Next, we generally add credits to your balance and then subtract debits from your balance. Some, but not all, of our categories are shown below. For each debit category shown below, we list some common types of debits that we assign to the category and summarize how we generally post them within the category.

- We add deposits and other credits to your balance.
- Then, we subtract from your balance in date and time order the types of debits listed in this paragraph, when our systems receive date and time information. If our systems do not receive date and time information, then we subtract the remaining debits in this category from your balance in order from the highest to lowest dollar amount.

Common debits in this category include:

- one-time and recurring debit card transactions;
- withdrawals made at our tellers and ATMs;
- one-time transfers made at ATMs, through our tellers, by telephone, and through Online Banking and Mobile Banking;
- checks you wrote that are cashed at our tellers; and
- wire transfers.

- Then, for other checks you wrote, we subtract from your balance checks with check numbers sequentially in check number order when our systems can read the check number. Next, checks without a check number that our systems can read are subtracted in order from highest to lowest dollar amount.

As an example, on the same business day we receive five checks that you wrote and were not cashed at a teller. Our systems can read three of the check numbers, which are #105, #112, and #115. The other two checks do not have check numbers that our systems can read. We subtract check #105 first, then #112, and then #115. Then, we subtract the two remaining checks in order from the highest to lowest dollar amount.

- Then, we subtract from your balance many other types of electronic debits in order from the highest to lowest dollar amount. These debits include: scheduled transfers, preauthorized or automatic payments that use your deposit account number (generally referred to as automated clearing house (ACH) debits), and Online Banking and Mobile Banking bill payments.

- Then, we subtract from your balance most fees (such as monthly maintenance fees, overdraft item fees, returned item fees, and ATM fees) in order from highest to lowest dollar amount. Some fees may show as "processing," until the next day.

### Changing Posting Orders

You agree that we may determine in our discretion the orders in which we post transactions to your account.

You agree that we may determine in our discretion the categories, the transactions within a category, the order among categories, and the posting orders within a category. We sometimes add or delete categories, change posting orders within categories and move transaction types among categories. You agree that we may in our discretion make these changes at any time without notice to you.

### Posting Orders Determined at End of Day

We receive credits, debits and holds throughout the day. Regardless of when during the day we receive transactions for your account, you agree that we may treat them as if we received all transactions at the same time at the end of the business day.

During the day, we show some transactions as processing. As an example, we show some transactions as processing on the Account Details screen in Online Banking. Please note that transactions shown as processing have not been posted yet. The posting order for these transactions is determined at the end of the day, with the other transactions we receive for that day.

You should note that often we do not receive debits on the same day that you conduct them. As an example, when you use your debit card to pay for a purchase at a merchant and sign for the transaction, we usually receive an authorization request from the merchant the same day, but we might not receive the final debit card transaction for payment and posting until several days later.

We generally post credits and debits to your account, and report them on your statement, in a different order than the order in which you conduct them or we receive them.

### Overdraft Fees

We generally determine at the time we post a debit to your account whether it creates an overdraft and whether an overdraft or returned item fee applies. You should note that sometimes we authorize a transaction at a time when you have enough available funds to cover it, but because other transactions post before it and reduce your balance, the transaction creates an overdraft when we post it to your account. You can avoid fees for overdrafts and returned items by making sure that your account always contains enough available funds to cover all of your transactions. When your account balance includes some funds that are subject to a hold, dispute or legal process, you should note that those funds are not available to cover your transactions.

We offer services to help you manage and keep track of your finances, such as Online Banking and Online Alerts. Please see "How to Get Started" at the beginning of this agreement.

Our posting orders can impact the number of overdraft fees we charge you when you do not have enough available funds to cover all of your transactions. When several debits arrive the same business day for payment from your account and you do not have enough available funds in your account to cover all of the debits we receive for that day, you understand that some posting orders can result in more overdrafts, and more fees for overdraft items and returned items, than if we had used other

posting orders. You agree that we may in our discretion choose our posting orders, and also change them from time to time, regardless of whether additional fees may result.

When your account balance includes some funds that are not available at the time that we post a debit, and you do not have enough available funds in your account to cover the debit, the debit results in an overdraft and we generally charge you an overdraft item fee or returned item fee for the debit. You should note that we do not show holds, or distinguish between available and unavailable funds in your account balance, on your statement so when you review your statement later, it might appear that you had enough available funds in your account to cover a debit for which we charged you a fee.

### Certain Transactions Made After Business Day Ends

During processing, we generally include in your account balance some transactions that you make after the business day cutoff, but before the end of the calendar day. These transactions are described below. This can impact fees that apply to your account. The credits can help you avoid overdrafts, returned items, and related fees. However, the debits can cause you to incur overdrafts, returned items, and related fees. You should note that we show these transactions on your statement as posting to your account on our next business day.

**Credits.** We generally add to your account balance the following credits, when the transaction occurs after the cutoff time for the business day, but during the same calendar day:

- Cash deposited at one of our ATMs or financial centers, and
- Transfers to your account from another deposit account with us made at one of our ATMs or financial centers, through Online Banking, Mobile Banking, or by calling customer service.

**Debits.** We generally subtract from your account balance the following debits, when the transaction occurs after the cutoff time for the business day, but during the same calendar day:

- Cash withdrawals made at one of our ATMs or financial centers, and
- Transfers from your account made at one of our ATMs or financial centers, through Online Banking, Mobile Banking, or by calling customer service.



## Processing Deposits and Cashed Items

We may forward deposits, cashed items and other transaction requests for an account to one of our processing centers. We may use the date that our processing center receives the transaction as the effective date of the transaction.

### Cashing Items or Accepting Items for Deposit

We may accept, accept for collection only, refuse, or return all or part of any deposit. If we accept checks or other items for deposit to your account or cash them, you are responsible for the checks and other items if there is a subsequent problem with them.

- If we cash a check or other item for you or credit it to your account and it is not paid for any reason, we may charge your account for the amount of the check or other item, even if this causes your account to become overdrawn.
- We may accept a check or other item for deposit to your account from anyone. We do not have to question the authority of the person making the deposit.
- If your account is overdrawn, we may use the deposit to pay the overdraw and any fees you owe us.
- We may adjust your account for any deposit errors, even if you have already withdrawn all or part of the deposit, though we reserve the right not to do so in every case.
- We may refuse to accept for deposit to your account items payable to another person.
- In receiving checks or other items for deposit or collection, we act only as your collecting agent and assume no responsibility beyond the exercise of ordinary care. We are not responsible for errors and delays made by others in the collection process.
- We may assess a charge for processing cash in a deposit.
- If you give us cash that we later determine to be counterfeit, we may charge your account for the amount we determine to be counterfeit.
- You will not knowingly deposit items into your account that do not have either a true original signature of the person on whose account it is drawn or an authorized mechanical reproduction of that person's signature.
- We may require ID or impose other conditions before accepting a deposit.

**Deposit Slips** You should always use our personalized deposit slips with your preprinted name and account number. If you use a blank deposit slip from one of our financial centers, rather than your personalized deposit slip, we are not liable to you for errors that may result from your or our hand encoding the account information.

**Checks, Cashier's Checks, and Similar Items** We cannot generally verify that checks, money orders, cashier's checks or similar items are authentic and valid at the time you ask us to cash them or accept them for deposit. If we cash, or accept for deposit, a check, money order, cashier's check or similar item and we later learn that the item is fraudulent, counterfeit or invalid for some other reason, we may charge your account for the amount of the item. This may occur even if we previously made the funds available to you, or this causes your account to become overdrawn.

**Foreign Items** You should be especially cautious about accepting items drawn on banks located outside of the United States. See *Foreign Items and Foreign Currency*.

### Checks Lost in the Collection Process

When we cash a check for you or accept a check for deposit to your account, we are acting as your agent in collecting the check. We are not responsible if the check is lost or delayed in the collection process. We may charge your account for the amount of the check, even if this causes your account to become overdrawn, if a check is lost during the collection process or if the financial institution on which the check is drawn gives us a photocopy of the check or a debit slip representing the check.

A check that was lost may not be returned to us for some time. Despite any delay, we may charge your account when we receive either the returned check, a copy of the check, or a notice of return.

### Collection Items

We may accept certain items — such as certain securities and checks payable in foreign currencies or at foreign locations — on a collection basis only. We route and process collection items separately. We normally credit your account for collection items only after we receive payment for them. But if we do credit your account and then do not receive payment, we may debit your account for the amount of the item, even if this causes your account to become overdrawn.

We charge fees for processing collection items. Financial institutions in the collection process and the financial institution on which the collection item is drawn may also charge fees. If a financial institution requires payment of a fee before that institution will process the collection item, we may pay the fee and charge your account. A financial institution may subtract its fee

from the amount of the payment we receive. You have to pay these fees even if the collection item is returned unpaid.

For our current collection fees, call us at the number for customer service shown on your statement, or ask a financial center associate.

### Demand Drafts and Remotely Created Checks

If you deposit a demand draft or remotely created check (an unsigned draft or a preauthorized draft) into your account, you warrant and guarantee that the draft or remotely created check is authorized according to the terms on its face by the person identified as drawer. You agree to indemnify us from all loss, expense and liability related to a claim that such draft or check was not authorized by the persons on whose accounts it was drawn.

### Deposit Preparation and Acceptance

When you make deposits through our financial centers, including lobby boxes, ATMs, night depositories and other automated depositories, or by mail, we may use the method of delivery to our branch or processing center to determine when we accept the deposit, when you receive credit for the deposit, and whether deposit fees apply.

If we credit your account for a deposit and provide you with a receipt, we may use the amount shown on the deposit slip or otherwise specified by you. The amount of the credit is subject to subsequent verification by us and, after review, we may adjust your account for any errors, though we reserve the right not to do so in every case.

Any of our employees or authorized agents may open and count any deposit that a teller did not count in front of you, including coin deposits, cash deposits, and each deposit made through the mail, a lobby box, a night depository, or other automated depository. You agree not to dispute that employee or agent's determination of the amount you delivered. The funds will be accepted for deposit after the counting has been completed and we have verified the amount, if we opt to do so. The funds will be made available to you in accordance with our funds availability schedule at that time.

If you make your deposit through a mechanical or automated depository such as an ATM or night depository, you agree to exercise due care in opening, closing and properly securing the depository.

If your deposit includes items that we do not accept for deposit, we may hold those items until claimed by you.

### Deposit Error Correction

When we accept your deposits, we may provisionally credit your account for the amount declared on the deposit slip. You must ensure that the amount declared on the deposit slip is cor-

rect even if you did not prepare the deposit slip. If later we determine that the amounts declared on the deposit slip are incorrect, we may adjust (debit or credit) your account, though we reserve the right not to do so if the error in completing the deposit slip was apparently inadvertent and is less than our standard adjustment amount. In that case, we may not adjust the deposit unless you notify us of the error within one year of the date of your periodic statement that shows the deposit. After this notice period has passed without your bringing an error to our attention, the deposit amount indicated on the statement will be considered finally settled. That is, if the actual amount deposited was less than the amount declared on the deposit slip, the difference will become your property and if the actual amount deposited was more than the amount declared on the deposit slip, the difference will become our property. We may change our standard adjustment amount from time to time without notice to you.

### Encoding Deposits

If you are a business client, you may ask us for permission to encode the MICR (Magnetic Ink Character Recognition) line of an item you deposit with us. If we permit this, you agree to follow the instructions we give you for preparing and encoding your deposits. If you make an encoding mistake that results in costs, losses or damages to us, you agree to reimburse us for our costs, losses and damages, including attorneys' fees. We may charge them to your account. We are not liable for any claims, costs, losses, or damages you may incur when you encode your own items.

If our equipment is unable to read what we consider a significant number of your encoded items, we may refuse to accept some or all of your items and we may charge you fees for each item we do accept.

You must provide us with a replacement or a copy of each original check if the deposit is lost or destroyed. We are not liable to you if you are unable to do so.

### Endorsing Checks

We may endorse and/or collect items deposited to your account without your endorsement but may, at our option, require your personal endorsement prior to accepting an item for deposit. If you deposit items which bear the endorsement of more than one person or of persons who are not signers on the account, we may refuse the item or may require you to have their endorsement guaranteed before we accept an item. We may accept for deposit checks payable to any signer on your account when endorsed by any other signer.

When you endorse checks that you ask us to cash or deposit, you must endorse checks in the area that extends 1 1/2 inches from the trailing edge of the back of the check. You must also

confine information that you place or have preprinted on the back of your checks to the same area. Otherwise, it may overlap into the area reserved for the banks' endorsements. The trailing edge is the left side of the check when you look at it from the front.

If you endorse a check outside of that area, mark or otherwise obscure the other area or a prior endorsement or make an endorsement that is illegible or incomplete, we may refuse the item or we may accept such nonconforming endorsement and you agree to hold us harmless from any loss, delay, liability, claim or damage which may arise as a result.

If it becomes necessary for us to return one of your checks, your endorsement or information placed on the back of the check may interfere with the bank endorsements and cause delays in returning the item. You are liable for and agree to reimburse us for all claims, costs, losses and damages that result from late return of a check due to material entered on the back of the check that obscured or interfered with the depository or another bank's endorsement.

#### Identifying the Account for Your Deposit

You must correctly identify the account to which you want funds deposited. We may credit a deposit to an account based solely on the account number listed on the deposit slip or other instruction to credit an account, even if the name on the deposit slip or other instruction differs from the name on the account.

You are responsible for any claim, cost, loss or damage caused by your failure to properly identify the account to which a deposit is made or intended to be made.

#### Overpayments and Reversals

If funds to which you are not entitled are deposited to your account by mistake or otherwise, we may debit these funds from your account, even if this causes your account to become overdrawn. If the funds were transferred from your account, we may reverse the transfer. We can do this without giving you any prior notice or demand.

#### Returned Items

This section applies to items that you deposit or that we cash for you (a "cashed or deposited item") and includes items drawn on us as well as items drawn on other financial institutions. You are responsible for returned items.

If a cashed or deposited item is returned to us at any time for any reason by the bank on which it is drawn or any collecting bank, we may accept that return, pay the claiming party, and charge the item to your account without regard to whether we or the other bank finally paid the item or returned the item in

accordance with any applicable midnight deadline or clearing-house rule. We may also deduct from your account any interest you may have provisionally earned on the item. We may charge you a fee for each returned item. Different fees may apply to domestic and foreign items. We may debit your account for a returned item at any time on or after the day it is returned to us by electronic, automated clearinghouse ("ACH") or other means or on the day we receive notice that the item is being returned to us - whichever is earlier.

As an example, if an item deposited in your account has been paid by the bank on which it is drawn (including on us) and that item is later returned to us with a claim that the item was altered, forged, unauthorized, bears a forged or missing endorsement or should not have been paid for any reason, we may at our discretion charge the item against your account or place a hold on the amount of that item against your account until the claim is finally resolved. We may take these actions without prior notice to you and regardless of whether settlement with respect to such item is considered final.

We are not obligated to question the truth of the facts that are asserted, to assess the timeliness of the claim, to take any action to recover payment of a returned item, or to assert any defense. We do not need to notify you in advance of our actions related to the claim. If you do not have sufficient available funds to cover a returned item, we may overdraw your account. We are not liable to you if there are insufficient funds to pay your items because we withdraw funds from your account or in any way restrict your access to funds due to a hold or debit to your account in connection with a returned item. You agree to repay immediately an overdraft caused by a return of a cashed or deposited item.

In some cases, the financial institution on which the returned check or other item is drawn may send us an electronic notice of return, an indemnified copy of the original, an image replacement document ("IRD") or an image, instead of returning the item. We may act on, and you agree to be bound by, the electronic notice of return, or indemnified copy or IRD just as if the original item had been returned.

We may send the unpaid item back for collection a second time before notifying you, but we are not obligated to do so. You waive notice of dishonor and protest. You agree that we will have no obligation to notify you of any item that is being returned. However, if we receive advance notice from another financial institution that it is returning to us unpaid a check of \$2,500 or more, we may send you a notice. We do not send a notice about returned checks of less than \$2,500.

#### Substitute Checks

You agree that you will not cash or deposit "substitute checks," as defined by federal law or image replacement documents

("IRD") that purport to be substitute checks and have not been previously endorsed by a bank. If you cash or deposit such an item, you give us the same warranties and indemnities that we, as a converting bank, would give under applicable law or regulation and you agree to reimburse us for claims, losses, costs and damages we may incur. If you provide us with an electronic representation of a substitute check for deposit into your account instead of an original check, you agree to reimburse us for all claims, losses, costs and damages we incur because the substitute check resulting from the electronic representation does not meet applicable substitute check standards or causes duplicate payments.

#### Third-Party Endorsements

We may require that checks and other items you want to deposit or cash be endorsed by all parties to whom the items are payable. We may require verification of any endorsement through either an endorsement guarantee or personal identification.

## When Funds are Available for Withdrawal and Deposit Holds

Our general policy is to make funds from your cash and check deposits available to you no later than the first business day after the day of your deposit. However, in some cases we place a hold on funds that you deposit by check. A hold results in a delay in the availability of these funds. When we place a hold, you will have to wait a few days before being able to use the funds. When we decide to place a hold at the time you make your deposit, the teller or ATM gives you a notice that lets you know funds are on hold. For ATM deposits, the hold notice is usually included on the ATM receipt. The hold notice will let you know the date and the time when the funds will be available for you to use. In some cases, you will not get the hold notice from the teller or ATM, but later by mail. You can avoid holds by using direct deposit or wire transfer.

In many cases, we make funds from your deposited checks available to you sooner than we are able to collect the checks. This means that, from time to time, a deposited check may be returned unpaid after we made the funds available to you. Please keep in mind that even though we make funds from a deposited check available to you and you withdraw the funds, you are still responsible for problems with the deposit. If a check you deposited is returned to us unpaid for any reason, you will have to repay us and we may charge your account for the amount of the check, even if doing so overdraws your account.

While we generally apply our funds availability policy to deposits you make to savings accounts (including money market savings

accounts), and to deposits you make using a mobile device, please note that our funds availability policy does not apply to these deposits, and we may delay availability of funds from these deposits.

#### Your Ability to Withdraw Funds

Our general policy is to make funds from your cash and check deposits available to you no later than the first business day after the day we receive your deposit. Our policy is to make funds from electronic direct deposits made through the automated clearing house (ACH) and incoming wire transfers available to you on the day of the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit on a business day that we are open at one of our financial centers before 2:00 p.m. local time, or at one of our ATMs before 5:00 p.m. local time in the state where we maintain your account, we consider that day to be the day of your deposit. However, if you make a deposit after such times, or on a day when we are not open or that is not a business day, we consider that the deposit was made on the next business day we are open. Some locations have different cutoff times.

#### Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you by the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$200 of your deposits, however, may be available no later than the first business day after the day of your deposit.

If we are not going to make all of the funds from your deposit available by the first business day after the day of your deposit, we generally notify you at the time you make your deposit. We also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we mail you the notice by the next business day after we receive your deposit. If you need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, we may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You re-deposit a check that has been returned unpaid.

- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

#### Special Rules for New Accounts

If you are a new customer, the following special rules may apply during the first 30 days the account is open. Funds from electronic direct deposits to your account are available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks are available no later than the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you and deposited in person to one of our employees. The excess over \$5,000 is available by the fifth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of deposit. Funds from all other check deposits are generally available by the fifth business day after the day of your deposit.

However, we may place longer holds on certain items for other reasons, such as large deposits (see *Longer Delays May Apply* above).

#### Government Checks, Cashier's Checks and Other Special Types of Checks

Our policy is to make funds from U.S. Treasury checks that are payable to you available no later than the first business day after the day of the deposit.

If you make the deposit in person to one of our employees, and meet the other conditions noted below, our policy is to make funds from the following types of deposits available no later than the first business day after the day of your deposit:

- State and local government checks that are payable to you and are deposited in an account in the same jurisdiction that issued the check.
- Cashier's, certified and teller's checks that are payable to you.
- Federal Reserve Bank checks, Federal Home Loan Bank checks and U.S. Postal Service money orders that are payable to you.

If you do not make your deposit of these checks in person to one of our employees (for example, if you mail the deposit), our policy is to make funds from these deposits available no later than the second business day after the day of your deposit.

However, we may place longer holds on certain items for other reasons, such as large deposits (see *Longer Delays May Apply* above).

#### Cash-Withdrawal Limitation

If we delay availability of your deposit, we place certain limitations on withdrawals in cash or by similar means. In general, \$200 of a deposit is available for withdrawal in cash or by similar means no later than the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash or by similar means at or after 5:00 p.m. on that day. Any remaining funds will be available for withdrawal in cash or by similar means on the following business day.

Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as a debit card transaction.

#### Holds on Other Funds

If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your ability to withdraw a corresponding amount of funds that you have on deposit in another account with us. In either case, we make these funds available in accordance with our policy described above for the type of check that was cashed or deposited.

## Processing Withdrawals

We may forward withdrawals and other transaction requests for an account to one of our processing centers. We may use the date that the processing center receives the transaction as the effective date of the transaction.

#### Cashing Checks for You

Check cashing services may not be available at some financial centers. We may occasionally refuse to cash a check written to you. If we do cash such a check and it is returned to us unpaid for any reason at any time, we may deduct the amount of the check from your account, even if this causes your account to become overdrawn, and we may charge you a fee.

We may cash checks payable to any signer on your account when endorsed by any other signer.

If you ask us to cash a check or other item for you, we may apply the proceeds of the check or other item to fees, overdrafts and other amounts you owe us.

#### Cashing or Accepting Your Checks for Others

When a person with a check or other item drawn on your account asks us to cash it or accept it for deposit, we may require identification satisfactory to us and their fingerprint. We may also impose additional requirements. We may refuse to cash a check for a person who is not our loan or deposit customer.

If the person with your check fails or refuses to satisfy our requirements, we may refuse to cash the check or accept it for deposit.

When we cash your check, or accept it for deposit, we may do so without reviewing your account at that time to see whether you have enough available funds to cover the check. We may charge that person cashing a check or other item a fee for cashing the check or other item if that person is not a customer of Bank of America.

We are not liable to you for refusing to cash or accept the check, or for charging a check cashing fee.

#### Checks with Legends or Restrictions

Some customers print or write legends or restrictions on their checks. Sometimes the person to whom the check is payable prints or writes a legend or restriction on the check. Legends and restrictions include conditions, special or restrictive instructions, and other notations. Some examples are: "not valid after 60 days", "not valid over \$1,000" or "paid in full". We may disregard legends and restrictions. We may pay the item even if the legend or restriction has not been met. We are not liable to you for any claims, costs, losses or damages that result from the placement of these legends or restrictions on your checks, or from our failure to abide by them.

#### Collection Items

When another financial institution submits to us for collection an item drawn on your account, we may charge the other financial institution a fee. When you do not have enough funds in your account for us to process a collection item drawn on your account, we may charge you an overdraft or returned item fee.

#### Check Stock and Ink

You agree to bear the risk of loss if you use check stock that contains defects, such as printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers.

Checks you write may be converted into electronic images (truncated) during the check collection and return process. You also agree to bear the risk of loss if you elect to have your checks printed by a vendor that has not been approved by us; you use check stock or features (such as security features) that cause critical data to disappear or be obscured upon truncation; or you make your check out in a way (such as, using a lightly colored ink) that causes critical data to disappear or be obscured upon truncation.

#### Converting Checks to Electronic Debits

Some businesses convert checks that you give them into electronic debits (sometimes referred to as an electronic check) and then send us an electronic debit for the transaction amount. When we receive the electronic debit, we charge it to your account. We may receive the electronic debit to your account immediately after the business enters the transaction, so you may have a reduced right to stop payment and you may incur an overdraft if you do not have sufficient funds in your account to cover the amount of the check at the time you write the check or authorize the transaction. Since the check is not sent to us, we do not have a copy of your check. We list these electronic debits on your account statement. If the business uses your check to initiate an electronic debit at the point of sale, the business should give you notice of the conversion and return the voided check to you. You should treat the voided check with care because someone else who obtains possession of it could use the information to initiate additional debits against your account. A business that receives your check by mail and converts it to an electronic debit may give you notice of the conversion and destroy the original check.

#### Examining Checks

We receive checks in great volume. This and compliance with expedited funds availability laws require us to use automated check processing procedures. Although we may visually review a sample of checks and other items from time to time, reasonable commercial standards do not require us to do so.

We select some checks for review based on certain criteria that changes from time to time. This means that most checks are processed on the basis of the MICR (Magnetic Ink Character Recognition) line printed along the bottom edge of the check, and are not individually examined for dates, maker signatures, legends or endorsements. You agree that we will have exercised ordinary care if we examine only those items that we have identified according to the criteria that we may establish in our discretion for inspection.

If we do visually review any check or other item, we may disregard any restrictive instructions or notations, such as an instruction to permit withdrawals only upon more than one sig-

nature. We may return the item unpaid if, in our opinion, it does not bear a signature matching any specimen signature we have on file for your account. You agree, however, that we will not be liable to you for honoring any check or other item bearing a signature that, in our sole opinion, resembles the specimen signature on file with us.

Since we do not individually examine most checks, it is critical for you to take care of your checks, promptly review your account statement, and immediately report any suspicious or unauthorized activity to us. You agree that automated processing of your checks is reasonable and that you accept responsibility for preventing and reporting forgeries, alterations, and other unauthorized uses of your checks or accounts. You agree that the exercise of ordinary care will not require us to detect forgeries or alterations that could not be detected by a person observing reasonable commercial standards.

Since some types of check fraud have become more difficult to detect, we may elect in some cases to make further inquiries about certain checks or other items that are presented for payment against your account. If we are unable to contact you, or take other steps, to determine with reasonable certainty that you authorized these payments, we may either pay the checks and other items or return them unpaid without any liability to you.

#### Items Resulting from Voluntary Disclosure

If you voluntarily disclose your account number to another person orally, electronically, in writing or by other means, you are deemed to authorize each item, including electronic debits, which result from your disclosure. We may pay these items and charge your account.

#### Large Cash Withdrawals

We may require reasonable advance notice for large cash withdrawals. We may also refuse to honor a request to withdraw funds in cash from your account or to cash a check (including a cashier's check or other official item) at a financial center if we believe that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk. We may require that such withdrawals be made at one of our cash vaults by an armored courier, acceptable to us and at your sole risk and expense. We are not responsible for providing for your security in such transactions.

#### Paying Checks and Other Items

We may debit your account for a check or other item drawn on your account either on the day it is presented to us for payment, by electronic or other means, or on the day we receive notice that the item has been deposited for collection at another financial institution — whichever is earlier. If you do not have

sufficient available funds to cover the item, we decide whether to return it or to pay it and overdraft your account.

We may determine your balance and make our decision on an insufficient funds item at any time between our receipt of the item or notice and the time we must return the item. We are required to determine your account balance only once during this time period.

When you deposit checks or other items that are drawn on another account with us, we may treat such items as presented to us for payment on the business day that they are received by our office that processes checks drawn on the other account.

#### Stale-Dated and Postdated Checks

If a stale-dated check — that is, a check dated more than six months in the past — is presented for payment against your account, we may pay the check and charge it to your account. If a postdated check — a check dated in the future — is presented for payment, we may pay the check and charge it to your account even if it is presented for payment before the date stated on the check. If you do not want us to pay a stale-dated or postdated check, you must place a stop payment order on it. See the *Stop Payment Orders and Postdating Orders* section.

#### Substitute Checks, Indemnified Copies, Images and Image Replacement Copies

In some cases, we may be sent an indemnified copy of your original check, an image replacement document (IRD), a substitute check or an image of your check, instead of the original item. We may act upon presentation of an IRD, indemnified copy, substitute check, or image of your check and pay these items against your account, just as if the original item had been presented.

#### Unpaid Items

If we decide not to pay a check or other item drawn on your account, we may return the original, an image or a copy of the item or we may send an electronic notice of return and keep either the original, an image or a copy of the item in our records. If we send an electronic notice of return, you agree that any person who receives that electronic notice may use it to make a claim against you to the same extent and with the same effect as if we had returned the original item.

## Substitute Checks and Your Rights

The following provisions help explain some of the rights a consumer has under a federal law commonly referred to as Check 21. Check 21 was enacted to increase the efficiency of the U.S. check clearing system. The clearing system relies heavily on the physical transport of checks between banks. Check 21 allows banks to create substitute checks and present them to other banks instead of the original check. This reduces the transport of checks among banks and helps enable the electronic collection of checks.

#### What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

#### What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

#### How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at the telephone number listed on your account statement, or write to us at:

Bank of America  
Attn: Research and Adjustments  
P. O. Box 655961  
Dallas, TX 75265-5961

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include—

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: your account number, the check number, the name of the person to whom you wrote the check, the amount of the check and the date of the check.

## Notices, Statements and Other Communications

### General Terms for Notices, Statements and Other Communications

Please review promptly all notices, statements and other communications we send you. In this section "communications" means all notices, statements and other communications we send you.

We may provide communications in English. Many communications will be notices of change affecting your rights and obligations. If you have questions about any of them or difficulty reading English, please call us at the number for customer service on your statement.

We may:

- address communications to one account owner;
- provide communications in English, even though we may have given you account opening documents and disclosures in a language other than English;
- destroy communications that are sent to you and returned to us as being undeliverable, along with any accompanying checks and other items;
- authorize the Post Office or an agent to destroy communications, along with accompanying checks and other items, that the Post Office informs us are undeliverable; and
- stop sending communications to you until a new address is provided to us if one or more communications that we mail to you are returned to us as being undeliverable.

We are not responsible for communications, or for any checks or other accompanying items, lost while not in our possession. If we receive communications that we sent you at a financial center, they are deemed to have been delivered to you at the time that they are available to you at the financial center.

**Electronic delivery of communications** We recommend that you use our Online Banking service and receive your communications electronically. When you use electronic or paperless delivery, we deliver communications to you by placing them in Online Banking. You can find your account statements, notices, and other eligible documents in Online Banking within the statements and documents area of your account details page. Communications currently available for electronic delivery are listed in the statements and documents area of Online Banking.

### Notices

When we inform you of changes affecting your rights and obligations, we do so by delivering or otherwise making a notice available to you. In some cases, we may post a notice of a change in our banking offices or on our website. Otherwise, we mail the notice to you at the address we currently show for your statement or, if we have agreed on this method, we provide it to you electronically. We may provide a notice as a message on your statement or as an insert with your statement.

If a notice of a change to this Agreement is returned to us as being undeliverable or if we stop sending notices or statements to you because we consider your account dormant or because notices or statements we previously sent you were returned to us as being undeliverable, you understand that the notices are available to you through our financial centers. You agree to that method of delivery and that changes covered in these notices are still effective and binding on you.

A notice sent to any one owner is deemed notice to all account owners and is effective for all account owners.

### Statements

We provide you with a single statement when there is activity on your checking or savings account. When there is no activity on your account, we may choose not to provide a statement. You may generally obtain an additional copy of your statement for a fee.

We recommend that you use our Online Banking service and receive your statements electronically. If your statement is received at one of our offices, we may mail it to you or destroy it, along with any accompanying checks and other items.

### For checking, money market savings and business

savings accounts, we provide you with a monthly statement. Statement cycles generally vary from 28 to 33 days and may end on different days during the month. A statement cycle can be shorter than monthly. As examples, a statement cycle may only be a few days in length for the first statement cycle after an account is opened or when a statement date is changed to link accounts for combined statements. If you want to know the date your statement cycle ends, call us at the number for customer service on your statement.

**For Regular Savings accounts**, we provide you with a quarterly statement. If you have an electronic fund transfer (such as a direct deposit or an ATM withdrawal) to or from your account during any month, we provide a statement for that month.

**For analyzed business checking accounts**, you can elect to receive an additional monthly account analysis statement. This statement includes balance and flag information, quantity of

services used during the period, fees and charges for these services and the earnings allowance, if any.

For IRAs, we provide you with a quarterly statement.

**Combined Statements** With combined statement service we provide a single statement that reports activity for all accounts linked for this service, instead of separate statements for each linked account.

Accounts with at least one common owner may be linked and reported on a combined statement, either automatically or at your request. When accounts are reported on a combined statement, you understand and agree that each owner and each signer of any linked account can review information about all linked accounts. As an example: if you own a checking account jointly with others and you link your individual savings account to this checking account for combined statement service, then each of the other owners and signers of the joint checking account can review information about both the checking account and your individual savings account. You should not link accounts for combined statement service that you do not want others to see.

You must generally request combined statement service and tell us what accounts you want us to link and report on a combined statement. In some cases, however, we may automatically send you a combined statement. As an example: we may automatically link accounts that have the same owners and provide a combined statement for those accounts.

We may restrict what accounts can be linked for a combined statement. Please note that combining accounts on a single statement does not mean they are also linked for pricing. To determine which accounts can be linked, or to link accounts, for combined statements or for combined balances (pricing), please call us.

### Check image, safekeeping and Enclosure Services

For most accounts, we offer the following options regarding your canceled checks.

**Check image Service** We provide with your statement an image of the front of each of your canceled checks that we post to your account during the statement cycle. We print images of your checks up to 10 images on a page. We do not return your canceled checks, in some states and for some business accounts we provide an image of the front and back of your canceled checks. When you use this service, checks are deemed to be made available to you at the same time your statement is made available.

We store copies of your canceled checks (usually on microfilm or as a digital image) and then destroy the checks. Copies of checks are generally available for seven years from the date

the checks are paid. See *Check Copies in Other Terms and Services*.

**Check Safekeeping Service** We report on your statement information about canceled checks (check number, amount and date posted) that posted to your account during the statement cycle. You do not receive your canceled checks with your account statement. When you use this service, checks are deemed to be made available to you at the same time your statement is made available.

If your statements are returned to us, you automatically receive check safekeeping service. If you usually receive your checks with your statement but we are unable to return them because of circumstances beyond our reasonable control, we may convert your account to check safekeeping service.

We store copies of your canceled checks (usually on microfilm or digital image) and destroy the checks. Copies of the checks are generally available for seven years from the date the checks are paid. See *Check Copies in Other Terms and Services*.

If you use our check safekeeping service, we cannot provide a copy of a check that posted to your account, and you lose money as a result, we may cover the loss up to the amount of the check. However, we are not liable to you for consequential loss or damage of any kind.

**Check Enclosure Service** This service is no longer available for most accounts. We return with your statement canceled checks that we received and posted to your account during the statement cycle. We may also provide you with images of your canceled checks.

We may not return some of your canceled checks. For example, if a check that you write is converted into an image or electronic debit during the check collection process, your check is not sent to us and, as a result, we cannot return the check to you. In some cases, we may receive a substitute check (also called an image replacement document) instead of your check. We do not return substitute checks with your statement.

### Your Address and Change of Address

We may send notices, statements and other communications regarding your account to you at the electronic or street address we have in our records for your account.

You agree to notify us if you change your address. If the United States Post Office or one of its agents tells us that your address has changed:

- we may change your address on our records to the address specified by the Post Office; and
- we may send notices, statements and other communications regarding your account to that new address.

## Actions You Can Take to Help Protect Your Account

Your role is extremely important in helping to prevent the wrongful use of your account. Please consider the measures below to help you protect your account.

**Stay Informed** We offer several services you can use to help you keep track of your account on a daily basis. You can use our Online Banking service to review your accounts and Online Alerts to receive notice of account balances and activity. Please see the information about these services in *How to Get Started*.

**Be Cautious about Giving Out Your Personal Information.** We will not send you e-mails requesting personal information. If you receive an e-mail that seems to come from us and requests personal information, do not answer it. Instead, please contact us immediately at the number on your statement.

**Be Cautious about Accepting Checks, Money Orders and Cashier's Checks, especially from Strangers.** You should be cautious about accepting checks, money orders and cashier's checks (especially, foreign checks) from strangers. Sometimes they are fraudulent or counterfeit. We cannot verify that a check, money order or cashier's check that purports to be issued by another company or financial institution is authentic, or has any value at all, when you give it to us and ask us to cash or deposit it.

We ordinarily make funds from a check you deposit (or we cash for you) available to you sooner than we are able to collect the check or determine whether the check is any good. If the check is returned to us unpaid for any reason, you are still responsible for the check. We charge your account for, and you will have to repay us, the full amount of the returned check. A check may be returned because it "bounced" or because the check is fraudulent, counterfeit or invalid for some other reason.

One way to help protect yourself is to take the check to the bank, company (such as Western Union) or service (such as the U.S. Postal Service) that issued it and redeem the check for cash. For more information on how to avoid being a victim of fraud, visit [bankofamerica.com](http://bankofamerica.com), or consult trusted organizations such as your local Better Business Bureau or the Federal Citizen Information Center. The following website is also a good resource - [www.fakechecks.org](http://www.fakechecks.org).

**Review Statements and Report Suspected Problems Immediately** You must promptly review the notices, statements and other communications, along with any accompanying checks and other items, we send you. You must also report

problems or unauthorized transactions to us immediately, by calling the number for customer service on your statement. See *Reporting Problems*.

**Identity Theft** Identity theft occurs when someone uses your personal information without your permission to take over your existing account or to open new accounts in your name. Identity theft often begins with the loss or theft of a wallet or purse. Criminals can also obtain your personal information by stealing records from your trash or sending fraudulent e-mails to you requesting your information.

You should destroy or shred account statements, checks, deposit slips and other documents with your personal information before you throw them away.

### Other Actions You Can Take

Here are some other actions you can take to help control your risk. This is by no means a complete list of preventive measures. You may want to take other or additional actions.

- Do not share your passwords, user numbers or Personal Identification Number (PIN) for Online Banking or your ATM or debit card.
- Call us if your new check order or debit card does not arrive within 14 business days.
- Be cautious about giving someone your account number. If you give your account number to a third person and authorize that third person to initiate one or more transactions on your account, you may be liable for all transactions initiated by the third person even if you do not intend to authorize a particular transaction.
- Do not give anyone a pre-signed blank check. Do not give anyone permission to sign your name on a check.
- Do not preprint your driver's license or Social Security Number on your checks.
- Write checks in a dark colored permanent ink and fill in all lines. Make sure the written and numeric amounts match, are readable and begin on the far left of the line so additional numbers or words cannot be added.
- Write and sign your checks clearly, because illegible checks are easier to forge.
- Use tamper resistant checks. If you do not order checks through us, ask your check vendor about tamper resistant checks.
- Store blank checks, deposit slips and statements in a safe place and audit your check stock frequently. When discarding, destroy them by shredding or other means

so they cannot be copied or used. Call us immediately if any of these items are lost, stolen or missing.

- Use the same precautions that apply to your checks to your endorsement and signature stamps.
- Do not leave outgoing mail in an unlocked collection box or in your residence mailbox. Deposit outgoing mail in a locked Postal Service mail deposit box.
- Keep accurate records of your transactions and reconcile your statements as soon as they are made available to you. Pick up your mail every day. When reviewing your statements, watch for:
  - Checks cashed out of sequence or made payable to cash
  - Use of a check number from a previously cleared item
  - Balance discrepancies or unexpected fluctuations
- Reconcile your account yourself. If you have authorized someone else to transact on your account and you do not reconcile your account yourself, someone other than an authorized signer should reconcile your accounts.
- Business customers should assign to different individuals responsibilities for: opening mail, reconciling bank statements, endorsing incoming checks, making deposits, reconciling accounts payable checks with vendor invoices, reconciling incoming checks against outstanding receivables and issuing checks.

## Reporting Problems

If you find that your records and ours disagree, if you suspect any problem or unauthorized transaction on your account or you do not receive a statement when expected, call us immediately at the number for customer service on your statement. If you fail to notify us in a timely manner, your rights may be limited.

This section does not apply to electronic fund transfers that are subject to Regulation E. If we have a specific agreement with you for a service or this Agreement has specific provisions for a service (such as the Funds Transfer Services section), these provisions supplement the specific agreement and provisions to the extent they are not inconsistent.

### Your Responsibility

You must exercise reasonable control over your statements, checks, deposit slips, endorsement and signature stamps, debit and ATM cards, Personal Identification Numbers and other access devices. It is your responsibility to keep them safe and

secure and to promptly discover and report if any of them are missing in time to prevent misuse. You assume full responsibility for monitoring and reviewing the activity of your account, the work of your employees, agents and accountants, and any use they make of your account.

We may deny a claim for losses due to forged, altered or unauthorized transactions, items or signatures if you do not guard against improper access to your checks, statements, deposit slips, endorsement and signature stamps, and account information. We may also deny your claim if you do not monitor your account and report problems as provided in this section. Please review this *Reporting Problems* section carefully.

In some states we offer certain fraud prevention and detection products and services to business customers. If we have offered you one or more of these services, and you decline to use them or fail to implement them, or you fail to follow the procedures necessary for proper use of these products or services, or you fail to follow other precautions reasonable for your particular circumstances, you are precluded from asserting any claims against us for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and we will not be required to re-credit your account or otherwise have any liability for paying such items.

### What Are Problems and Unauthorized Transactions

Problems and unauthorized transactions include suspected fraud; missing deposits; unauthorized electronic transfers; missing, stolen, or unauthorized checks or other withdrawal orders; checks or other withdrawal orders bearing an unauthorized signature, endorsement or alteration; illegible images; encoding errors made by you or us; and counterfeit checks. This is not a complete list.

### Reviewing Your Account Statements

Your review of your statements, checks and other items is one of the best ways to help prevent the wrongful use of your account. You agree:

- to review your statements, checks and other items and reconcile them as soon as they are made available to you;
- that our statements provide sufficient information to determine the identification and authenticity of any transaction including without limit, whether any are forged, altered or unauthorized if the statement includes the item number, amount and the date the item posted to your account;
- to report any problems or unauthorized transactions as soon as possible; and

- that 60 days after we send a statement and any accompanying items (or otherwise make them available) is the maximum reasonable amount of time for you to review your statement or items and report any problem or unauthorized transaction related to a matter shown on the statement or items. There are exceptions to this 60-day period. For forged, unauthorized or missing endorsements, you must notify us within the period specified by the state law applicable to your account. For substitute checks, you must notify us within 40 days to qualify for an expedited receipt. See section titled *Substitute Checks and Your Rights*.

### **We Are Not Liable If You Fail To Report Promptly**

Except as otherwise expressly provided elsewhere in this agreement, if you fail to notify us in writing of suspected problems or unauthorized transactions within 60 days after we make your statement or items available to you, you agree that:

- you may not make a claim against us relating to the unreported problems or unauthorized transactions, regardless of the care or lack of care we may have exercised in handling your account; and
- you may not bring any legal proceeding or action against us to recover any amount alleged to have been improperly paid out of your account.

Except as otherwise expressly provided elsewhere in this agreement, we are not liable to you for subsequent unauthorized transactions on your account by the same person if you fail to report an unauthorized transaction on your account within 30 days (or such lesser period as is specified in the state law applicable to your account) following the closing date of the statement containing information about the first unauthorized transaction.

For business deposit accounts, also see *Electronic Banking Disclosures in the Electronic Banking Services section* and *ACH Debits and Credits in the Funds Transfer Services section*.

### **Written Confirmation and Other Assistance**

If you report to us that an unauthorized transaction has occurred on your account, we may require you to confirm your report in writing. We may also require that you give us a statement, under penalty of perjury, about the facts and circumstances relating to your report and provide such other information and proof as we may reasonably request.

If you assert a claim regarding a problem, you must cooperate with us in the investigation and prosecution of your claim and any attempt to recover funds. You also agree to assist us in identifying and in seeking criminal and civil penalties against

the person responsible. You must file reports and complaints with appropriate law enforcement authorities.

If you fail or refuse to do these things, we will consider your failure or refusal to be your ratification of the defect in the statement or item, unauthorized transaction or other problem and your agreement that we can charge the full amount to your account.

### **Our Investigation and Maximum Liability**

We may take a reasonable period of time to investigate the facts and circumstances surrounding any claimed loss. We do not have to provisionally credit your account while we investigate.

Our maximum liability is the lesser of your actual damages proved or the amount of the missing deposit or the forgery, alteration or other unauthorized withdrawal, reduced in all cases by the amount of the loss that could have been avoided by your use of ordinary care.

We are not liable to you for special or consequential losses or damages of any kind, including loss of profits and opportunity or for attorneys' fees incurred by you.

### **Business Insurance**

If your claim relates to a business account, you agree to pursue all rights you may have under any insurance coverage you maintain before making a claim against us in connection with any transaction involving your accounts. You will provide us with all reasonable information about your coverage, including the name of your insurance carrier, policy number, policy limits and applicable deductibles. Our liability is reduced by the amount of all insurance proceeds you receive or are entitled to receive. At our request, you agree to assign to us your rights under your insurance policy.

### **Opening a New Account**

If you or we suspect that your account is or may be compromised, we may recommend that you close your account and open a new account. If there are any unauthorized transactions on your account, we recommend that you close your account and open a new one. If we recommend that you close your account and you do not do so, we are not liable to you for subsequent losses or damages on the account due to unauthorized transactions. When you open a new account, you are responsible for notifying any third parties that need to know your new account number.

## **Foreign Items and Foreign Currency**

### **What is a Foreign Item**

A foreign item is a check or other item in any currency (including United States dollars) that is drawn on a bank or branch of a bank located outside of the United States. A foreign currency is any currency other than United States dollars. Some foreign items are payable in United States dollars. Some are payable in a foreign currency.

### **Be Cautious About Accepting Foreign Items**

You should be cautious about accepting foreign items because foreign items are not subject to United States laws or regulations. A foreign item may be returned unpaid much later (sometimes many months later) than checks or other items that are drawn on banks located in the United States. If a foreign item is returned to us unpaid or there is some other problem with the foreign item, you are responsible for the item and you may incur a loss.

### **Currency Exchange Rates**

We may receive transactions related to your account or relationship with us for which we determine that it is appropriate to convert the transaction from a foreign currency to United States dollars or from United States dollars to a foreign currency. As an example, we receive a wire denominated in a foreign currency for credit to your account. When we decide to convert a transaction, we may determine in our discretion the currency exchange rate and then assign that currency exchange rate to your transaction without notice to you. You agree to this procedure and accept our determination of the currency exchange rate.

We may consider many factors in setting our currency exchange rates. Some of these factors are exchange rates set by others, our desired rates of return, market risk and credit risk. We are not liable to you if our currency exchange rates are different from rates offered or reported by third parties; offered by us at a different time, at a different location or for a different transaction amount; or which involve different payment media (such as bank-notes, checks and wire transfers). You acknowledge that:

- our currency exchange rates for retail and commercial transactions, and for transactions effected after our regular business hours or on weekends, are different (and usually less favorable to you) from the exchange rates for large inter-bank transactions effected during a business day (the rates reported in *The Wall Street*

*Journal* or elsewhere are usually for large inter-bank transactions);

- currency exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from our rates; and
- currency exchange rates can be highly volatile and may change frequently during a day.

You assume all risks relating to or arising from fluctuations in the exchange rates between currencies.

### **Wires Sent to a Foreign Currency Account**

When you send a wire denominated in United States dollars to an account denominated in a foreign currency, an intermediary bank or the receiving bank may convert your wire into the applicable foreign currency and we may receive compensation in connection with any such conversion. When this occurs, the intermediary bank or the receiving bank determines in their discretion the currency exchange rate. We are not responsible for the exchange rate set by an intermediary bank or the receiving bank.

### **You May Not Write Foreign Currency Checks**

You may not write checks or give other withdrawal orders on your account, which order payment in a foreign currency. If we receive such a check or order, we may refuse to accept or process it without any liability to you.

### **Processing and Collecting Foreign Items**

We may refuse to accept a foreign item for deposit or collection. If we accept a foreign item for deposit or collection, you assume all the risks relating to or arising from: the collection process, a late return and changes in currency exchange rates. If we accept a foreign item for deposit or collection, we may decide not to credit the value of the foreign item to your account until we receive the proceeds in cleared funds from the paying bank. However, if we do credit your account, the credit is provisional and we may reverse the credit at any time.

If we accept an item for deposit which we later determine to be a foreign item, we may decide that the item needs to be sent for collection. If so, we may reverse any credit given for the item and mail the foreign item to you at the address we have for your account statement. You may ask us to send the item for collection.

When we send a foreign item for collection, you understand that the foreign item is sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control. As examples, we are not liable a default by any bank or agent involved in the collection

process or for the loss of the foreign item in transit. We may send the foreign item through a correspondent bank or directly to the paying bank. We may deduct our fees and the fees and charges assessed by the paying bank and any agents involved in the collection process from any amount collected or from your account.

If you request, we will try to determine the status of a collection. You agree to pay all fees and charges related to such a request. We may refuse your request if less than 30 business days have passed since we first processed the collection.

If a foreign item is returned to us unpaid for any reason at any time or is initially paid but then subsequently returned unpaid, we may charge your account for the foreign item and mail the foreign item to you at the address we have for your account statement. Even though the item is returned unpaid, we may charge you for our collection fees and for fees and charges assessed by the paying bank and any agents involved in the collection process.

When we credit your account for a foreign item, we use our applicable currency exchange rate on the day we credit the item to determine the amount of the credit. When we reverse a credit for a foreign item, we use our applicable currency exchange rate on the day we reverse the credit to determine the amount of the debit. Currency exchange rates are highly volatile and our rate on the day of the credit is likely to be different (sometimes very different) than our rate on the day of the debit. You understand and agree that this may result in a currency exchange loss to you.

## Other Terms and Services

### Account Changes

You must notify us of any change to your name or address. If you do not provide notice of change of address, we may send notices, statements and other correspondence to you at the address maintained on our records for your account and you agree to indemnify us and hold us harmless for doing so.

You agree to notify us in writing of any change in ownership or authorized signers of your account or if an owner or authorized signer on the account dies or is adjudicated incompetent.

If there is more than one owner and/or authorized signer on the account, any one account holder or authorized signer may request the account be closed without consent of any other account holder or authorized signer. Further, any one account holder may request, and we may, at our option, permit removal of any account holder or authorized signer without consent of any other account holder or authorized signer on the account.

You acknowledge that we may, but need not, require a new signature card to be completed before any change in ownership or authorized signers becomes effective and each time you open a new account, we may require a Taxpayer Identification Number certification(s). You also acknowledge that we may require you to close your account in the event of any change in ownership or change in the authorized signers.

After we receive notice of a change and all documents we require regarding the change, we may take a reasonable period of time to act on and implement the change to your account.

### Automatic Transfer Service

You may have funds transferred automatically from most Bank of America checking or savings accounts to another Bank of America checking or savings account or to pay a Bank of America loan or credit card account or safe deposit rental fee.

Federal regulation and this Agreement place limits on the number of automated transfers you may make from savings accounts each month. Please see "Limits on Withdrawals and Transfers from Savings Accounts". Certain other restrictions apply.

You must schedule transfers to pay a Bank of America loan for the due date each month, in most other cases, you may schedule transfers periodically on the dates and for the amounts that you specify. Transfers can only be made on a business day. If a scheduled transfer date falls on a weekend or bank holiday, we may make the transfer on the next business day. If we are unable to complete a transfer because you do not have enough available funds in your account, we may cancel this service.

### Check and Deposit Slip Forms

We offer checks, withdrawal forms and deposit slips in a number of styles and at various prices. We recommend that you use checks and other forms that we provide.

You are responsible for verifying the accuracy of all information on your checks and other forms, whether obtained through others or us. Our liability, if any, for any printing errors on checks or other forms obtained through us is limited to the cost of replacing the forms. We are not liable for any claims, costs, losses or damages you may incur when you use checks or other forms not obtained through us. Check deposits with a retired routing number will be returned unpaid.

We may refuse to accept checks or other forms that you create or someone else provides that do not meet our then current specifications, even if they meet our specifications at the time they were initially drawn. You may obtain a copy of our printing specifications by calling the telephone number on your statement or asking your account representative. These specifications include the magnetically encoded numbers, the size of the check and the weight, color and type of paper. If you create or obtain checks or other forms from someone else and our automated check processing systems are unable to read or process them, we may refuse to accept them and we may charge you a fee for each check or other item that we are unable to read or process through our automated systems.

### Check Copies

We generally keep a copy of each check we post to your account for seven years from the date the check posts to your account. We have no obligation to retain the original check. We typically keep the copies on microfilm or as a digital image. If a copy is unavailable or of poor quality, we are not liable to you for any claim, cost, loss or damage of any kind. After seven years, we may destroy the copies.

**Requesting Copies** You may request a copy of a canceled check by calling us at the number for customer service on your statement. To produce a copy, we need the account number, check number, exact amount of the check, and date the check was paid. This information is on your statement. Generally, we will mail or make a copy available within seven business days. If we need more time, we will tell you. A fee may apply to each check copy. Please see the *Schedule of Fees* for your account. If a check that you wrote was converted to an electronic debit, then the check was not sent to us for processing so we do not have a copy. We list these electronic debits on your account statement.

### Compliance

You agree to comply with applicable laws and regulations. You may not use your account or related services for any illegal transactions or activity, for example those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et. seq. You agree to indemnify us from every action, proceeding, claim, loss, cost and expense (including attorney's fees) suffered or incurred by us due to any U.S. or foreign government entity seizing, freezing or otherwise asserting or causing us to assert control over any account or funds in an account of yours (or ours) when purportedly caused by, or arising out of, your action or inaction. This will apply whether or not such action is ultimately determined to be authorized under the laws of the U.S. or its territories, or of any foreign jurisdiction. We are not required to inquire or determine the authority of any action taken by the U.S. or foreign government entity prior to acceding to any legal process initiated by it.

Please note that your agreement to comply with applicable laws and regulations includes United States economic sanctions laws and regulations, including regulations issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, and Executive Orders issued by the President of the United States.

### Conflicting Demands and Disputes

We are not required to make payment from an account to a signer, a payee, a beneficiary of a trust account or Payable on Death (POD) account, or to any other person claiming an interest in any funds in the account:

- if we have actual knowledge of, or otherwise believe in good faith that there may be a bona fide dispute between the signers, beneficiaries, payees, or other persons concerning their rights to the account proceeds or
- if we are otherwise uncertain as to who is entitled to the account funds.

We may notify all signers, beneficiaries, payees, and other persons claiming an interest in the account of the dispute or uncertainty without liability to you.

We also may, at our option and without liability to you, take one or more of these actions:

- continue to rely on current signature cards and other account documents;
- honor the competing claim upon receipt of evidence we deem satisfactory to justify such claim;
- freeze all or part of the funds until the dispute is resolved to our satisfaction;



- close the account and distribute the account balance, subject to any bank claims, to each claimant payable jointly, or payable individually in equal shares to each claimant;
- pay the funds into an appropriate court for resolution; or

- refuse to disburse any funds in the account to any person until such time as: all persons claiming an interest in the account consent in writing to a resolution of the dispute; or a court of proper jurisdiction authorizes or directs the payment; or the person with a conflicting claim withdraws his or her claim in writing.

You are liable for all expenses and fees we incur, including attorneys' fees, and we may charge them to your account.

#### Converting an Account

We may convert your account to another type of account, revoke privileges or close your account:

- if you make frequent transactions on a savings account;
- if your account frequently has debits against uncollected funds;
- if your account has excessive deposit activity;
- if you use a personal account for business purposes; or
- when we consider it appropriate or necessary to do so.

If we discontinue your type of account, we may convert your account to another type of account. We may also convert your account to another type of account based on our evaluation of how you use the account. If we convert your account, we will send you information about your new account.

#### Cutoff Time for Receipt of Orders

Our cutoff time for receipt at a financial center of an order relating to your account is 10:00 a.m. local time or, if later, one hour after the financial center opens each business day. Orders include a stop payment order or postdating order, restraining order, writ of attachment or execution, levy, garnishment and any similar order.

The cutoff time relates to our obligation to pay or return checks and other items. If we receive an order before this cutoff time, we may review items presented for payment against your account on the previous business day to determine whether we need to return any of them to comply with the order. If we receive the order after the cutoff time, we may not review items presented on the previous business day.

For example, if you give us a stop payment order after our cutoff time and the item you want to stop was previously presented for payment or otherwise before we have the opportunity to act on your order, your order comes too late to stop payment on the item. Or, if we receive a levy before the cutoff time and you do not have enough funds in your account to cover both the levy and all items presented against your account the previous business day, we may return one or more items and apply the funds to the levy.

#### Death or Incompetence

You agree to notify us promptly if any owner or authorized signer on your account dies or is declared incompetent by a court. Until we receive a notice of death or incompetence, we may act with respect to any account or service as if all owners, signers or other persons are alive and competent and we will not be liable for any actions or inactions taken on that basis.

If you give us instructions regarding your account, and you or another owner of the account subsequently dies or is declared incompetent, we may act on the instructions unless we receive written notice of death or incompetency prior to honoring such instructions.

When we receive a notice that an owner has died or been declared incompetent, we may place a hold on your account and refuse to accept deposits or permit withdrawals. We may hold any funds in your account until we know the identity of the successor.

If a deposit — including salary, pension, Social Security and Supplemental Security Income (SSI) — payable to the deceased owner is credited to the account after the date the deceased owner died, we may debit the account for the deposit and return it to the payer.

We may accept and comply with court orders, and take direction from court appointed personal representatives, guardians, or conservators from states other than where your account was opened or where the account, property or records are held. We reserve the right to require U.S. court documents for customers who reside outside of the U.S. at time of incompetence or death.

#### Facsimile Signature

A facsimile signature can be a convenient method for signing or endorsing documents and other items. If you use a facsimile signature, you are responsible for any withdrawal from your account that bears or purports to be the signature of a person authorized to withdraw funds. We will not be liable to you if use of the facsimile device (or similar device utilized to affix your signature) was unauthorized. You are responsible even if the

size, or color of the facsimile signature is different from that of any signature previously presented to us. We may pay the withdrawal and may charge your account for it. You agree to reimburse us (and we may charge your account) for all claims, costs, losses and damages, including attorneys' fees, that result from our payment of a withdrawal bearing either a facsimile that resembles or purports to bear your signature or a facsimile that we believe you authorized.

#### Deposit Bank Assessment

For some business accounts, Bank of America may, at our discretion, charge you a Deposit Bank Assessment on your average positive ledger balances. The assessment rate is variable and we may change it at any time without notice.

#### Fingerprint

If a person to whom you gave your check asks us to cash the check, we may require them to place their fingerprint on the check. If they refuse to provide their fingerprint, we may refuse to cash the check. We have no liability to you for refusing to cash the check.

#### "Freezing" Your Account

If we decide to close your account, we may freeze it. If we do this, we may in our discretion either accept or return deposits, checks and other items that we receive after we freeze your account without being liable to you.

If at any time we believe that your account may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our discretion, freeze the funds in the account and in other accounts you maintain with us, without any liability to you, until such time as we are able to complete our investigation of the account and transactions. If we do freeze your account funds, we will provide notice to you as soon as reasonably possible.

Notice may be made by mail or verbally or provided by other means such as via Online Banking or text alerts as permitted by law or by updated balance information. We may not provide this notice to you prior to freezing the account if we believe that such notice could result in a security risk to us or to the owner of the funds in the account.

#### Indemnification and Limitation of Liability

You agree to reimburse us for all claims, costs, losses and damages (including fees paid for collection) we may incur with respect to overdrafts or returned deposits in connection with your account.

We are not liable to you for errors that do not result in a financial loss to you. We may take any action authorized or permitted by this Agreement without being liable to you, even if such action causes you to incur fees, expenses or damages.

We are not liable to you for any claim, cost, loss or damage caused by an event that is beyond our reasonable control. In particular, we are not liable to you if circumstances beyond our reasonable control prevent us from, or delay us in, performing our obligations for a service, including acting on a payment order, crediting a funds transfer to your account, processing a transaction or crediting your account. Circumstances beyond our reasonable control include: a natural disaster; emergency conditions, such as fire, theft or labor dispute; a legal constraint or governmental action or inaction; the breakdown or failure of our equipment for any reason, including a loss of electric power; the breakdown of any private or common carrier communication or transmission facilities, any time-sharing supplier or any mail or courier service; the potential violation of any guideline, rule or regulation of any government authority; suspension of payments by another bank; or your act, omission, negligence or fault.

Except as limited by applicable law, we are not liable for special, incidental, exemplary, punitive or consequential losses or damages of any kind.

Our liability for a claim will be limited to the face value of an item or transaction improperly dishonored or paid or the actual value of any deposits not properly credited or withdrawals not properly debited.

You agree that the amount of any claim you have against us in connection with any account or transaction with us, whether brought as a warranty, negligence, wrongful dishonor or other action, is subject to reduction to the extent that: 1) negligence or failure to use reasonable care on your part, or on the part of any of your agents or employees, contributed to the loss which is the basis of your claim; and 2) damages could not be avoided by our use of ordinary care.

Any loss recovery you obtain from third parties on a particular claim will reduce the amount of any obligations we may have to you on that claim and you will immediately notify us of any such recovery. You agree to pursue all rights you may have under any insurance policy you maintain in connection with any loss and to provide us information regarding coverage. Our liability will be reduced by the amount of any insurance proceeds you receive or are entitled to receive in connection with the loss. If we reimburse you for a loss covered by insurance, you agree to assign us your rights under the insurance to the extent of your reimbursement.

### Legal Process – Subpoena and Levy

"Legal process" includes a writ of attachment, execution, garnishment, tax withholding order, levy, restraining order, subpoena, warrant, injunction, government agency request for information, search warrant, forfeiture or other similar order.

We may accept and comply with legal process: served in person, by mail, by facsimile transmission, or by other means; or served at locations other than the location where the account, property or records are held. You direct us not to contest the legal process. We may, but are not required to, send a notice to you of the legal process. We do not send a notice if we believe the law prohibits us from doing so.

We may hold and turn over funds or other property to the court or creditor as directed by the legal process, subject to our right of setoff and any security interest we have in the funds or other property. We do not pay interest on the funds during the period we hold them pursuant to legal process, if we hold or turn over funds, we may without any liability to you return checks and other items unpaid and refuse to permit withdrawals from your account. If the legal process applies to a time deposit account, we may charge the applicable early withdrawal penalty for funds taken from the time deposit.

We may charge your account a fee for each legal process. You agree to pay us for fees and expenses (including administrative expenses) that we incur in responding to any legal process related to your account, such as expenses for research and copying of documents. The fees and expenses may include attorneys' fees. We may deduct these fees and expenses from any of your accounts without prior notice to you, if the legal process directs us to release information about one or more, but not all, accounts that are reported on a combined statement, we may release the entire combined statement, even though other accounts reported on the combined statement are not covered by the legal process. If the legal process requests information about one or more, but not all, account owners or signers, we may release information about all co-owners or signers on the account, even though some of the other co-owners or signers are not covered by the legal process.

We may produce documents held at, or provide access to property that is located in, any of our facilities or any facility operated by a third party on our behalf, even if the facility is not designated as the place to be searched in the legal process.

We have no liability to you if we accept and comply with legal process as provided in this section or by law.

### Multiple Signatures Not Required

We may act on the oral or written instructions of any one signer on the account. Each signer may make withdrawals, write checks, transfer funds, stop payments, obtain ancillary services (e.g., electronic fund transfer services or wire transfers), and otherwise give us instructions regarding your account. We may require written authorization for some actions.

We do not assume a duty to enforce multiple signature requirements that you may agree upon among yourselves, if you indicate on your checks or signature card or other account documents that more than one signature is required for withdrawal, this indication is for your own internal procedures and is not binding on us.

We may disregard any instructions to permit withdrawals only upon more than one signature with respect to checks, electronic fund transfers or other debit/withdrawal requests. We may pay out funds from your account if the check, item, or other withdrawal or transfer instruction is signed or approved by any one of the persons authorized to sign on the account. We are not liable to you if we do this.

### Notice of Withdrawal

Federal regulations require us to retain the right to require all savings and all NOW account depositors to give seven days' written notice before making a withdrawal. It is unlikely, however, that we would require this notice.

### Powers of Attorney/Appointment and Payment to Agents

You may decide to appoint someone to act for you as your agent or attorney-in-fact ("agent") under a power of attorney. Please note that the form must be satisfactory to us in our discretion and unless prohibited by law, we may refuse, with or without cause, to honor powers of attorney that you grant to others.

For our customers' convenience we have a banking power of attorney form, which is available at many of our financial centers. If your state has a statutory form power of attorney, we also generally accept that form. We may, however, accept any form that we believe was executed by you and act on instructions we receive under that form without any liability to you. You agree to reimburse us for all claims, costs, losses and damages that we incur in accepting and acting on any power of attorney form that we believe you executed.

We may pay any funds deposited in your account to your agent or upon the order of your agent. When we accept a power of attorney, we may continue to recognize the authority of your agent to act on your behalf without question until we receive

written notice of revocation from you or notice of your death or incapacity and have had a reasonable time to act upon it. We will not be liable for action in accordance with the most current documentation if we have not received such notice.

We may require a separate form for each agent and for each account for which you want to grant power of attorney. We may require your agent to present the original form and refuse to act on a copy. In some cases, we may require that your agent confirm in an affidavit that the power has not been revoked or terminated or that you register the power with the appropriate recording authorities. We may restrict the types or sizes of transactions we permit your agent to conduct.

The authority of your agent to receive payments, transact on or otherwise make changes to your account generally terminates with your death or incapacity, unless the document creating such agency provides, in accordance with applicable law, that the agent's powers continue in spite of your incapacity.

### Records

We may in our discretion retain records in any form including, without limit, paper, film, fiche, digitalized or other electronic medium. If we are not able to produce the original or a copy of your signature card or any other document relating to your account or service, our records (including our electronic records) will be deemed conclusive. If there is a discrepancy between your records and our records, our records will be deemed conclusive.

### Right of Setoff

We may take or setoff funds in any or all of your accounts with us and with our affiliates for direct, indirect and acquired obligations that you owe us, regardless of the source of funds in an account. This provision does not apply to IRA or tax-qualified retirement accounts, to consumer credit card obligations or where otherwise prohibited by law. Your accounts include both accounts you own individually and accounts you own jointly with others. Our setoff rights are in addition to other rights we have under this Agreement to take or charge funds in your account for obligations you owe us.

If the law imposes conditions or limits on our ability to take or setoff funds in your accounts, to the extent that you may do so by contract, you waive those conditions and limits and you authorize us to apply funds in any or all of your accounts with us and with our affiliates to obligations you owe us.

We may use funds held in your joint accounts to repay obligations on which any account owner is liable, whether jointly with another or individually. We may use funds held in your individual accounts to repay your obligations to us, whether owed by you individually or jointly with another, including:

obligations owed by you arising out of another joint account of which you are a joint owner, even if the obligations are not directly incurred by you; obligations on which you are secondarily liable; and any amounts for which we become liable to any governmental agency or department or any company as a result of recurring payments credited to any of your accounts after the death, legal incapacity or other termination of entitlement of the intended recipient of such funds. If you are a sole proprietor, we may charge any of your personal or business accounts.

If we take or setoff funds from a time deposit account, we may charge an early withdrawal penalty on the funds withdrawn.

We may take or setoff funds from your account before we pay checks or other items drawn on the account. We are not liable to you for dishonoring items where our action results in insufficient funds in your account to pay your checks and other items.

Some government payments may be protected from attachment, levy or other legal process under federal or state law. If such protections may apply, to the extent that you may do so by contract, you waive these protections and agree that we may take or setoff funds, including federal and state benefit payments, from your accounts to pay overdrafts, fees and other obligations you owe us.

This section does not limit or reduce our rights under applicable law to charge or setoff funds in your accounts with us for direct, indirect and acquired obligations you owe us.

### Sample of Your Signature

To determine the authenticity of your signature, we may refer to the signature card or to a check or other document upon which your signature appears. We may use an automated process to reproduce and retain your signature from a check upon which your signature appears.

If you create your own checks, or obtain them from someone else, and we cannot accurately verify your signature on a check by comparing it with a check that posted to your account, you are responsible for any losses that may result from our inability to use that check to verify your signature.

### Stop Payment Orders and Postdated Orders

**Acceptance of Stop Payment Orders.** If we have not already paid a check or other item that is drawn on your account, then at your request and risk we may accept a stop payment order on it. If you request a stop payment on a check or other item in a financial center, we may require identification such as a Bank of America debit card with photo and a secondary form of identification. You may not stop payment on a point of sale transaction or an ATM withdrawal or transfer.

**Postdated Orders** if you write a postdated check (that is — you put a future date on the check), you may ask us not to pay the check before its date by giving us a stop payment order. Otherwise, we may pay it and deduct the amount from your account even if it is presented for payment before its date. If we receive a postdated check that is subject to a stop payment order, we may return the check "payment stopped," "refer to maker," or with a similar designation.

**Placing A Stop Payment Order** We may accept a written or oral stop payment order from any person who has a right to withdraw funds from the account. We may require you to complete a form authorizing the order. You must give us sufficient notice and information so that we have a reasonable opportunity both to verify that the item is unpaid and to act on your request. We may charge you a fee for each stop payment order and each renewal of the order.

We use a computer system to identify items. Therefore, to place a stop payment order on a check or draft, we need specific information to process the request, such as the account number, the routing number, the name of the party to whom the item was made payable, the item number and the exact amount of the item — in dollars and cents. If you give us the wrong amount (even one penny off) or the wrong item number, we may pay the item. We may also require the date of the item, the name of the person who signed or authorized the item, and the name of the party to whom the item was made payable. We may use only a portion of the required information to identify an item. Please see the *Additional Information about Stop Payments for Preauthorized (Recurring) Electronic Funds Transfers* section for information about how to stop these types of payments.

In some cases, we may pay an item even if an order is in effect. For example, if one of our financial centers, without notice of your request, pays a check that you have asked us to stop, we may still pay the check.

A stop payment order generally expires after six months. However, we may, in our sole discretion, elect to honor a stop payment order for a longer period of time without notice to you. If you want the order to continue after six months, you must ask us to renew the order. Each request for a renewal is treated as a new order. If you want the order to expire in less than six months, you must ask us to cancel the order on or after the date you want it to expire. We may accept a written or oral instruction to cancel the order. Your request to cancel the order is not effective until we have a reasonable opportunity to act on it. We cancel the order automatically when the account on which the item is drawn is closed. If the item is presented

to us for payment after the stop payment order expires, we may pay the item.

If we pay an item subject to a valid and timely stop payment order, we may be liable to you if you had a legal right to stop payment and you establish that you suffered a loss because of the payment. Our liability, if any, is limited to the actual loss suffered, up to the amount of the item. You must prove the loss to our satisfaction. We are not liable to you for any special, incidental or consequential loss or damage of any kind.

**Additional Information about Stop Payments for Preauthorized (Recurring) Electronic Funds Transfers** If you have told us in advance to make regular payments out of your account (such as recurring debit transactions) or if you have authorized someone else to debit your account through the ACH system, you can stop these payments.

Here's how: Call us at 1.800.432.1000 or write us at Bank of America Customer Service, P.O. Box 25118, Tampa, FL 33622.

You must notify us in time to receive your request at least three business days before the payment order is scheduled to be made. If you call us to stop the payment, we may require you to confirm the request in writing. If you do not notify us in writing, we may remove the stop payment after 14 days. We may charge you a fee for each stop payment order you give.

Stop payment orders for preauthorized (recurring) payments do not expire without action on your part, including recurring debit card and ACH transactions. Should your debit card number change, please contact us to place a new stop payment on the transaction on your new card.

To place a stop payment order on an ACH debit, we may require you to provide your name and telephone number, the type of account (checking or savings), and the exact company name used by the sender of the ACH debit, and some of the other information listed under *Placing a Stop Payment Order*. You can obtain the company name used by your sender from your statement by looking at a prior ACH debit from this sender that posted to your account.

If you do not know the amount of the ACH debit, we may still be able to place the stop payment order based on the company name of the sender, but this may stop all ACH items from this sender. If you give us the wrong company name or if the sender changes the company name, we may pay the item.

To place a stop payment on other preauthorized (recurring) transactions, you must give us the identifying information we request. You may be able to give us a specific expiration date for certain stop payment orders if you choose to do so.

You must notify the payee that you have withdrawn your authorization for any preauthorized (recurring) transaction.

#### **Notice of Varying Amounts**

If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to receive this type of notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

#### **Liability for Failure to Stop Payment**

If you order us to stop a preauthorized payment three business days or more before the transfer is scheduled, and you have given us all of the information we requested, and we do not stop the payment, we will be liable for your losses or damages directly caused by our failure to stop the payment.

#### **Subaccounts**

For regulatory accounting purposes, we may classify checking accounts as two subaccounts: a checking subaccount and a savings subaccount. For interest bearing checking accounts, we calculate and pay interest at the same rate and in the same way on both subaccounts. For non-interest bearing checking accounts, we do not pay interest on either subaccount. We may transfer funds between these subaccounts. We record the subaccounts and any transfers between them on our internal accounting records only. Otherwise, the subaccounts are subject to the same terms as the checking and savings accounts described in this Agreement.

#### **Unclaimed Property — Accounts Presumed Abandoned or Inactive**

State and federal law and our policy govern when accounts are considered abandoned. The applicable state law is generally the state listed in the address for your account statement.

Your account is usually considered abandoned if you have not performed at least one of the following activities for the period of time specified in the applicable state's unclaimed property law: made a deposit or withdrawal, written to us about the account, or otherwise shown an interest in the account, such as asking us to keep the account active. You usually need to perform the activity. Therefore, bank charges and interest payments, and automatic deposits and withdrawals, are usually not considered activity.

We are required by the unclaimed property laws to turn over accounts considered abandoned to the applicable state. Before we turn over an abandoned account, we may send a notice to the address we currently show for the account statement. We may not send this notice if mail we previously sent to this

address was returned. Unless prohibited by the applicable state law, we may charge to the account our costs and expenses of any notice, advertisement, payment and delivery of the account to the applicable state agency.

After we turn the funds over to the state, we have no further liability to you for the funds and you must apply to the appropriate state agency to reclaim your funds.

If we consider your account inactive, then (unless prohibited by federal law or the law of the state where we maintain your account) we may:

- charge dormant account fees on the account in addition to regular monthly maintenance and other fees;
- stop sending statements;
- if the account received interest, stop paying interest on the account; and
- refuse to pay items drawn on or payable out of the account.

If you re-establish contact with us, we do not have to reimburse you for these fees and we are not liable to you for any interest that would otherwise have accrued on your account.

#### **Verification of Transactions and Right to Reverse Transactions**

Transactions, including those for which we provide a receipt, may be subject to subsequent verification and correction, though we reserve the right not to do so in every case. We do not verify a deposit at the teller window so the receipt that you receive at the time of your deposit is not evidence that your deposit has been verified. We may reverse or otherwise adjust any transaction (both credit and debit) that we believe we erroneously made to your account at any time without prior notice to you, if we opt to do so.

#### **Waiver, Severability, and Change of Law by Agreement**

We may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right. No delay in enforcing our rights will affect your obligation to pay us fees and other amounts you owe us under this Agreement. If we waive a provision of this Agreement, the waiver applies only in the specific instance in which we decide to waive the provision and not to future situations or other provisions regardless of how similar they may be.

**Severability** A determination that any part of this Agreement is invalid or unenforceable will not affect the remainder of this Agreement.

**Change of Law by Agreement** If any part of this Agreement is inconsistent with any applicable law, then to the extent the law

can be amended or waived by contract, you and we agree that this Agreement governs and that the law is amended or waived by this Agreement.

## Electronic Banking Services

We offer a variety of electronic banking services for use with your deposit accounts. We describe some in this section and also provide certain disclosures that apply to use of an electronic banking service with personal deposit accounts. We provide separate agreements to you that govern the terms of some services, including separate agreements for ATM and debit cards and Online and Mobile Banking services. Please review the following provisions and the separate agreement for the service.

### Types of Electronic Banking Services

#### ATM and Debit Cards

We may issue you an ATM or debit card (either is called a "card") and a personal identification number (PIN) when you open your account. The terms that govern this service are in a separate agreement that you receive with your card. Please review that agreement carefully.

There are daily dollar limits for withdrawals and purchases. We provide your card limits to you as part of the separate agreement for card services. We may occasionally decide not to issue a card or code to a customer. We may suspend or terminate a card or code at any time without cause or notice.

The following information is a summary of how you can use your card. Some of these uses may not be available with every card or at every ATM or other terminal.

**At ATMs** You can use your card with linked accounts at participating ATMs to withdraw cash, transfer funds, and find out balances. At most ATMs that are prominently branded with the Bank of America name and logo, you can also use your card and PIN with linked accounts to make deposits and make payments to qualifying Bank of America credit cards and loans.

**At participating merchants** You can use your card with linked accounts at participating merchants to purchase goods and services. Some merchants may also permit you to withdraw cash from your checking account while making a purchase.

**At participating financial institutions** You can use your card with linked accounts at participating financial institutions to obtain a cash withdrawal from a teller.

**Payments, Credits, and Transfers** You can send or receive electronic transfers from or to your accounts. We may do this by ACH (as a member of a national or local automated clearing

house association) or other similar networks. Electronic transfers may take various forms, such as:

- Automatic electronic deposits to your account, such as payroll or benefits payments;
- Automatic one-time or repeating charges to your account for bill payments, sent by a merchant or other payee with your authorization. The merchant or payee may ask you for bank number and account information from your check or a canceled check to create these orders; and
- A "check conversion" transfer, where a merchant or other payee uses a check that you have written to create an electronic transfer from your account. The merchant may either keep the check you wrote or return it to you.

**Online and Mobile Banking** Online and Mobile Banking services are governed by a separate agreement. You receive the agreement for the service at the time you enroll. You can use these services with linked accounts to view your account information, make deposits, transfer funds between your accounts and to the accounts of others, pay qualifying loans or credit cards, and make payments from your account to third parties. You can enroll for these services on our website [www.bankofamerica.com](http://www.bankofamerica.com).

**Telephone Banking** You may use our automated customer service system with an Access ID or speak to a telephone banker to get your account information, transfer funds between your accounts with us, and pay qualifying loans or credit cards.

#### Access ID

An Access ID is a numeric code which, when used with a separate PIN number or passcode (plus, in some circumstances, another piece of identifying information called a "verbal verification code"), enables consumer and small business customers to do the following through our automated telephone system or in person at a financial center:

- obtain information about deposit and credit accounts that are linked to the Access ID
- transfer funds and make payments between linked accounts; and
- obtain other services such as stop payments, check reorders, and copies of checks and statements

You may request an Access ID and related security codes by calling customer service or at any financial center. Please note that Access IDs may not be available to customers in all states. In some states, individual account numbers, com-

bined with additional security codes, may be required to obtain account information and transact other business.

Two activity levels are available for most accounts linked to your Access ID:

- (1) Inquiry: Allows you to obtain account balances and transaction information.
- (2) Financial: Allows you to obtain account information, transfer funds among accounts linked to the Access ID, and obtain certain other banking services.

When you first choose your Access ID, and when you subsequently open any new accounts, we will link all your Bank of America accounts that are eligible, and assign the financial activity level to all accounts for which that activity level is available, unless you tell us otherwise. We may establish certain limits on the accounts that can be linked to your Access ID and that can have the financial activity level.

If you permit another person to use your Access ID or account number(s) and related code(s), you are responsible for all transactions conducted by that person (even if he or she exceeds your authorization), until you notify us that the person is no longer authorized so that we may block the codes and issue new ones.

You must review your periodic statements and promptly report to us any unauthorized funds transfers initiated through the use of your security codes or otherwise. You must also promptly notify us of any suspected loss or theft of your security codes. Failure to take these actions may affect the extent of your liability for any unauthorized transfers under federal banking regulations or other applicable laws.

**Small Business Access IDs** If you are a small business customer, to uniquely identify each person who initiates a request for banking services, you should establish a separate Access ID and related security codes for each person who you determine needs access to your accounts. Your authorization (whether express or implied) for any individual to establish an Access ID shall constitute your authorization for the bank to provide account information to such individual and (unless inquiry only access is selected) to transfer funds and conduct other banking transactions upon that person's request. Such authorization supersedes any resolution, signature card or other document filed with the bank that purports to limit authority over any of your accounts, whether currently on file or submitted or modified in the future, unless the Access ID authorization is expressly modified or revoked.

### Electronic Banking Disclosures

**Personal deposit accounts** Our Personal Schedule of Fees describes our personal deposit accounts. This Electronic Banking

Disclosures section explains provisions that apply to electronic fund transfers to or from personal deposit accounts (sometimes referred to as "consumer deposit accounts"). These transfers are governed by Regulation E, which implements the federal Electronic Fund Transfer Act. A personal deposit account is an account that is owned by a natural person and that is established primarily for personal, family, or household purposes.

**Business deposit accounts** Our Business Schedule of Fees describes our business deposit accounts. Business deposit accounts are accounts that are established primarily for business purposes. When you open one of our business deposit accounts, you represent and agree to that you are establishing it primarily for business purposes. Provisions below that explain a consumer's liability for unauthorized transfers do not apply to business deposit accounts, although as a matter of practice we generally follow the error resolution procedures described in this *Electronic Banking Disclosures* section for business purpose accounts. Please note that we are not required to follow these procedures for business accounts and that we may change our practice at any time without notice.

#### Consumer's Liability for Unauthorized Transfers

Tell us AT ONCE if you believe your card or your personal identification number (PIN) or other code has been lost or stolen. Also, tell us AT ONCE if you believe that an electronic fund transfer has been made without your permission using information from your check. The best way to keep your possible losses down is to call us immediately.

Your losses could include all of the money in your account plus, if you have an overdraft protection plan linked to your account, any transfers from another account or any advances on a credit line.

If you tell us within two business days after you learn of the loss or theft of your card or code, you can lose no more than \$50 if someone uses your card without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code, and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

**Note:** These liability rules are established by Regulation E, which does not apply to business deposit accounts. For personal

deposit accounts, our liability policy regarding unauthorized debit card or ATM card transactions, and unauthorized Online Banking transactions may give you more protection, provided you report the transactions promptly. Please see the agreement you receive with your ATM or debit card and the Online Banking agreement. You should never write your PIN on your card or carry the PIN with you. This reduces the possibility of someone using your card without your permission if it is lost or stolen.

If you give, or make reasonably available, your card, PIN or other access device or code to anyone, you may be liable for any use made of such until you advise us that such person is not authorized to use them.

Also, the state law applicable to your account may give you more time to report an unauthorized transaction or may give you more protection. For example, in Massachusetts, the two day and 60 day time limits for reporting unauthorized transactions do not apply and the \$500 limit does not apply.

#### **Contact in Event of Unauthorized Transfer; and Lost or Stolen Card, PIN or Other Code**

If you believe your card, PIN or other code is lost or stolen, or learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, notify us immediately by calling the number listed below.

Telephone: 1-800-432-1000

You can also write to us at: Bank of America, P. O. Box 53137, #7405, Phoenix, AZ 85072-3137

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

If unauthorized activity occurs, you agree to cooperate during the investigation and to complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

**Business Days** For purposes of these electronic banking disclosures, our business days are Monday through Friday. Weekends and bank holidays are not included.

#### **Documentation of Transfers**

**Receipts** You can usually get a receipt at the time you make any transfer to or from your account at an ATM or point of sale terminal. You may not get a receipt for small dollar transactions. Transactions may be verified by us (though) we reserve the right not to do so in every case, so the receipt is not final and our records will control if there is a conflict.

**Unauthorized Credits** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at

1-800-432-1000 to find out whether or not the deposit has been made.

**Periodic Statements** We send you a monthly account statement unless there are no electronic fund transfers in a particular month. In any case, we send you a statement at least quarterly unless we consider your account inactive.

#### **Preauthorized Payments**

Please see the *Additional Information about Stop Payments for Preauthorized (Recurring) Electronic Funds Transfer section in the Stop Payment Orders and Postdated Orders* section of the Agreement.

#### **Liability for Failure to Make Transfers**

If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- if, through no fault of ours, you do not have enough money in your account to make the transfer.
- if the transfer would go over the credit limit on your overdraft line.
- if the ATM where you are making the transfer does not have enough cash.
- if the ATM, terminal or system was not working properly and you knew about the breakdown when you started the transfer.
- if circumstances beyond our control (such as power outages, equipment failures, fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- if the funds are subject to legal process or other encumbrance restricting the transfer.
- if we consider your account to be inactive or dormant.
- if your card or code has been revoked due to inactivity or at our discretion.

There may be other exceptions stated in our agreement with you or permitted by law.

**Confidentiality - Account Information Disclosure** We will disclose information to third parties about your account or transfers you make as stated in the *Information about You and Your Account* section near the front of this Agreement.

#### **Fees**

**ATM Fees** When you use an ATM that is not prominently branded with the Bank of America name and logo, you may be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer. We may also charge you fees.

**Other Fees** For other fees that apply to electronic banking services, please review the *Schedule of Fees* for your account and each agreement or disclosure we provide to you for the specific electronic banking service, including the separate agreement for Online and Mobile Banking services and the separate agreement for ATM and debit cards.

#### **In Case of Errors or Questions about your Electronic Transfers You May Sign into Online Banking to Report the Error Promptly, or**

Call or write us at the telephone number or address below, as soon as you can, if you think your statement or receipt is wrong, or if you need more information about a transfer listed on the statement or receipt.

Call us at 1-800-432-1000 during normal Claims Department business hours or write us at Bank of America, P. O. Box 53137, #7405, Phoenix, AZ 85072-3137.

We must hear from you **NO LATER** than 60 days after we sent you the FIRST statement on which the error or problem appeared. Please provide us with the following:

- Tell us your name and account number;
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information;
- Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point of sale, or foreign-initiated transactions, we may take up to 90 days (instead of 45) to investigate your complaint or question. For new accounts we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within 3 business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

**Notice:** As part of the security system to help protect your card and PIN, we may use hidden cameras and other security

devices to determine who is using a card at an ATM. You consent to this.

**Additional Information for Massachusetts customers:** Any documentation provided to you which indicates that an electronic fund transfer was made shall be admissible as evidence of the transfer and shall constitute prima facie proof that the transfer was made. And the initiation by you of certain electronic fund transfers from your account will effectively eliminate your ability to stop payment of the transfer. **UNLESS OTHERWISE PROVIDED IN THIS AGREEMENT, YOU MAY NOT STOP PAYMENT OF ELECTRONIC FUND TRANSFERS. THEREFORE, YOU SHOULD NOT EMPLOY ELECTRONIC ACCESS FOR PURCHASES OR SERVICES UNLESS YOU ARE SATISFIED THAT YOU WILL NOT NEED TO STOP PAYMENT.**

## ATM Safety Tips

The suggestions that follow offer some simple tips on protecting your card and PIN and exercising care when using an ATM.

### Protect Your ATM Card and Personal Identification Number (PIN)

- Always protect your card by keeping it in a safe place.
- If your card is lost or stolen, contact us immediately.
- Memorize your PIN. Do not write it on your card, keep it in your wallet or give it to anyone.
- If you choose your own PIN, avoid using numbers for your PIN that are easily identifiable (such as birth dates, telephone numbers, addresses, etc.)
- Never give information about your card or PIN over the telephone, email or the internet, unless to a trusted merchant in a call or transaction initiated by you. If someone is asking for this information, refuse and immediately contact us.
- Carefully review your account statements and report any fraudulent transactions immediately.

### Be Aware of Your Surroundings at ATMs

- Be aware of people and your surroundings before, during and after you use an ATM, particularly at night. If you think it is unsafe, leave immediately and visit another ATM.
- If you must visit an ATM at night, take someone with you.
- When using an ATM with a door that requires card access, close the door completely upon entering and exiting and do not open the door to anyone you don't know.
- When you use a drive-up ATM, keep your engine running, doors locked and only the driver's window open during the transaction.
- The activity around Bank of America ATMs may be monitored or recorded by surveillance cameras.

### Protect Your Privacy

- Shield the key pad with your hand or body while entering your PIN at an ATM.
- Put your card and receipt away immediately after completing your transaction. Do not count your cash at the ATM.
- Do not leave your transaction record at the ATM. Keep your transaction record in a safe place, so you can compare it to your statement.

### Request Emergency Assistance

- If you need emergency assistance, call 911 from the nearest telephone. If you have a complaint about the security of a Bank of America ATM, call our Corporate Security Department at 1.800.222.7511.
- Report all crimes immediately to law enforcement, if you think you're being followed from an ATM, go to a busy area and immediately contact the police.

## Funds Transfer Services

The following provisions apply to funds transfers you send or receive through us, but do not apply to electronic fund transfers governed by Regulation E, Subpart A of the Consumer Financial Protection Bureau. We provide separate agreements to you that govern the terms of some funds transfer services, including separate agreements for Online and Mobile Banking, telephone transfers, and funds transfers in the financial centers. If you have a specific agreement with us for these services, these provisions supplement that agreement to the extent these provisions are not inconsistent with the specific agreement.

The Uniform Commercial Code includes provisions relating to funds transfers. These provisions define the following terms: funds transfer, payment order and beneficiary. These terms are used here as they are defined in Article 4A of the Uniform Commercial Code -- Funds Transfers as adopted by the state whose law applies to the account for which the funds transfer service is provided. In general, a funds transfer is the process of carrying out payment orders that lead to paying a beneficiary. The payment order is the set of instructions given to us to transfer funds. The beneficiary is the person or business who receives the payment.

In addition, funds transfers sent outside of the United States that are initiated by consumers primarily for personal, family or household purposes are governed by federal law (Remittance Transfers) (see below). Effective as of the date set forth in the final rules implementing EFTA (defined below), federal law may provide rights with respect to Remittance Transfers that may vary in certain ways from the terms and conditions set forth herein. Your rights with respect to Remittance Transfers, including disclosures, error resolution and cancellation rights, will be explained to you contemporaneously with each Remittance Transfer transaction you initiate, either orally or in writing.

In general, your and our rights and obligations under this Agreement are governed by and interpreted according to federal law and the law of the state where your account is located.

However, Remittance Transfers shall be governed by federal law and, as applicable, the law of the State of New York. Funds transfers to your account or funded from your account or otherwise funded by you may involve one or more funds transfer systems, including, without limitation, Fedwire or Clearing House Interbank Payments System (CHIPS). Accordingly, notwithstanding any choice of law that may be provided elsewhere in this agreement, such transfers will be governed by the rules of any funds transfer system through which the transfers are made, as amended from time to time, including, without limitation, Fedwire, the National Automated Clearing House Association, any regional association (each an "ACH"), and CHIPS. Funds transfers through Fedwire will be governed by, and subject to, Regulation J, Subpart B, and Uniform Commercial Code Article 4A incorporated by reference thereunder. Funds transfers through CHIPS are governed by, and subject to, CHIPS Rules and Administrative Procedures and by the laws of the State of New York, including Article 4-A of the New York Uniform Commercial Code, regardless of whether the payment message is part of a transfer that is a Remittance Transfer, except that in the case of an inconsistency between New York law and EFTA, EFTA shall govern.

We may charge fees for sending or receiving a funds transfer. We may deduct our fees from your account or from the amount of the transfer. Other financial institutions involved in the funds transfer may also charge fees. For current fees, call us at the number for customer service on your statement or ask a financial center associate.

### Remittance Transfers

The Bank may execute certain payment orders for you known as Remittance Transfers. A Remittance Transfer is a wire transfer initiated by a consumer primarily for personal, family or household purposes to a designated recipient in a foreign country. Effective as of the date set forth in the final rules implementing EFTA (defined below), federal law may provide certain rights and obligations related to Remittance Transfers that may differ from rights and obligations that apply to other types of payment orders, including disclosure, cancellation and error resolution rights. To the extent the provisions of this Agreement are inconsistent with the oral or written disclosures provided to you for a Remittance Transfer governed by section 919 of the Electronic Fund Transfer Act (EFTA), 15 U.S.C. section 1693o-1, the terms of the disclosures provided at the time of the Remittance Transfer shall govern. Notwithstanding anything to the contrary contained herein, rights and obligations

that apply to Remittance Transfers are as set forth in EFTA and, as applicable, as set forth in New York law.

### Sending Funds Transfers

You may subscribe to certain services we offer or you may give us other instructions to pay money or have another bank pay money to a beneficiary. This *Sending Funds Transfers* section applies to wire transfers and transfers we make between Bank of America accounts. It does not apply to automated clearing house (ACH) system funds transfer services.

You may give us payment orders for ACH system funds transfers only if you have a separate agreement with us for those services.

**Cutoff Times for Payment Orders** We have cutoff times for processing payment orders. Cutoff times vary depending on the particular office of our bank and the type of payment order. We may treat payment orders we receive after a cutoff time as if received the next business day. We tell you our cutoff times upon request.

**Amending or Canceling Payment Orders** You may not amend or cancel a payment order after we receive it. If you ask us to do this, we may make a reasonable effort to act on your request. But we are not liable to you if, for any reason, a payment order is not amended or canceled. You agree to reimburse us for any costs, losses or damages that we incur in connection with your request to amend or cancel a payment order.

**Inconsistency of Name or Number** The beneficiary's bank may make payment to the beneficiary based solely on the account or other identifying number, even if the name on the payment order differs from the name on the account. We or an intermediary bank may send a payment order to an intermediary bank or beneficiary's bank based solely on the bank identifying number, even if the payment order indicates a different bank name.

**Sending Payment Orders** We may select any intermediary bank, funds transfer system or means of transmittal to send your payment orders. Our selection may differ from that indicated in your instructions.

**Notice of Rejection** We may reject payment orders. We notify you of any rejection orally, electronically or in writing. If we send written notices by mail, we do so by the end of the next business day.

We are not liable to you for the rejection or obligated to pay you interest for the period before you receive timely notice of rejection.

**Errors or Questions About Your Payment Orders** We notify you about certain funds transfers by listing them on your account statement. In some cases, we also may notify you electroni-

cally, in writing or by a report, produced through one of our information reporting services.

You must notify us at once if you think a funds transfer shown on your statement or notice is incorrect. You must send us written notice, including a statement of relevant facts, no later than 14 days after the date you receive the first notice or statement on which the problem or error appears.

If you fail to notify us within this 14-day period, we are not liable for any loss of interest because of an unauthorized or erroneous debit or because your statement or notice is incorrect. We are not required to compensate you, and we are not required to credit or adjust your account for any loss of interest or interest equivalent.

**Calculations** Unless otherwise prohibited by law, if we are obligated to pay for loss of interest that results from our error or delay regarding your payment order, we calculate compensation as follows. With an analyzed checking account, we credit the account to reflect the applicable value date or otherwise adjust the account under our account analysis procedure, to recalculate earnings credits for the period involved. With a non-analyzed, non-interest bearing account, we use a rate equal to the average of the Federal Funds rates set by the Federal Reserve Bank of New York, less a reserve factor. With a non-analyzed, interest bearing account, we use the rate applicable to the account. If we have a separate agreement with you specifying a different calculation method, we use that method instead.

#### Receiving Funds Transfers

We may receive instructions to pay funds to your account. We may receive funds transfers directly from the sender, through a funds transfer system or through some other communications system. This includes wire transfers, ACH transfers that may be sent through an ACH system or processed directly to an account with us, and transfers between Bank of America accounts.

**ACH Provisional Payment Rule** Under ACH rules, funds transfers sent through an ACH are provisional and may be revoked prior to final settlement. You agree to these rules. If the funds transfer is revoked before final settlement, we may charge your account for the amount credited. The person who sent the payment order is considered not to have paid you. If this happens, we do not send a separate notice; we report the information on your account statement.

**Notice of Funds Transfer** We notify you that we have received funds transfers by listing them on your account statement. We provide statements to you by mail or through Online Banking if you selected paperless delivery through Online Banking for your deposit account documents. If you use one of our information reporting services, you may receive notice through that service.

## Tax Information

Generally, we are required to report annually to you and to the Internal Revenue Service (IRS) interest payments that total \$10 or more during the year on your deposit account with us. We also be required to report this information to the appropriate state revenue authority.

When you open an account, we are required to obtain — and each U.S. citizen or resident alien must give us — a certified U.S. Taxpayer Identification Number (TIN) and information regarding your backup withholding status. When you apply for an account, you certify that you have provided the correct TIN for the account holder and the correct backup withholding status.

For individual accounts, the TIN is your Social Security Number (SSN). For individual accounts with more than one owner, we report taxpayer information for the person listed first in our records. Resident aliens who do not qualify for Social Security should provide their Individual Taxpayer Identification Number (ITIN). For other accounts, the TIN is the owner's Employer Identification Number (EIN). If you do not give us a certified name and TIN, if the IRS notifies us that the name and TIN you gave us is incorrect, or if the IRS notifies us that you failed to report all your interest and dividends on your tax return, we are required to backup withhold at the current backup withholding rate on interest paid to your account and pay it to the IRS. In some cases, a state and local tax authority may also require that we pay state and local backup withholding on interest paid to your account when we are required to pay backup withholding to the IRS. Backup withholding is not an additional tax. If you are subject to backup withholding, we are required to report to you and to the IRS regardless of the amount of the interest payment. You may claim amounts withheld and paid to the IRS as a credit on your federal income tax return.

If you are a certified nonresident alien individual, you are generally exempt from backup withholding on interest but may be subject to information reporting if you reside in a country in which we are required to report. If you are a certified foreign entity, you are generally exempt from backup withholding and information reporting for interest payments. Deposit interest income that is effectively connected with the conduct of a trade or business in the United States is subject to information reporting.

You must renew your status as an exempt foreign person or entity prior to the end of the third calendar year following the year in which you last certified your status. If you fail to renew your status by the last day of the fourth calendar year, your interest payments will be subject to backup withholding. If you become a U.S. citizen or resident after opening your account,

you must notify us within 30 days and provide us with your certified name and TIN.

We comply with Foreign Account Tax Compliance Act (FATCA) as mandated by U.S. federal tax law. We will withhold on certain payments when required by such law.

For more information or to determine how this information applies to you, consult your U.S. tax advisor.

## Resolving Claims

If you and we are not able to resolve a claim ourselves, then you and we agree that the claim will be resolved as provided in this Resolving Claims section. This is a dispute resolution provision. Please read it carefully.

### What does "Claim" Mean?

Claim means any claim, dispute or controversy (whether under a statute, in contract, tort, or otherwise and whether for money damages, penalties or declaratory or equitable relief) by either you or us against the other, or against the employees or agents of the other, arising from or relating in any way to this deposit agreement (including any renewals, extensions or modifications) or the deposit relationship between us.

Claim does not include provisional or ancillary remedies from a court of competent jurisdiction, which either you or we may exercise without waiving the right to arbitration or reference.

### How Claims on Personal Accounts will be Resolved

You and we both agree that all Claims relating to a personal account will be resolved in court by a judge without a jury, as permitted by law.

**JURY TRIAL WAIVER FOR PERSONAL ACCOUNTS FOR PERSONAL ACCOUNTS, AS PERMITTED BY LAW, YOU AND WE AGREE AND UNDERSTAND THAT YOU AND WE ARE BOTH GIVING UP THE RIGHT TO TRIAL BY JURY. THIS IS A JURY TRIAL WAIVER.**

### How Claims on Business Accounts will be Resolved

You have the right to compel us at your option, and we have the right to compel you at our option, to resolve a Claim relating to a business account by binding arbitration. If neither you nor we decide to compel arbitration, then the Claim will be resolved in court by a judge without a jury, as permitted by law. There is an exception for Claims brought in a California state court. If a Claim relating to a business account is brought in a California state court, either you or we can seek to compel the other to have the Claim resolved by general reference to a judicial referee under California Code of Civil Procedure (C.C.P.)

Section 638, as provided below. Both parties may also agree to resolve their disputes through judicial reference. The arbitration, judicial reference or trial by a judge will take place on an individual basis without resort to any form of class or representative action.

**CLASS ACTION AND JURY TRIAL WAIVER FOR BUSINESS ACCOUNTS**  
**FOR BUSINESS ACCOUNTS, YOU AND WE AGREE AND UNDERSTAND: (1) THAT YOU AND WE ARE BOTH GIVING UP THE RIGHT TO TRIAL BY JURY, AND (2) THAT THIS SECTION PRECLUDES YOU AND US FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION OR JOINING OR CONSOLIDATING THE CLAIMS OF OTHER PERSONS. THIS IS A CLASS ACTION WAIVER AND JURY TRIAL WAIVER.**

**Judicial Reference**

A case sent to judicial reference is heard by a neutral individual (a "judicial referee"), but remains in the court system subject to the same rules of procedure, discovery and evidence and appeal as any court case. The judicial referee will be an active or retired judge or attorney with more than 10 years of experience, chosen by mutual agreement of you and us.

If you and we are unable to agree on a judicial referee, then the judicial referee will be appointed according to the procedure for appointment of a referee under California C.C.P. Section 640.

The judicial referee, sitting alone without a jury, will decide questions of law and fact and will resolve the Claim. This includes the applicability of this *Resolving Claims* section and the validity of the deposit agreement.

Judicial reference will be governed by California C.C.P. Section 638 at seq. and the judicial referee will determine all issues in accordance with federal and California law and the California rules of evidence. The referee is empowered to provide all temporary or provisional remedies and rule on any motion that would be authorized in pretrial or trial proceedings in court, including motions for summary judgment or summary adjudication. The award that results from the decision of the referee will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of California C.C.P. Sections 644(a) and 645. You and we both reserve the right to seek appellate review of any judgment or order to the same extent permitted in a court of law.

**Arbitration**

This section on arbitration applies to business accounts and is subject to the provisions of the *Limitation and Non-Severability* section below.

Arbitration is a method of resolving disputes in front of one or more neutral individuals, instead of having a trial in court in front of a judge and/or jury. The arbitrator will be an active or retired judge or attorney with more than 10 years of experience, chosen by mutual agreement of you and us.

If you and we are unable to agree on an arbitrator, then you agree to choose one of the following Administrators within 10 days of our written notice that an agreement cannot be reached.

- JAMS Resolution Center  
1920 Main St., Suite 300  
Irvine, CA 92614  
www.jamsadr.com (800) 352-5267
- American Arbitration Association ("AAA")  
1633 Broadway, 10<sup>th</sup> Floor  
New York, NY 10019  
www.adr.org (212) 716-5800

If you do not choose the Administrator on a timely basis, we will select the Administrator and the Administrator will select the arbitrator using the Administrator's rules. If an Administrator cannot hear or refuses to hear the arbitration, then the arbitration will be handled by the alternative Administrator.

The arbitrator, sitting alone without a jury, will decide questions of law and fact and will resolve the Claim. This includes the applicability of this *Resolving Claims* section and the validity of the deposit agreement, except that the arbitrator may not decide or resolve any Claim challenging the validity of the class action and jury trial waiver. The validity of the class action and jury trial waiver will be decided only by a judicial referee or a court.

After a decision is given by an arbitrator, and where the amount of the Claim exceeds \$200,000, either you or we can appeal the arbitrator's decision to another arbitrator. If the amount of the Claim exceeds \$1,000,000, either you or we can appeal the arbitrator's decision to a panel of three arbitrators. No decision may be appealed under this paragraph, unless the arbitrator that heard the matter first makes a finding that the Claim could reasonably have exceeded either \$200,000 or \$1,000,000. Any arbitrator who hears an appeal under this paragraph will be selected according to the rules of the Administrator.

The arbitration of any matter involves interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the "FAA"). The arbitrator will follow applicable substantive law to the extent consistent with the FAA. The arbitrator will give effect to the applicable statutes of limitation and will dismiss barred claims. Arbitrations will be governed by the rules of the Administrator to the extent those rules do not conflict with this *Resolving Claims* section. In addition, you or we may submit a written request to the arbitrator to expand the scope of discovery normally allowable. At the timely request of either you or us, the arbitrator must provide a brief written explanation of the basis for the award.

Judgment upon the award given by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision is final and binding, except for any right of appeal provided by the FAA or under this Agreement.

**Limitation and Non-Severability**

**For both personal and business accounts.** Regardless of anything else in this *Resolving Claims* section, you and we both acknowledge and agree that the validity and effect of the class action and jury trial waiver for business accounts and the jury trial waiver for personal accounts may be determined only by a court or judicial referee and not by an arbitrator. You and we both have the right to appeal the limitation or invalidation of the waiver.

**For business accounts.** Regardless of anything else in this *Resolving Claims* section, you and we both acknowledge and agree that the class action and jury trial waiver is material and essential to the arbitration of any disputes between you and us and is non-severable from the agreement to arbitrate Claims. If the class action and jury trial waiver is limited, voided or found unenforceable, then the agreement to arbitrate (except for this sentence) will be null and void with respect to such proceedings and this *Resolving Claims* section will be read as if the provisions regarding arbitration were not present. You and we both have the right to appeal the limitation or invalidation of the class action and jury trial waiver. You and we acknowledge and agree that under no circumstances will a class action be arbitrated.

**Rules of Interpretation**

Except as provided in the *Limitation and Non-Severability* section above, if any portion of this *Resolving Claims* section is determined to be invalid or unenforceable, it will not invalidate the remaining portions of this section. If there is a conflict or inconsistency between this *Resolving Claims* section and other terms of this deposit agreement or the applicable rules of the Administrator, this *Resolving Claims* section will govern. If there is any conflict between this *Resolving Claims* section and any other dispute provision (whether it be for arbitration, reference

or any other form of dispute resolution), this *Resolving Claims* section will prevail for Claims arising out of this deposit agreement or transactions contemplated by this deposit agreement.

**Jurisdiction and Venue**

Any action or proceeding regarding your account or this deposit agreement must be brought in the state in which the financial center that maintains your account is located. You submit to the personal jurisdiction of that state. Note that any action or proceeding will be governed by and interpreted in accordance with the *Governing Law* section of this agreement.

If a Claim is submitted to arbitration and the state where that financial center is located is not reasonably convenient for you, then you and we will attempt to agree on another location. If you and we are unable to agree on another location, then the location will be determined by the Administrator or arbitrator.



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## Legislation Description

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**File #:** 16-629, **Version:** 1

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### **RESOLUTION NO. 5189 NEW SERIES**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTED THE ENTERING INTO OF A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF PEORIA TO PARTICIPATE IN A REGIONAL FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ASSISTANCE TO FIREFIGHTERS GRANT (AFG) BY THE GLENDALE FIRE DEPARTMENT.**

Staff Contact: Terry Garrison, Fire Chief

### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a Memorandum of Understanding (MOU) with the City of Peoria to participate in a regional Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) for training purposes.

### **Background**

The City of Peoria Fire Department has applied for a regional grant through the FEMA AFG Program. The AFG will provide training to seventeen fire department Chief Officers. The grant will cover tuition for the training class and costs associated with Emergency Services Pay. The grant will also cover the 2017 annual subscription fees for Blue Card Incident Command Certification for 72 students and Blue Card Incident Command Instructor Certification for 7 instructors. The total cost of the Chief Officer training and the annual Blue Card Incident Command subscriptions is \$27,409.40. Glendale will be responsible for a 15 percent match of \$3,575.14. FEMA requires that each participating agency provide a MOU acknowledging their participation in this grant.

### **Community Benefit/Public Involvement**

The Assistance to Firefighter Grant will provide training for seventeen fire department Chief Officers. This 2-day Chief Officer Workshop will provide strategic level command decision making and incident management in the role of the Chief Officer. Students will receive instruction and be involved in managing 1st Alarm and greater fires, Hazardous Material Incidents, and complex multi-agency emergencies, including the transition from offensive to defensive strategies. Simulated scenarios will emphasize Incident Organization, transition to the Command Van, and functioning in the responsibilities of Incident Commander, Support Officer, Senior Advisor and Administrative functions. The Blue Card Incident Command Certification subscription fee will provide twelve hours of continuing education for 72 students and seven instructors ranging in rank from firefighter to chief officer and is designed to produce safe and effective hazard zone operations. It develops the personal skills in officers required to supervise and manage incident operations that occur in a hazard zone. The Incident Command Certification Program is designed to first instruct, train and then evaluate and

certify members of the fire department who serve in the role of Incident Commander and supervise and manage emergency and hazard zone operations for every day, local NIMS Type 4 and Type 5 events.

**Budget and Financial Impacts**

The cost of two day Chief Officer Workshop and associated Emergency Services Pay is \$16,889.40. The cost of the 2017 annual Blue Card Incident Command subscription fees is \$10,520.00. Total cost is \$27,409.40. The FEMA Assistance to Firefighter Grant will cover \$23,834.26 and the City of Glendale is required to provide a fifteen percent match of \$3,575.14.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$1,584.31</b>	<b>1000-12422-500600, Fire Operations - Overtime</b>
<b>\$1,990.83</b>	<b>1000-12410-511400, Fire Administration - Professional Development</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5189 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTED THE ENTERING INTO OF A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF PEORIA TO PARTICIPATE IN A REGIONAL FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ASSISTANCE TO FIREFIGHTERS GRANT (AFG) BY THE GLENDALE FIRE DEPARTMENT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that a Memorandum of Understanding (MOU) with the City of Peoria to participate in a Regional Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) be entered into, which MOU is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the City Manager or designee and the City Clerk be authorized and directed to execute and deliver said document on behalf of the Glendale Fire Department.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 20th day of December, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

**Memorandum of Understanding  
Between and Among  
The City of Peoria  
And**

**The City of Maricopa, The City of Mesa, The Town of Queen Creek, The Sun Lakes Fire District, The Gila River Indian Community Fire Department, The City of Goodyear, The Gilbert Fire & Rescue Department, The Glendale Fire Department, The Sun City Fire and Medical District, The Chandler Fire, Health & Medical Department, Rio Verde Fire District, The Salt River Fire Department, The City of Scottsdale, The Superstition Fire and Medical District, and The City of Surprise Fire-Medical Department**

This Memorandum of Understanding (“MOU”) is entered into on December\_\_\_\_, 2016 (“Effective Date”) between and among **The City of Peoria**, located at 8401 W. Monroe Peoria, AZ 85345, **The City of Maricopa**, located at 39700 West Civic Center Plaza, Maricopa, Arizona 85138, **The City of Mesa**, located at 20 E. Main Street Mesa, AZ 85201, **The Town of Queen Creek**, located at 22350 S. Ellsworth Road, Queen Creek, AZ 85142, **The Sun Lakes Fire District**, located at 25020 South Alma School Road, Sun Lakes, AZ 85248, **The Gila River Indian Community Fire Department**, 5002 N. Maricopa Road, Chandler, AZ 85226, **The City of Goodyear**, 190 N Litchfield Road, Goodyear, AZ 85338, **The Gilbert Fire & Rescue Department**, located at 85 E. Civic Center Drive, Gilbert, AZ 85296, **The Glendale Fire Department**, 6829 N. 58th Drive, Glendale, Arizona 85301, **The Sun City Fire and Medical District**, located at 18602 N.99th Avenue, Sun City, AZ 85382, **The Chandler Fire, Health & Medical Department**, located at 151 E. Boston Street, Chandler, AZ 85225, **Rio Verde Fire District**, 25608 N. Forest Rd. Rio Verde, AZ 85263, **The Salt River Fire Department**, located at 10005 East Osborn Road, Scottsdale, AZ 85256, **The City of Scottsdale**, located at 3939 N. Drinkwater Blvd., Scottsdale, AZ 85251, and **The Superstition Fire and Medical District**, located at 565 N. Idaho Road, Apache Junction, AZ 85119, **The City of Surprise Fire-Medical Department** located at 14250 W. Statler Plaza, Suite 101, Surprise, AZ 85374 (hereinafter referred to collectively as “Parties” or individual as “Party”).

IN ORDER to fulfill the obligations of a FEMA Assistance to Firefighters grant award, between and among the Parties, the Parties desire to identify mutual interests and set forth their intent to collaborate on grant related activities.

**I. Intended Areas of Cooperation.**

- A. The City of Peoria shall serve as the primary grant recipient and administrative agent for the grant.
- B. The City of Peoria, The City of Maricopa, The City of Mesa, The Town of Queen Creek, The Sun Lakes Fire District, The Gila River Indian Community Fire Department, The City of Goodyear, The Gilbert Fire & Rescue Department, The Glendale Fire Department, The Sun City Fire and Medical District, The Chandler Fire, Health & Medical Department, Rio Verde Fire District, The Salt River Fire Department, The City of Scottsdale, The Superstition Fire and Medical District, and The City of Surprise Fire-Medical Department will be participating entities and sub-recipients in the grant.

- C. All Parties shall train command officers as specified in the grant through the Mesa Community College Virtual Incident Command Center (“VICC”) located at 145 N. Centennial Way, Mesa, AZ 85201. This training shall consist of Blue Card Certification and quarterly training for a period of one year commencing with the grant award as outlined in the grant proposal, subject to any revisions by the granting agency.
- D. The Parties shall adhere to the 15% cost sharing requirements as contained in the grant and all other grant requirements.
- E. The Parties shall adhere to the fiscal and programmatic reporting requirements specified in the grant award and to provide such information on a timely basis to the City of Peoria.
- F. The Parties anticipate several benefits of these collaborative activities, which may include but are not limited to:
  - Improved outcomes of critical incident response;
  - Improved outcomes of mutual aid; and
  - Improved public safety.

## **II. Duration and Termination.**

- A. The Parties will implement this potential collaboration during the one-year period commencing on the Effective Date of the potential grant award that includes any potential grant extension period and grant close-out period. Unless renewed by the Parties, this MOU will expire at the end of the grant period.
- B. Any Party may terminate its participation in this this MOU by providing at least sixty (60) days written notice to the other Parties unless such termination would affect the terms of the grant.

## **III. Miscellaneous Provisions.**

- A. Use of Trade names/Logos. The names, crests, and logos of each Party are the intellectual property of that Party and may not be used without that Party’s prior express written permission for each specific usage.
- B. Indemnification. Each Party (as ‘indemnitor’) agrees to indemnify, defend, and hold harmless the other Parties, its elected officials, officers, officials, agents, employees, or volunteers (as ‘indemnatee’) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as ‘claims’) arising out of bodily injury to any person (including death) or property damage, but only to the extent that such claims are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- C. Workers Compensation. The provisions of A.R.S. Section 23-1022(D) shall apply to this MOU. An employee of a public agency, as defined in A.R.S. Section 11-951, who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or

contract is deemed to be an employee of both public agencies for the purposes of A.R.S. Section 23-1022 The primary employer shall be solely liable for the payment of workers' compensation benefits for the purposes of this section. Each Party to this MOU shall comply with the posting requirements of A.R.S. Section 23-1022(E)

- D. Conflict of Interest. Each Party's participation in this MOU is subject to [Section 38-511 of the Arizona Revised Statutes](#) which provides that this MOU may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this MOU on behalf of a Party is, at any time while this MOU or any extension thereof is in effect, an employee or agent of the other Party to this MOU in any capacity or a consultant to any other Party with respect to the subject matter of this MOU.
- E. This MOU may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither a signature for every party nor a signature line shall be required in each counterpart except that on a counterpart being brought forward by an agency to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that jurisdiction's practice only by the particular agency seeking approval.
- F. The Parties agree to maintain and furnish to each other records and documents pertaining to the grant activities provided under this MOU as may be required by Federal, State or local laws, rules, or regulations.
- G. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this MOU, and that the person signing on behalf of each has been properly authorized and empowered to enter this MOU.

#### **IV. Federal Provisions.**

- H. The Parties agree to comply with the Fiscal Year 2016 Department of Homeland Security Standard Terms and Conditions incorporated into this MOU by this referenced and attached as Appendix A.

THIS AREA INTENTIONALLY LEFT BLANK – SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties named below have executed this MOU as first written above.

**The City of Peoria**

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

ATTEST:

Name: Bobby Ruiz

\_\_\_\_\_

Fire Chief

Rhonda Geriminsky, City Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_

Stephen J. Burg, Acting City Attorney

**NAME OF ENTITY\***

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

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

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

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

\*This signature line may be modified to meet individual agency specifications.



# The Department of Homeland Security Standard Terms and Conditions 2016

The FY 2016 DHS Standard Terms and Conditions apply to all new Federal financial assistance awards funded in FY 2016. The terms and conditions of DHS financial assistance awards flow down to subrecipients, unless a particular award term or condition specifically indicates otherwise.

## **Assurances, Administrative Requirements, Cost Principles, and Audit Requirements**

DHS financial assistance recipients must complete either the OMB Standard Form [424B Assurances – Non-Construction Programs](#), or OMB Standard Form [424D Assurances – Construction Programs as applicable](#). Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the financial assistance office if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at [2 C.F.R. Part 200](#), and adopted by DHS at [2 C.F.R. Part 3002](#).

## **DHS Specific Acknowledgements and Assurances**

All recipients, sub-recipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS financial assistance office and the DHS Office of [Civil Rights and Civil Liberties](#) (CRCL) by e-mail at [crcl@hq.dhs.gov](mailto:crcl@hq.dhs.gov) or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.
6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS financial assistance office and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

### **Acknowledgment of Federal Funding from DHS**

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

### **Activities Conducted Abroad**

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

**Age Discrimination Act of 1975**

All recipients must comply with the requirements of the *Age Discrimination Act of 1975* ([Title 42 U.S. Code, § 6101 et seq.](#)), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

**Americans with Disabilities Act of 1990**

All recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. ([42 U.S.C. §§ 12101–12213](#)).

**Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Award recipients may also find as a useful resource the DHS Privacy Impact Assessments: [Privacy Guidance](#) and [Privacy template](#) respectively.

**Civil Rights Act of 1964 – Title VI**

All recipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* ([42 U.S.C. § 2000d et seq.](#)), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. DHS implementing regulations for the Act are found at [6 C.F.R., Part 21](#) and [44 C.F.R. Part 7](#).

**Civil Rights Act of 1968**

All recipients must comply with [Title VIII of the Civil Rights Act of 1968](#), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex ([42 U.S.C. § 3601 et seq.](#)), as implemented by the Department of Housing and Urban Development at [24 C.F.R. Part 100](#). The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See [24 C.F.R. § 100.201](#)).

**Copyright**

All recipients must affix the applicable copyright notices of [17 U.S.C. §§ 401 or 402](#) and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards.

**Debarment and Suspension**

All recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders [12549](#) and [12689](#), and [2 C.F.R. Part 180](#). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

**Drug-Free Workplace Regulations**

All recipients must comply with the *Drug-Free Workplace Act of 1988* ([41 U.S.C. § 701 et seq.](#)), which requires all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at [2 C.F.R. Part 3001](#).

**Duplication of Benefits**

Any cost allocable to a particular Federal award provided for in [2 C.F.R. Part 200, Subpart E](#) may not be charged to other Federal awards to overcome fund

deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude a recipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal award.

## **Education Amendments of 1972 (*Equal Opportunity in Education Act*) – Title IX**

All recipients must comply with the requirements of Title IX of the Education Amendments of 1972 ([20 U.S.C. § 1681 et seq.](#)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. DHS implementing regulations are codified at [6 C.F.R. Part 17](#) and [44 C.F.R. Part 19](#)

## **Energy Policy and Conservation Act**

All recipients must comply with the requirements of [42 U.S.C. § 6201](#) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

## **False Claims Act and Program Fraud Civil Remedies**

All recipients must comply with the requirements of [31 U.S.C. § 3729](#)- 3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See [31 U.S.C. § 3801-3812](#) which details the administrative remedies for false claims and statements made.

## **Federal Debt Status**

All recipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See [OMB Circular A-129](#).

## **Federal Leadership on Reducing Text Messaging while Driving**

All recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in [E.O. 13513](#), including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.

## **Fly America Act of 1974**

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under [49 U.S.C. § 41102](#)) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974* ([49 U.S.C. § 40118](#)) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, [amendment](#) to Comptroller General Decision B-138942.

## **Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, [15 U.S.C. § 2225a](#), all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, as amended, [15 U.S.C. § 2225](#).

## **Limited English Proficiency (*Civil Rights Act of 1964*, Title VI)**

All recipients must comply with the *Title VI of the Civil Rights Act of 1964* (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

## **Lobbying Prohibitions**

All recipients must comply with [31 U.S.C. § 1352](#), which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

## **Non-supplanting Requirement**

All recipients who receive awards made under programs that prohibit supplanting by law must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources.

## **Notice of Funding Opportunity Requirements**

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the terms and conditions of your award. All recipients must comply with any such requirements set forth in the program NOFO.

## **Patents and Intellectual Property Rights**

Unless otherwise provided by law, recipients are subject to the [Bayh-Dole Act, Pub. L. No. 96-517](#), as amended, and codified in [35 U.S.C. § 200](#) et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at [37 C.F.R. Part 401](#) and the standard patent rights clause located at 37 C.F.R. § 401.14.

## **Procurement of Recovered Materials**

All recipients must comply with Section 6002 of the [Solid Waste Disposal Act](#), as amended by the [Resource Conservation and Recovery Act](#). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 C.F.R. Part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

## **Reporting Subawards and Executive Compensation**

All recipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at [2 C.F.R. Part 170, Appendix A](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

## **SAFECOM**

All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the [SAFECOM](#) Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

## **Terrorist Financing**

All recipients must comply with [E.O. 13224](#) and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the Order and laws.

## **Trafficking Victims Protection Act of 2000**

All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act of 2000*, (TVPA) as amended ([22 U.S.C. § 7104](#)). The award term is located at [2 CFR § 175.15](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

## **Rehabilitation Act of 1973**

All recipients must comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, [29 U.S.C. § 794](#), as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at [2 C.F.R. Part 200, Appendix XII](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

**Universal Identifier and System of Award Management (SAM)**

All recipients are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at [2 C.F.R. Part 25, Appendix A](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

**USA Patriot Act of 2001**

All recipients must comply with requirements of the [Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act \(USA PATRIOT Act\)](#), which amends [18 U.S.C. §§ 175–175c](#).

**Use of DHS Seal, Logo and Flags**

All recipients must obtain permission from their financial assistance office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**Whistleblower Protection Act**

All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at [10 U.S.C § 2409](#), [41 U.S.C. 4712](#), and [10 U.S.C. § 2324](#), [41 U.S.C. §§ 4304](#) and [4310](#).



## Legislation Description

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**File #:** 16-620, **Version:** 1

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### **RESOLUTION NO. 5190 NEW SERIES**

#### **A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REQUESTING EXEMPTION FROM THE REQUIREMENT BY THE INDUSTRIAL COMMISSION OF ARIZONA TO POST SECURITY FOR THE CITY OF GLENDALE'S SELF-INSURED WORKERS' COMPENSATION CLAIMS.**

Staff Contact: Jim Brown, Director, Human Resources and Risk Management

#### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the approval of calendar year 2017 workers' compensation trust fund Industrial Commission of Arizona (ICA) self-insurance renewal and exemption from posting a security deposit. This resolution states the city provides sufficient funding to cover liabilities for workers' compensation claims and allows ICA to waive the requirement to post a security deposit.

#### **Background**

A.R.S §11-981 allows for self-insurance of its workers' compensation benefits. The ICA requires self-insured entities to provide documentation of their claims and liabilities to be accepted as a self-insurer. The ICA approves continuation of self-insurance annually. The Statute requires that to obtain a self-insured status, a security deposit or letter of credit must be posted in an amount equal to 125% of its liabilities. ICA Rule R20-5-1114 allows public entities to be exempted from providing a security deposit:

- If they establish a self-insurance trust fund pursuant to A.R.S. §11-981
- Conduct an actuarial report on an annual basis with a confidence level no less than 55%
- Maintain a balance above 125% of their liabilities
- Fund the trust sufficiently to cover actuarial liabilities in accordance with GASB #10
- Adequately fund the Trust to pay claims (above the minimum balance)
- Agree to notify the ICA if the Fund falls below the required minimum

The ICA asks for completion of the Workers' Compensation Liability Form which calculates the 125% security deposit. The completed Liability Form is attached. In addition the city provides documentation that supports the information which is detailed in the November 30, 2016 draft letter to ICA (copy attached) and completes the Request for Exemption from Requirement to Post Statutory Deposit.

#### **Analysis**

The calculation for the 2017 security deposit is \$4,262,757. The Unaudited Statement of Revenues, Expenses and Changes in Fund Net Assets (Budget Basis), attached, indicates the Workers' Compensation Fund balance

projected as of 10/31/2016 is \$8,176,815. The Fund is adequately funded to meet the ICA requirement for self-insurance and waiving the posting of a security deposit.

The ICA also considers the actuarial report projection of the fund balance needed to pay claims. If the most recent actuarial report minimum balance (at a 55% confidence level in accordance with GASB #10) is greater than the ICA minimum requirement, the Fund must be maintained at the greater amount. In this instance the actuarial report is projecting \$3,831,036 which is less than the ICA minimum. The Governmental Accounting Standards Board (GASB) Statement #10 is the generally accepted level to set accrued liabilities. The ICA minimum requirement is greater than the actuarial projection. Therefore, the ICA minimum requirement would need to be maintained which is \$4,262,757.

The Workers' Compensation Trust Fund Board met on November 29, 2016 and is recommending City Council adopt a resolution authorizing the approval of 2017 workers' compensation trust fund ICA self-insurance renewal and exemption from posting a security deposit.

#### **Previous Related Council Action**

Council passed, adopted and approved this action for the 2016 calendar year in December 2015 and for the 2015 calendar year in November 2014.

#### **Community Benefit/Public Involvement**

Requesting a waiver of the security deposit saves the City from depositing additional funds with the ICA.

RESOLUTION NO. 5190 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REQUESTING EXEMPTION FROM THE REQUIREMENT BY THE INDUSTRIAL COMMISSION OF ARIZONA TO POST SECURITY FOR THE CITY OF GLENDALE'S SELF-INSURED WORKERS' COMPENSATION CLAIMS.

WHEREAS, pursuant to the approved revised rules of The Industrial Commission of Arizona dated April 4, 2005, Section R20-5-1114, a statement is required from the City of Glendale, a chartered Arizona municipality and duly qualified Arizona Workers' Compensation self-insurer, requesting exemption from the requirements to post security for pending self-insured workers' compensation claims; and

WHEREAS, Glendale City Charter, Art. II, Sec. 1 provides the City Council with all powers of the City, not in conflict with the Constitution and subject to the limitations of the Charter, which shall be vested in the council, who shall enact appropriate legislation and do and perform any and all acts and things which may be necessary and proper to carry out these powers or any of the provisions of the Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City of Glendale has a fully-funded workers' compensation trust fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Glendale City Code Sec. 2-202(b) and the Government Accounting Standards Board Statement #10.

SECTION 2. That the City of Glendale provides funding to the workers' compensation trust fund each fiscal year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Glendale City Code Sec. 2-202(b) and the Government Accounting Standards Board Statement #10.

SECTION 3. That based upon the above statements, the City of Glendale meets the conditions required under subsection (A) of The Industrial Commission of Arizona Section R20-5-1114.

SECTION 4. That the City Manager or his designee shall immediately notify The Industrial Commission of Arizona and provide security as otherwise required by Section R20-5-1114, should the workers' compensation trust fund have insufficient funds to cover all workers' compensation liabilities of the City of Glendale.

[Signatures on the following page.]



PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 20th day of December, 2016.

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

November 30, 2016

Industrial Commission of Arizona  
Attn: Renee Pastor  
Self-Insurance Manager  
800 W. Washington  
Suite 301  
Phoenix, AZ 85007

RE: 2017 Self-Insurance Renewal Request and Request for Exemption from Requirement to Post Statutory Deposit

Dear Ms. Pastor:

The City of Glendale submits its documentation for self-insurance authority. The City of Glendale, a public entity, meets the condition required under R20-5-1114 (A). A resolution was passed by the City Council on December 20, 2016, meeting the conditions outlined in R20-5-1114(A). I have provided the Council Report and a copy of the unsigned resolution. A copy of the resolution will be provided to the Commission once it is signed.

1. Attached is the complete Workers' Compensation Liability form, accompanied by a loss run that supplies individual claim backup information. The evaluation date is October 31, 2016.
2. Attached is the City of Glendale's loss run, referenced above.
3. The City of Glendale is a public entity and will be requesting an exemption to post the security deposit under item 6, below.
4. A copy of the City Excess insurance policy is attached. The completed Excess Recovery Claims form, as well as a copy of the 2016 letters requesting excess reimbursement are attached.
5. Attached is the UNAUDITED Statement of Revenues, Expenses and Changes in Fund Net Assets - Budget Basis for the period 7/1/16 through 10/31/16. The City's trust fund balance is \$8,176,815.

6. The City is requesting continuing an exemption from positing required security deposit pursuant to Rule 20-5-1114. The City has an established trust fund for payment of workers' compensation claims in accordance with City Ordinance Chapter 2, Administration, Article V., Financial Affairs, Division 5, Risk Management Trust Fund and Workers' Compensation Trust Fund.
7. The City's Annual Financial Report (CAFR) will be available after December 31, 2016. When it becomes available it can be found at [www.glendaleaz.com/finance](http://www.glendaleaz.com/finance).
8. The City of Glendale's denial rate did not exceed 12% of the claims filed.
9. The City of Glendale has 2,503 employees.
10. The City's Third Party Administrator:  
CorVel Corporation  
1850 North Central Avenue, #1200  
Phoenix, AZ 85004  
Tel. 602-288-1838 Fax 866-392-2919
11. The City of Glendale points of contact:

Dianne Shoemake Risk Manager 5850 West Glendale Avenue Glendale, AZ 85301 Tel.: (623) 930-2856 Fax: (623) 915-2697 <a href="mailto:dshoemake@glendaleaz.com">dshoemake@glendaleaz.com</a>	Lorena Sanchez-Zumph Risk & Safety Analyst 5850 West Glendale Avenue Glendale, AZ 85301 Tel.: (623) 930-2857 Fax: (623) 847-5322 <a href="mailto:lsanchez@gendaleaz.com">lsanchez@gendaleaz.com</a>
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12. The Commission determined the City of Glendale's 2016 EMF at 0.86.
13. The City of Glendale conducts an annual actuary report. Attached is actuarial study conducted by AON Risk Consultants as of June 30, 2016.
14. The City of Glendale CAFR recommends a 55% confidence level.
15. The City of Glendale uses 0.51% discount percentage for investment returns.

I am pleased to report on the City of Glendale's financial outlook improved significantly over the course of the last year. This is evidenced by bond rating upgrades during 2016, from both Standard and Poor's and Moody's Investor Services. Both rating agencies cited recovery from the economic recession and prudent fiscal management as reasons for the upgrades.

We would be glad to discuss any concerns that you have, answer any questions or provide additional documentation regarding the administration of the Workers' Compensation Trust Fund.

Sincerely,

Dianne Shoemake  
Risk Manager

Enclosures:

Council Report, 12/20/2016

Signed Resolution (approved 12/20/2016) to be provided once signed

Workers Compensation Liability Form

Open Loss Run

Excess Insurance Policy

Excess Recovery Report

Letter to Excess Carrier

Unaudited Statement of Revenues, Expenses and Changes in Fund Net Assets – Budget Basis

Actuarial Report - AON Risk Consultants



## INDUSTRIAL COMMISSION OF ARIZONA WORKERS' COMPENSATION LIABILITY FORM

1. NAME OF SELF-INSURER: City of Glendale
2. EMPLOYEE COUNT 2503 Total Employee Count from prior anniversary date to current (W-2 count to include all full & part time employees that worked regardless of whether or not they are still employed). Explain decrease from prior year on separate cover.

3. SECURITY DEPOSIT CALCULATION

(Number of Claims, Incurred Liability and Paid amounts must be calculated from the Effective Date of Self-Insurance Authority to the present date):

A	B	C	D	E	F	G	H
Total Amount of Open Claims	Incurred Medical	Paid Medical	Total Medical Owed (B - C = D)	Incurred Comp.	Paid Comp.	Total Comp. Owed (E - F = G)	TOTAL ALL CLAIMS (D + G = H)
121	\$4,993,251	\$3,567,879	\$1,365,372	\$5,527,913	\$1,762,286	\$3,765,628	\$5,131,000

Total Owed from Column H: \$ 5,131,000

Excess insurance reimbursement amount expected: \$ 1,720,794

Net remaining liability: \$ 3,410,206

Multiply by 125%: \$ 4,262,757

Calculated Security Deposit: (minimum security deposit \$100,000.00) \$ 4,262,757

4. Name of Excess Insurance Carriers providing reimbursement: (provide detailed report with carrier name, SIR amount, claimant names, DOI and claim number, reimbursement amount requested)

(List the Policy Year(s) of Reimbursement taken) 1995, 2000, 2010, and 2012

*I, Vicki Rios attest that there is no affiliate relationship between the self-insurer and the excess insurance carrier and to the truthfulness of the above information.*

Self-Insurers Authorized Representative Signature:

Printed Name/Title: Vicki Rios, Director, Budget and Finance

DATE: 11-30-10

\* Must be signed by Designated Officer

**SAFETY NATIONAL CASUALTY CORPORATION**  
 1832 SCHUETZ ROAD  
 ST. LOUIS, MO 63146

**DECLARATIONS – SPECIFIC EXCESS**

**SP 4055408**

Item 1. **Employer:** CITY OF GLENDALE

**Address:** 5850 W. GLENDALE AVE., SUITE B56, GLENDALE, AZ 85301

Item 2. **This Agreement covers all business operations of the EMPLOYER as a Self-Insurer in the following State(s):** ARIZONA

Item 3. **Effective Date:** 12:01 A.M. July 01, 2016

Item 4. **Anniversary Date:** 12:01 A.M. July 01, 2018

Item 5. **The Service Company shall be** CORVEL CORPORATION

Item 6. CLASSIFICATIONS OF OPERATIONS	Code Number	Estimated Total Annual Remuneration/Manhours	Rate Per \$ 100 Remuneration/Manhours
See Attached			
	Total Estimated Manual Premium		N/A
	SNCC Experience Modification Factor		N/A
	Total Estimated Standard Premium		N/A

Item 7. **Self-Insured Retention Per Occurrence** \$ 800,000

Item 8. (a) **Maximum Limit of Indemnity Per Occurrence** Statutory  
 (b) **Employers' Liability Maximum Limit of Indemnity Per Occurrence** \$ 2,000,000

Item 9. **Premium Rate** \$ 0.188 per \$100 of Payroll

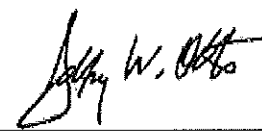
Item 10. **Minimum Premium for the Liability Period** \$ 436,554

Item 11. **Deposit Premium for the Payroll Reporting Period** \$ 229,765

Item 12. **Payroll Reporting Period** July 01, 2016 through July 01, 2017

Item 13. **Endorsements** See Endorsement Schedule

Signed at St. Louis, Missouri on July 26, 2016



Secretary

Countersigned this \_\_\_\_\_ day of \_\_\_\_\_

By: \_\_\_\_\_ N/A



**CITY OF GLENDALE, AZ  
EXCESS WORKERS' COMPENSATION  
2015-2016 SUMMARY OF COVERAGE**

**INSURANCE COMPANY:** Safety National Casualty Corporation

**A.M. BEST GUIDE RATING:\*** A+ (Stable);  
Financial Size Category: XIII (1.25 Billion to \$1.5 Billion)  
As of August 21, 2015

**STANDARD & POOR'S RATING:\*** A+ Stable;  
As of September 18, 2015

**ARIZONA STATUS:** Admitted

**COVERAGE TERM:** July 1, 2015 to July 1, 2016

**POLICY NUMBER:** SP 4053430

**COVERAGE LOCATION:** 5850 W. Glendale Ave., Suite B56  
Glendale, AZ 85301

**COVERAGE:** Excess Workers' Compensation & Employers' Liability

**LIMITS:** Statutory Maximum Limit of Indemnity Per Occurrence  
\$2,000,000 Employers' Liability Maximum Limit of Indemnity Per Occurrence

**RETENTION:** \$800,000 Per Occurrence

**ESTIMATED PAYROLL:** \$116,273,826

**RATE PER \$100 OF PAYROLL:** \$0.18483

**PREMIUM:** \$214,909 Policy Premium

**ENDORSEMENTS AND EXCLUSIONS (Including but not limited to):** Endorsement:

- Arizona Cancellation Endorsement
- Waiver of Subrogation – Negligence Excluded
- Broad Form All States for Employee Travel
- Voluntary Compensation Endt – Premium Delineation
- Foreign Voluntary Workers' Compensation and Employers' Liability
- Same Communicable Disease-Specific Excess
- Policyholder Disclosure Notice of Terrorism Insurance Coverage

*\*See last page for additional information*

**UNAUDITED**

City of Glendale, Arizona

Workers Compensation

Statement of Revenues, Expenses and Changes in Fund Net Assets - **Budget Basis**

For the Period 7/1/16 - 10/31/16

	7/01/16 - 10/31/16	7/01/15 - 06/30/16
Operating revenues:		
Self-Insurance premiums	\$ 766,672	\$ 2,299,827
Operating expenses:		
Administrative and general	38,213	121,005.07
Insurance claims and premiums	<u>728,729</u>	<u>1,448,072</u>
Operating income (loss)	(270)	730,750
Nonoperating revenues (expenses):		
Investments	14,668	43,787
Miscellaneous Revenues	4,325	12,208
Other Fees	-	-
Operating Transfer In	0	-
Operating Transfer Out	<u>0</u>	<u>-</u>
Total nonoperating revenues	18,993	55,995
Net income (loss)	18,723	786,745
Net Assets, July 1, 2015		<u>7,371,347</u>
Net Assets, July 1, 2016	<u>8,158,092</u>	<u>\$ 8,158,092</u>
Net Assets October 31, 2016	<u>\$ 8,176,815</u>	





## Legislation Description

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**File #: 16-622, Version: 1**

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### **RESOLUTION NO. 5191 NEW SERIES**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY, ADMINISTERED BY ITS HUMAN SERVICES DEPARTMENT, FOR THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM.**

Staff Contact: Elaine Adamczyk, Interim Director, Community Services

### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the Maricopa County Human Services Department, as the lead agency for Maricopa HOME Consortium, for the receipt of HOME Investment Partnerships Program (HOME) funds. This annual funding agreement allows the City of Glendale to utilize \$514,115 from the HOME program for FY 2016-17, and compliments the existing IGA and clarifies Glendale's role as a subrecipient, as required by the U. S. Department of Housing and Urban Development (HUD).

### **Background**

The Maricopa HOME Consortium was established in 1993 for the purpose of receiving HOME funds from HUD. HOME funds are used by Glendale to address housing related needs, such as housing rehabilitation, replacement housing, and new infill construction for qualified homeowners. Execution of this IGA will allow Glendale to provide housing rehabilitation services to low-to-moderate income homeowners in Glendale, and to partner with agencies that address housing related needs in our neighborhoods.

Glendale receives HUD HOME funds through the Maricopa County Consortium. Current Consortium members include Maricopa County as the lead agency, the cities of Chandler, Glendale, Surprise, Avondale, Peoria, Scottsdale and Tempe, and the Town of Gilbert. Through its membership in the Maricopa HOME Consortium, Glendale has been allocated over \$14,788,818 in HOME funds since 1993.

### **Analysis**

HOME funds are provided to help cities address identified community needs in the area of housing. The HOME program is designed to assist families and individuals who are low- to- moderate income. The City has used over \$14 million in federal HOME funds to rehabilitate 165 qualified properties; administer down payment assistance programs; and constructed over 115 new quality infill housing units with non-profit agencies. Maricopa County Human Services, as the lead agency for the Consortium, provides administrative oversight, reporting, and monitoring of all program activity to HUD and encourages regional dialogue among members to facilitate best practices implemented.

**Previous Related Council Action**

On April 26, 2016, Council approved the Community Development Advisory (CDAC) recommendations for the FY 2016-17 Annual Action Plan and related HUD funding. This annual process determines the City's community needs and priorities to be used in formulating these recommendations which is part of an extensive public process. The City Council's priorities are supported by Glendale's Five Year Consolidated Plan for fiscal years 2015-2019 and were used by the CDAC in formulating these recommendations. Funding recommendation included \$514,115 in HOME funds to be used for HOME-eligible activities such as new infill housing and homeowner rehabilitation projects. The City Council has taken similar action in each of the previous funding years of the HOME program.

**Community Benefit/Public Involvement**

The objective of the HOME program is to expand the supply of decent, safe, sanitary, and affordable housing for low-to-moderate income households. This program has supported numerous activities that have assisted hundreds of Glendale residents and has been supported by the CDAC every year since the inception of the HOME program in 1993.

**Budget and Financial Impacts**

HOME funds are received by Glendale as a member of the Maricopa HOME Consortium and are budgeted annually through the City's budget process. The amount the City receives is based on the amount of congressional funding allocated and a formula that HUD applies using a variety of factors that include population, housing conditions, and others, such as foreclosure rates.

The HOME program requires a 25 percent match from non-federal funds. For FY 2016-17 HOME projects administered by the City, an annual match allocation of \$31,888 is budgeted in the Community Revitalization Division General Fund budget. Outside agencies that apply and are awarded HOME funds, through the city's annual application process, are required to provide their own 25 percent matching funds.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$514,115</b>	<b>1300-30001-618200, HOME Investment Partnership Program</b>
<b>\$31,888</b>	<b>1000-15010-518200, HOME Grant Match</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5191 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY, ADMINISTERED BY ITS HUMAN SERVICES DEPARTMENT, FOR THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement with Maricopa County, administered by its Human Services Department, for the HOME Investment Partnerships (HOME) Program be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the City Manager or designee and the City Clerk be authorized and directed to execute and deliver any and all documents necessary to effectuate said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 20th day of December, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager



INTERGOVERNMENTAL AGREEMENT  
FOR SERVICES BETWEEN  
MARICOPA COUNTY  
ADMINISTERED BY ITS  
HUMAN SERVICES DEPARTMENT  
AND  
THE CITY OF GLENDALE



Contract Amount: \$514,115  
Contract Start Date: July 1, 2016  
Contract Termination Date: 24 months from date fully executed  
Contract Number: \_\_\_\_\_  
CFDA Number: 14.239, HOME Investment Partnerships Program  
DUNS Number: 077523579

This Intergovernmental Agreement for services (“Agreement”) is entered into by and between the City of Glendale, a member of the HOME Consortium (hereinafter referred to as the “City and/or “Subrecipient”), and Maricopa County, administered by its Human Services Department, (hereinafter referred to as the “County” or “Lead Agency” or “Department”). The Subrecipient and County are collectively referred to herein as the “Parties” and individually as a “Party.”

The County shall provide financial reimbursement in an Agreement amount up to Five Hundred Fourteen Thousand and One Hundred Fifteen Dollars (\$514,115) subject to the terms of this Agreement and availability of funds. This Agreement amount constitutes the County’s entire participation and obligation in the performance and completion of all work to be performed under this Agreement.

The Subrecipient, for and in consideration of the covenants and conditions set forth in this Agreement, shall provide and perform the services set forth herein. All rights and obligations of the Parties shall be governed by the terms of this Agreement, its exhibits, attachments, and appendices, including any Subcontracts, Amendments, or Change Orders as set forth herein and in:

Section I – General Provisions – Contain uniform administrative requirements applicable to both Parties participating in the HOME Investment Partnerships (HOME) Program, which include, but are not limited to, definitions; non-discrimination and equal opportunity requirements; disclosure and retention requirements; and debarment, suspension, or ineligibility exclusions.

Section II – Special Provisions – Provides specific programmatic requirements upon the Subrecipient that are established by the HOME Program and applicable HUD regulations. This includes, but is not limited to, disposition of program income; financial record management; reporting requirements; and Subrecipient certifications.

Section III – Work Statement – The section contains, but is not limited to, a narrative of the project; a list of the tasks to be performed; established goals; performance measures; scheduling; budget; planned expenditures of income.

Section IV – Compensation – Contains provisions relating to compensation for Subrecipient, method of payment, terms of reimbursement, conditions-prior to the release of funds.

Section V – Attachments & Forms – Contains the Certification and Request For Reimbursement Form; Maximum Subsidy Limits for Rental 221 (d) 3 Limits; Monthly Summary of Program Income and Recaptured Funds; HOME Funds Match Certification Form.

SUBRECIPIENT

Representative: Gilbert Lopez, Community Revitalization Administrator

Phone: 623-930-3670

Email: GLopez@GlendaleAz.com

Address: 5850 W. Glendale Ave, Suite 107, Glendale, AZ 85301

LEAD AGENCY

Representative: Rachel Milne, Assistant Director, Housing and Community Development

Phone: 602-372-1528

E-mail: MilneR@mail.maricopa.gov

Address: 234 N. Central Avenue, Third Floor, Phoenix, AZ 85004

Notice under this Agreement shall be given by personal delivery or by registered or certified mail, postage prepaid and returned receipt requested, to the persons at the addresses set forth above and shall be effective three (3) days after being mailed unless otherwise indicated in the notice.

This Agreement contains all the terms and conditions agreed to by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any Party hereto. Nothing in this Agreement shall be construed as consent to any lawsuit or waiver of any defense in a lawsuit brought against the State of Arizona, County, or the Subrecipient in any State or federal court.

IN WITNESS THEREOF, the Parties have signed this Agreement:

Approved By:  
SUBRECIPIENT

Approved By:  
MARICOPA COUNTY (LEAD AGENCY)

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

\_\_\_\_\_  
Clint Hickman, Chairman, Board of Supervisors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attested to:

Attested to:

\_\_\_\_\_  
City/Town Clerk

\_\_\_\_\_  
Fran McCarroll, Clerk of the Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

IN ACCORDANCE WITH A.R.S. §§ 11-952, THIS AGREEMENT HAS BEEN REVIEWED BY THE UNDERSIGNED DEPUTY COUNTY ATTORNEY, AND, IN ACCORDANCE WITH A.R.S. § 11-952, THIS AGREEMENT HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY FOR SUBRECIPIENT ON BEHALF OF SUBRECIPIENT, AS TO THEIR RESPECTIVE CLIENTS ONLY, EACH ATTORNEY HAS DETERMINED THAT THIS AGREEMENT IS PROPER IN FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for the Subrecipient      Date

\_\_\_\_\_  
Deputy County Attorney      Date

**SECTION I**  
**GENERAL PROVISIONS**



**MARICOPA COUNTY**  
**HUMAN SERVICES DEPARTMENT**

**A. PURPOSE**

County shall provide Subrecipient with U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnership Program funds for the provision of HOME activities as identified in Section III Work Statement.

**B. TERM**

The term of this Agreement shall commence upon July 1, 2016, and shall remain in effect for 24 months from date fully executed. The Agreement shall become effective upon approval and signature by both Parties.

**C. RENEWAL**

The Agreement may be renewed by a written amendment, provided however, that Subrecipient is in full compliance with all terms and conditions of this Agreement. The County shall notify the Subrecipient in writing of its intent to extend the contract term at least thirty (30) calendar days prior to the expiration of the original contract term, or any additional terms thereafter.

**D. AMENDMENTS**

All Amendments to this Agreement shall be in writing and signed by authorized signers for both Parties, and be requested to the County no later than ninety (90) days prior to contract expiration.

**E. TERMINATION**

1. Pursuant to A.R.S. §38-511, Parties may cancel this Agreement without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of a Party is at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, pursuant to A.R.S. § 38-511 the Parties may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Party from any other party to the contract arising as the result of the Agreement.
2. Either Party may terminate this Agreement at any time by giving the other Party at least sixty (60) calendar days prior notice in writing (unless terminated by the County under the Availability of Funds provision). The notice shall be given by personal delivery or by registered or certified mail, postage prepaid and returned receipt requested to the persons at the addresses set forth on page one of this Agreement.
3. This Agreement may be terminated by mutual written agreement of the Parties specifying the termination date therein.
4. The County has the right to terminate this Agreement upon twenty-four (24) hour notice when the County deems the health or welfare of the service recipients are endangered or Subrecipient's non-compliance jeopardizes funding source financial participation. If not terminated by one of the above methods, this Agreement will terminate upon the expiration of the term of this Agreement stated on the Page One of this Agreement.
5. In accordance with 2 CFR § 200, *et seq.*, County may suspend or terminate this Agreement if Subrecipient violates any term or condition of this Agreement or if Subrecipient fails to maintain a good faith effort to carry out the purpose of this Agreement.
6. County or Subrecipient may terminate this Agreement for convenience in accordance with 2 CFR § 200, *et seq.* Both Parties shall agree upon the termination conditions including the effective date of the termination. The party initiating the termination shall notify the other party in writing stating the reasons for such termination.

F. **EFFECT**

To the extent that the Special Provisions are in conflict with the General Provisions, the Special Provisions shall control. To the extent that the Work Statement and the Special or General Provisions are in conflict, the Work Statement shall control. To the extent that the Compensation Provisions are in conflict with the General Provisions, Special Provisions or Work Statement, the Compensation Provisions shall control. Nothing herein shall operate to increase the Operating Budget without a written amendment thereto.

G. **DEFINITIONS**

As used throughout this Agreement, the following terms shall have the following meanings:

1. **Annual Action Plan** means the annual plan submitted by the County as the lead agency of the Maricopa HOME Consortium that describes the Consortium's annual program goals.
2. **Assistant Director** means the Director of the Community Development Division within the Human Services Department.
3. **Beneficiary** means a person or household that meets the income requirements of 24 CFR 92.203 subject to the restriction on assistance to students enrolled in an institution of higher education, as described in 24 CFR 5.612.
4. **Commitment** means an executed legally binding written agreement with a Subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing, provide down-payment assistance or tenant based rental assistance. An agreement between the representative unit and a member unit of general local government of the Consortium does not constitute a commitment as described in 24 CFR Part 92.2(1) and (2).
5. **Consortium Agreement** means the intergovernmental agreement between members of the Maricopa County HOME Consortium entered into on or about June 29, 2005 which automatically renews for successive 3-year terms and expires on or about June 30, 2018.
6. **Contract Administrator** means the person identified in page 2 of the agreement who is responsible for administering this Agreement on behalf of the County.
7. **County** means Maricopa County by and through its Human Services Department as the Lead Agency of the Maricopa HOME Consortium.
8. **Contractor/Subcontractor** means a non-profit or for-profit organization carrying out HOME related project activities as described in the written agreement between the City and the Developer.
9. **Director** means the Director of the Maricopa County Human Services Department.
10. **Division** means the Housing & Community Development Division of the Human Services Department.
11. **Fidelity Bond** means a bond to indemnify the Subrecipient against losses resulting from fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.
12. **Five Year Consolidated Plan** means the HUD required Consolidated Plan submitted by the County as the lead agency for the Maricopa HOME Consortium.
13. **HOME** means HOME Investment Partnerships Program
14. **HUD** means U.S. Department of Housing and Urban Development
15. **Juvenile** means any person under the age of eighteen (18).
16. **Lead Agency or Department** means Maricopa County Human Services Department, Housing and Community Development Division. The Lead Agency is designated per the Intergovernmental Agreement authorized and adopted by the HOME Consortium members' legislative bodies.
17. **Low-income families** means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family



- incomes. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.
18. **Maricopa HOME Consortium** means the group of jurisdictions that participate in the Three-Year Cooperative Consortium Agreement with Maricopa County.
  19. **Maricopa HOME Consortium Current Practices Manual** or **Current Practices Manual** is the manual adopted by the Maricopa HOME Consortium for the administration of Projects.
  20. **Minority Business Enterprise (MBE)** means an entity which is majority owned or controlled by a socially and economically disadvantaged individual as described by Public Law 95-507.
  21. **Women's Business Enterprise (WBE)** means an entity in which a woman has majority ownership and control.
  22. **Payment Bond** means a bond executed to assure payment as required by law of all persons performing work or providing materials in the execution of work provided in this Agreement.
  23. **Performance Bond** means a bond executed to secure fulfillment of all of the Subrecipient's obligations under this Agreement.
  24. **Program** means HOME Subrecipient's receive funds to carry out programs (e.g., down payment assistance, homeowner rehabilitation, or tenant-based rental assistance programs, etc.), and not to undertake specific projects. (Entities that carry out projects are generally owners, developers, or sponsors.) The Work Statement included herein describes the Subrecipient programs to be administered.
  25. **Projects** means rehabilitation or new construction (with or without acquisition) as described in a legally binding agreement between the HOME Subrecipient and the prospective owners or beneficiaries of the HOME funds for which all necessary financing has been secured and budgeted and for which an acquisition, construction and/or rehabilitation schedule has been established, and underwriting has been completed and otherwise complies with CFR Part 92.2(2) and 92.2 (A) and (B).
  26. **Public Agency** has the meaning prescribed by A.R.S. § 11-951.
  27. **Subcontract** means any contract entered into by a Subrecipient with a third party for performance of any of the work or provision of any of the services covered by this Agreement.
  28. **Subrecipient** means a public agency administering all requirements of the HOME program and is the member unit of a general local government, person, firm or organization listed on the Cover Page of this Agreement.
  29. **Vendor** means an entity funded through the Subrecipient to provide services required by the Work Statement.
  30. **Very low-income families** means low- income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.
  31. **Work Statement** means the section of this Agreement that contains a description of services to be delivered pursuant to this Agreement.

#### H. GENERAL REQUIREMENTS

1. The terms of this Agreement shall be construed in accordance with Arizona law and the applicable regulations of the United States Department of Housing and Urban Development (HUD). Any lawsuit arising out of this Agreement shall be brought in the appropriate court in Maricopa County, Arizona.
2. The Subrecipient shall, without limitation, obtain and maintain all licenses, permits, and authority necessary to do business, render services, and perform work under this Agreement,

and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation.

3. The Subrecipient is an independent in the performance of work and the provision of services under this Agreement and shall comply with all laws regarding unemployment insurance, disability insurance and worker's compensation.
4. Subrecipient shall comply with the regulations prohibiting a conflict of interest, and not make any payments, either directly or indirectly, to any person, partnership, corporation, trust or other organization that has a substantial interest in Subrecipient's organization or with which Subrecipient (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless Subrecipient has made full written disclosure of the proposed payments to the County and has received written approval therefore. For purposes of this provision, the terms "substantial interest" and "relative" shall have the meanings prescribed by A.R.S. § 38-502.

**I. ACCEPTANCE OF FUNDS**

Subrecipient hereby accepts the award of funds under the terms of this Agreement and agrees to execute and return this Agreement to the County within 30 days of receipt unless Subrecipient received a written waiver of this requirement by the County.

**J. ASSIGNMENT AND SUBCONTRACTING**

No right, liability, obligation or duty under this Agreement may be assigned, delegated or subcontracted, in whole or in part, without the prior written approval of the County. Subrecipient shall bear all liability under this Agreement, even if it is assigned, delegated or subcontracted, in whole or in part, unless the County agrees otherwise.

**K. AVAILABILITY OF FUNDS**

1. The provisions of this Agreement relating to the payment for services shall become effective when funds assigned for the purpose of compensating the Subrecipient, as provided herein, are actually available to the County for disbursement. The Director shall be the sole authority in determining the availability of funds under this Agreement and the County shall keep the Subrecipient fully informed as to the availability of funds.
2. If any action is taken by any State agency, federal department or any other agency or instrumentality to suspend, decrease or terminate its fiscal obligation under, or in connection with this Agreement, the Parties may amend, suspend, decrease or terminate its obligations under or in connection with this Agreement. In the event of termination, the Parties shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services performed are in accordance with the provisions of this Agreement. The Parties shall give written notice of the effective date of any suspension, amendment, or termination under this section at least ten (10) calendar days in advance.

**L. BUDGET ADJUSTMENTS**

Subrecipient must receive prior written approval from the County to move funds from one Budget Activity Line Item to another. Budget adjustments that do not change the Agreement Amount may be documented by an Amendment signed by the Director and the Subrecipient's Representative. If the County agrees to the budget adjustments that increase the Agreement amount, the County shall follow section D of this Agreement to amend this Agreement. Any requests for reasonable budget adjustments must be submitted ninety (90) days prior to the expiration of this Agreement. Requests for adjustments to this Agreement must be supported by appropriate documentation. The Subrecipient shall not retain any funds drawn down in excess of immediate cash needs (to be used within 15 days of draw down) to cover subsequent requests for reimbursement, and must return them to the County within 30 days of receipt. The Subrecipient must also return to the County any interest that is earned on these funds that are drawn down and not expended for eligible costs within 15 days of draw down.

**M. DISPUTES**

1. Except as may otherwise be provided for in this agreement, any dispute arising out of this agreement that is not resolved between the Parties within a reasonable period of time, which shall not exceed one hundred twenty (120) days, shall be submitted in accordance with the following dispute resolution process.
2. Notice of the specific grounds of a dispute shall be in writing and filed with the Assistant Director within ten (10) working days from the date Subrecipient knew or should have known of the basis of the dispute. The Assistant Director shall respond in writing to Subrecipient within fourteen (14) working days. The decision of the Assistant Director Subrecipient shall be final and conclusive unless, within seven (7) working days from the date Subrecipient is served with the decision, Subrecipient files a written notice of appeal with the Human Services Department Director, who shall provide Subrecipient with a written response within fourteen (14) working days following receipt of Subrecipient's notice of appeal. The decision of the Director shall be final and not appealable.
3. Pending a final decision of the Director, the Subrecipient shall proceed diligently with its performance of this agreement in accordance with the Director's decision.

**N. DEFAULT AND REMEDIES FOR NONCOMPLIANCE**

1. Notwithstanding anything to contrary, this Section shall not be deleted or superseded by any other provision of this Agreement.
2. This Agreement may be immediately terminated by the County if the Subrecipient defaults by failing to perform any objective or breaches any obligation under this Agreement, or any event occurs that jeopardizes the Subrecipient's ability to perform any of its obligations under this Agreement. The County reserves the right to have service provided by persons other than the Subrecipient if the Subrecipient is unable or fails to provide required services with the specified time frame.
3. Failure to comply with the requirements of this Agreement and all the applicable federal, state, or local laws, rules, and regulations may result in suspension or termination of this Agreement, the return of unexpended funds (less just compensation for work satisfactorily completed that, to date, has not been paid), the reimbursement of funds improperly expended, or the recovery of funds improperly acquired. Noncompliance includes, but is not limited to:
  - a. Nonperformance of any obligations required by this Agreement.
  - b. Noncompliance with any applicable federal, state, or local laws, rules or regulations, including HUD guidelines, policies, or directives.
  - c. Unauthorized expenditure of funds.
  - d. Violation of the applicable affordability period.
  - e. Improper disposition of resale or recapture proceeds.
  - f. Improper disposition of program income.
  - g. Noncompliance with applicable financial record requirements, accounting principles, or standards established by 2 CFR 200 *et seq.*
  - h. Noncompliance with recordkeeping, record retention, or reporting requirements.
4. Notwithstanding the suspension or termination of this Agreement, or the final determination of the proper disposition of funds, Subrecipient shall, without intent to limit or with restrictions, be subject to the following:
  - a. All awards of funding shall be immediately revoked, and any approvals related to the project described in the Special Provision or Work Statement shall be deemed revoked and canceled. Thereby, any entitlements to compensation after suspension or termination of this Agreement are similarly revoked and unavailable.
  - b. Not be relieved of any liability or responsibility associated with the Special Provision or Work Statement.

- c. Acknowledge that suspension or termination of this Agreement does not affect or terminate any rights against the Subrecipient at the time of suspension or termination, or that may accrue later. Nothing herein shall be construed to limit or terminate any right or remedy available under contract or rule.
  - d. Waiver of a breach or default of any term, covenant, or condition of this Agreement or any federal, state, or local law, rule, or regulation shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, condition, law, rule, or regulation.
5. The Subrecipient shall, upon notice or with knowledge obtained by itself or others, take any and all proactive actions necessary, and provide any and all applicable remedies to address and correct any act by itself, its employees, officials, successors, assigns, contractors, or subcontractors that resulted in any wrongdoing (intentional or unintentional); misuse or misappropriation of funds; the incorrect or improper disposition of funds; any violation of any federal, state, or local law, rule, or regulation; or the breach of any certification or warranty provided in this Agreement

**O. SEVERABILITY**

Any provision of this Agreement that is determined to be invalid, void or illegal by a court shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions shall remain in full force and effect.

**P. STRICT COMPLIANCE**

The County's acceptance of Subrecipient's performance that is not in strict compliance with the terms hereof shall not be deemed to waive the requirements of strict compliance for all future performance. All changes in performance obligations under this Agreement shall be in writing and signed by both Parties.

**Q. NON-LIABILITY**

The County, its officers, representatives, agents and employees shall not be liable for any act or omission by the Subrecipient or Vendor or any officer, representative, agent or employee of Subrecipient or Vendor occurring in the performance of this Agreement, nor shall these entities be liable for purchases or contracts made by the Subrecipient, Vendor or any officer, representative, agent and employee of Subrecipient or Vendor, in connection with this Agreement.

**R. INDEMNIFICATION**

To the extent permitted by law, the Subrecipient shall, and shall cause any of its Subcontractors to, indemnify, defend save and hold harmless the State of Arizona and Maricopa County, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient and any of its Subcontractors, or any of the directors, officers, agents, or employees of Subrecipient and any of its Subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of the Subrecipient or any of its Subcontractors to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Subrecipient and any of its Subcontractors from and against any and all claims. It is agreed that the Subrecipient and any of its

Subcontractors will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

S. **TECHNICAL ASSISTANCE**

The County will provide reasonable technical assistance to the Subrecipient to assist in complying with State and federal laws, regulations and accountability for diligent performance and compliance with the terms and conditions of this Agreement and all applicable laws, regulations and standards. However, this assistance in no way relieves the Subrecipient of full responsibility and accountability for its actions and performance in compliance with the terms of this Agreement.

T. **SINGLE AUDIT ACT REQUIREMENTS**

Subrecipient is in receipt of federal funds through the County. The funds are subject to the federal audit requirements of the Single Audit Act of 1984, as amended (Pub. L. No. 98-502) (codified at 31 U.S.C. §§ 7501, *et seq.*). Subrecipients shall comply with 2 CFR 200 Subpart F. Upon completion, such audits shall be made available for public inspection. Audits shall be submitted to the County within the twelve (12) months following the close of the fiscal year. Subrecipient shall take corrective actions within six (6) months of the date of receipt of the reports. The County shall consider sanctions as described in 2 CFR 200.505 when the Subrecipient is noncompliant with the audit requirements.

U. **AUDIT DISALLOWANCES**

1. The Subrecipient shall, upon written notice thereof, reimburse the County for any payments made under this Agreement that are disallowed by a federal, State or County audit in the amount of the disallowance, as well as court costs and attorney's fees the County spends to pursue legal action relating to a disallowance. Court costs and attorney's fees incurred will be specifically identified as applicable to the recovery of the disallowed costs in question.
2. If the County determines that a cost for which payment has been made is a disallowed cost, the County will notify the Subrecipient in writing of the disallowance and the required course of action, which shall be at the option of the County, either to adjust any future claim submitted by the Subrecipient by the amount of the disallowance or to require immediate repayment of the disallowed amount by the Subrecipient issuing a check payable to the County.

V. **STAFF AND VOLUNTEER TRAINING**

The Lead Agency may make available to the Subrecipient the opportunity to participate in any applicable training activities conducted by the County.

W. **CLEAN AIR ACT**

If the total face value of this Agreement exceeds \$100,000, the Subrecipient agrees to comply with all regulations, standards and orders issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. §§ 7401, *et seq.*), to the extent any are applicable by reason of performance of this Agreement.

X. **LOBBYING**

1. No federal appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of

Congress in connection with any federal contract, grant, loan or cooperative agreement, the Subrecipient shall complete and submit OMB Form-LLL, titled "Disclosure of Lobbying Activities," in accordance with its instructions and 31 U.S.C. § 1352.

**Y. RELIGIOUS ACTIVITIES**

The Subrecipient agrees that none of its costs and none of the costs incurred by any Vendor will include any expense for any religious activity.

**Z. POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property or services contributed by the County or the Subrecipient under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

**AA. COVENANT AGAINST CONTINGENT FEES**

The Subrecipient warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the County may immediately terminate this Agreement without liability.

**BB. SAFEGUARDING OF PARTICIPANT INFORMATION**

The use or disclosure by any Party of any information concerning an applicant for, or recipient of, services under this Agreement is directly limited to the conduct of this Agreement. Subrecipient and its agents shall safeguard the confidentiality of this information, just as Subrecipient would safeguard its own confidential information. Subrecipient shall include a clause to this effect in all Subcontracts.

**CC. RIGHTS IN DATA**

The Parties shall have the use of data and reports resulting from this Agreement without cost or other restriction, except as otherwise provided by law or applicable regulation. Each Party shall supply to the other Party, upon request, any available information that is relevant to this Agreement and to the performance hereunder.

**DD. COPYRIGHTS**

If this Agreement results in a book or other written material, the author is free to copyright the work, but the County reserves a royalty-free, nonexclusive, perpetual and irrevocable license to reproduce, publish, or otherwise use and to authorize other to use, all copyrighted material and all material which can be copyrighted resulting from this Agreement.

**EE. PATENTS**

Any discovery or invention arising out of, or developed in the course of, work aided by this Agreement shall be promptly and fully reported to the County for determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

**FF. AGREEMENT COMPLIANCE MONITORING**

The Lead Agency will monitor the Subrecipient's compliance with, and performance under, the terms and conditions of this Agreement and the applicable federal regulations promulgated by HUD. On-site visits for compliance monitoring may be made by the Lead Agency at any time during the Subrecipient's normal business hours, announced or unannounced. During an on-site visit, the Subrecipient shall make all of its records and accounts related to work performed or services provided under this Agreement available to the Lead Agency for inspection and copying. In the event of conflict

between the terms of this Agreement and the terms of the Consortium Agreement, the terms of this Agreement control.

**GG. CONTINGENCY RELATING TO OTHER CONTRACTS AND GRANTS**

1. The Subrecipient shall, during the term of this Agreement, immediately inform the Contract Administrator in writing of the award of any other agreement or grant, including any other agreement or grant awarded by the County, where the award may affect either the direct or indirect costs being paid or reimbursed under this Agreement. Failure by the Subrecipient to notify the County of such award shall be considered a violation of this Agreement and the County may immediately terminate this Agreement without liability.
2. The Contract Administrator may request, and the Subrecipient shall provide within a reasonable time, which shall not exceed ten (10) working days, a copy of such other agreement or grant, when in the opinion of the Contract Administrator the award of the agreement or grant may affect the costs being paid or reimbursed under this Agreement.
3. If the Contract Administrator determines that the award to the Subrecipient of such other agreement or grant has affected the costs being paid or reimbursed under this Agreement, the a cost adjustment will be made by the Contract Administrator. If the Subrecipient disputes the proposed cost adjustment, the dispute shall be resolved pursuant to the "Disputes" section contained herein.

**HH. MINIMUM WAGE REQUIREMENTS**

The Subrecipient warrants that it shall pay all its employees who are performing work or providing services under this Agreement not less than the minimum wage specified under Section 206(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 201, *et seq.*) by law, regulation or Executive Order 13658.

**II. RECOGNITION OF COUNTY SUPPORT**

The Subrecipient shall give recognition to the County and the funding source for its support when the Subrecipient publishes materials or releases public information that is paid for in whole or in part with funds received by the Subrecipient under this Agreement.

**JJ. INSURANCE**

1. Subrecipient, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies who are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.
2. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Agreement.
3. Subrecipient's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.
4. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect County.
5. The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Subrecipient shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may

- require Subrecipient to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
6. County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance certificates. County shall not be obligated to review policies and/or endorsements or to advise Subrecipient of any deficiencies in such policies and endorsements, and such receipt shall not relieve Subrecipient from, or be deemed a waiver of County's right to insist on strict fulfillment of Subrecipient's obligations under this Agreement.
  7. The insurance policies required by this Agreement, except Workers' Compensation, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insured's.
  8. The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Subrecipient's work or service.
  9. The Subrecipient's policies shall stipulate that the insurance afforded the Subrecipient shall be primary insurance and that any insurance carried by the County, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
  10. Coverage provided by the Subrecipient shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
  11. **Commercial General Liability:**
    - a. Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
  12. **Workers' Compensation:**
    - a. Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Subrecipient's employees engaged in the performance of the work or services under this Agreement; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.
    - b. Subrecipient waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Subrecipient pursuant to this Agreement.
  13. **Sexual Molestation And Physical Abuse:**
    - a. When services involve working with these groups of individuals, the insurance requirements in the Agreement need to be revised to include coverage for "sexual molestation and physical abuse". Coverage for this type of claim, or allegation, is excluded from standard general liability policies. Therefore, Subrecipient whose services include working with and/or caring for children/elderly and disabled persons should have their policies specifically endorsed to include this coverage.
  14. **Commercial General Liability – Occurrence Form:**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.



15. **The policy shall be endorsed to include coverage for physical/sexual abuse and molestation.**
16. The policy shall be endorsed to include the following additional insured language: "Maricopa County, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Subrecipient".
- Minimum Limits:**
- |                          |             |
|--------------------------|-------------|
| General Aggregate        | \$4,000,000 |
| Each Occurrence Limit    | \$2,000,000 |
| Sexual Abuse/Molestation | \$2,000,000 |
17. **Builder's Risk (Property) Insurance.**
- Subrecipient shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance and, if necessary, Commercial Umbrella insurance in the amount of the initial Agreement amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made or until no person or entity other than County has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of County, Subrecipient and all of Subrecipient's subcontractors and sub-subcontractors in the work during the life of the Agreement and course of construction, and shall continue until the work is completed and accepted by County. For new construction projects, Subrecipient agrees to assume full responsibility for loss or damage to the work being performed and to the structures under construction. For renovation construction projects, Subrecipient agrees to assume responsibility for loss or damage to the work being performed at least up to the full Agreement amount, unless otherwise required by the Agreement documents or amendments thereto.
- Builders' Risk insurance shall be on a special form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs" as required by the Agreement.
  - Builders' Risk insurance must provide coverage from the time any covered property comes under the Subrecipient's control and/or responsibility, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and any insurance or self-insurance maintained by the County is not contributory.
  - If the Agreement requires testing of equipment or other similar operations, at the option of County, Subrecipient will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy or the Builders' Risk Insurance policy.
18. **Certificates of Insurance:**
- Upon Agreement execution, Subrecipient shall furnish the County with valid and complete certificates of insurance or formal endorsements as required by the Agreement, issued by Subrecipient's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement number and title.
  - Prior to commencing work or services under this Agreement, Subrecipient shall have insurance in effect as required by the Agreement in the form provided by the County, issued by Subrecipient's insurer(s), as evidence that policies

providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Such certificates shall be made available to the County upon ten (10) business days. BY SIGNING THE AGREEMENT PAGE THE SUBRECIPIENT AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF AGREEMENT.

- c. In the event any insurance policy(ies) required by this Agreement is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Subrecipient's work or services and as evidenced by annual Certificates of Insurance.
  - d. If a policy does expire during the life of the Agreement, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.
19. **Cancellation and Expiration Notice:**
- a. Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.
  - b. If the Subrecipient provides professional or semi-professional personal services under this agreement for which malpractice or professional liability coverage is available, such as medical, psychiatric, or legal services, Subrecipient shall carry minimum liability coverage of \$2,000,000 each occurrence and provide the County with proof of coverage.
20. **Subcontractors:**  
Subrecipient's certificate(s) shall include all subcontractors as insureds under its policies or Subrecipient shall furnish to the County separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
21. **Approval:**  
Any modification or variation from the insurance requirements in any Agreement must have prior approval from the County whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.
22. **Exceptions:**  
In the event the Subrecipient or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.

#### KK. **BONDING**

- 1. The Subrecipient shall not receive any initial reimbursements under this Agreement in an amount greater than the Subrecipient's bonding limit. Subrecipient shall provide the Assistant Director with documentation of required bonding.
- 2. Subrecipient shall have fidelity bonding of not less than the maximum amount of cash on hand or an amount equal to the initial reimbursement, whichever is greater.
- 3. Bonding requirements shall prevail throughout the term of this Agreement.

#### LL. **GRIEVANCE PROCEDURE**

The Subrecipient shall establish a system through which applicants for, and recipients of, services may present grievances and may take appeals about eligibility and other aspects of the Subrecipient's work under this Agreement. The grievance procedure shall include provisions for notifying the applicants for, and recipients of, services of their eligibility or ineligibility for service and their right to appeal to the County if the grievance is not satisfied at the Subrecipient's level. This system shall include protest procedures for decisions related to contract awards and requests for reasonable accommodations for persons with disabilities.

#### MM. **NONDISCRIMINATION**

The Subrecipient, in connection with any service or other activity under this Agreement, shall not in any way, discriminate against any person on the grounds of race, color, religion, sex, national origin, age,

disability, political affiliation or belief. The Subrecipient shall include this clause in all of its Subcontracts.

**NN. EQUAL EMPLOYMENT OPPORTUNITY**

The Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, disability, color, religion, sex, sexual identity, gender identity, or national origin. The Subrecipient shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, disability, color, religion, sex, sexual identity, gender identity or national origin. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient shall, to the extent such provisions apply, comply with Title VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000a, *et seq.*); the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 701, *et seq.*); the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §§ 621, *et seq.*); the Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*); and Executive Orders 11375 amending Executive Order 11246 and implementing regulations at 41 CFR part 60, as well as, Arizona Executive Order 99-4, which mandates that all persons shall have equal access to employment opportunities.

**OO. DISABILITY REQUIREMENTS**

Subrecipient agrees that any electronic or information technology offered under this Agreement shall comply with A.R.S. §§41-2532 and 2533 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

**PP. UNIFORM ADMINISTRATIVE REQUIREMENTS**

By entering into this Agreement, the Subrecipient agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 *et seq.*

**QQ. FINANCIAL MANAGEMENT**

The Subrecipient shall establish and maintain a separate, interest-bearing bank account for money provided under this Agreement, or an accounting system that assures the safeguarding and accountability of all money and assets provided under this Agreement. No part of the money deposited in the bank account shall be commingled with other funds or money belonging to the Subrecipient. All interest earned on the account shall be disposed of in a manner specified by the County in accordance with applicable State and federal regulations. The Subrecipient shall provide a signed bank account agreement authorizing the County to obtain information about the account. If an accounting system is used, it shall be in accord with generally accepted accounting principles.

**RR. RETENTION OF RECORDS**

1. This provision applies to all financial and programmatic records, supporting document, statistical records and other records of the Subrecipient that are related to this Agreement.
2. The Subrecipient shall retain all records relevant to this Agreement for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer, and the County, federal and State auditors and any other persons duly authorized by the County shall have full access to, and the right to examine, copy and make use of any and all of the records.

**SS. ADEQUACY OF RECORDS**

If the Subrecipient's books, records and other documents related to this Agreement are not sufficient to support and document that allowable services were provided to eligible participants, the Subrecipient shall reimburse the County for the services not supported and documented.

**TT. COMPETITIVE BID REQUIREMENTS****1. Equipment**

If this Agreement is with other than a Public Agency, the Subrecipient shall obtain all equipment to be utilized under this Agreement and purchased with funds provided under this Agreement at the lowest practical cost pursuant to the following competitive bidding system:

- a. Procurements in excess of \$300, but less than \$1,000, require oral price quotations from two or more vendors. The Subrecipient shall keep and maintain a record of the vendors' verbal quotations. The Subrecipient's award shall be made to the lowest bidder meeting specification requirements concerning price, conformity to specifications, and other purchasing factors.
- b. Procurements exceeding an aggregate amount of \$1,000 must be approved by the County. At least three (3) bidders shall be solicited to submit written quotations. The Subrecipient shall solicit written quotations by issuing a Request for Quotation to at least three (3) vendors. The award shall be made to the lowest bidder meeting specification requirements concerning price, conformity to specifications, and other purchasing factors.

**2. Supplies**

If this Agreement is with other than a Public Agency, the Subrecipient shall obtain all supplies to be utilized under this Agreement and purchased with funds provided under this Agreement at the lowest practical cost and pursuant to a system of written quotes whenever the price is expected to be greater than \$300, unless the Subrecipient obtains the Contract Administrator's prior written approval to purchase supplies by an alternate method.

**3. Minority, Women and Small Business Enterprises**

The Subrecipient shall take affirmative steps to provide an opportunity for minorities, women, and small businesses to compete in the procurement of equipment and supplies under this Agreement.

**4. Bidding Procedures**

If the Subrecipient is a Public Agency, the Subrecipient's own bidding procedures shall govern.

5. Funding source requirements relating to competitive bid procedures may supersede any or all subparts of this clause and will be specified in the Special Provisions Section of this Agreement.

**UU. PROPERTY**

Any property furnished or purchased pursuant to the terms of this Agreement shall be utilized, maintained, repaired and accounted for in accordance with instructions furnished by the County, and shall revert to the County upon termination of this Agreement, unless the County determines otherwise. The costs to repair such property are the responsibility of the Subrecipient within the limits budgeted herein. Repair costs beyond the budgeted amount shall be approved by the County.

**VV. IMMIGRATION LAWS AND REGULATIONS****1. Federal Immigration and Nationality Act**

- a. The Parties understand and acknowledge the applicability of the Immigration Reform and Control Act of 1986 (IRCA). The Parties agree to comply with the IRCA in performing under this Agreement and to permit the other Party to inspect personnel records to verify such compliance.

- b. By entering into this Agreement, both Parties warrant compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. Both Parties shall obtain statements from their subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Agreement. Both Parties and their subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work under the Agreement. I-9 forms are available for download at USCIS.GOV.
  - c. The Parties may request verification of compliance for any employee or subcontractor performing work under the Agreement. Should either Party suspect or find that the other Party or any of its subcontractors are not in compliance, then the Party may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension and/or debarment of the other Party. All costs necessary to verify compliance are the responsibility of the Subrecipient or its subcontractor.
2. **Arizona Law:** The Subrecipient warrants that it is in compliance with A.R.S. § 41-4401 (e-verify requirements) and further acknowledges:
- a. That Subrecipient and its Vendors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214;
  - b. That a breach of a warranty under subsection 1 above, shall be deemed a material breach of this Agreement and the County may immediately terminate this Agreement without liability;
  - c. That the County and any contracting government entity retains the legal right to inspect the papers and employment records of any Subrecipient or Vendors employee who works on this Agreement to ensure that the Subrecipient or Vendors is complying with the warranty provided under subsection 1 above and that the Subrecipient agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection.

**WW. DRUG FREE WORKPLACE ACT**

The Subrecipient agrees to comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701, *et seq.*), which requires that the Subrecipient and grantees of federal funds must certify that they will provide drug-free workplaces that comply with federal law. This certification is a precondition to receiving a grant or entering into this Agreement.

**XX. GOVERNOR'S EXECUTIVE ORDER NO. 88-26**

The Subrecipient is required to use the Arizona Taxonomy of Human Services for reporting and contracting purposes.

**YY. EMPLOYMENT DISCLAIMER**

1. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement, partnership, or other formal business association or organization of any kind between the Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.
2. The Parties agree that no individual performing under this Agreement on behalf the Subrecipient is to be considered a County employee, and no rights of County civil service, County retirement, or County personnel rules shall accrue to such individuals. The Subrecipient shall have total responsibility for all its salaries, wages, bonuses, retirement, withholdings, workers' compensation, occupational disease compensation, unemployment compensation,

other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall defend and hold the County harmless with respect thereto.

**ZZ. CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY AND VOLUNTARY EXCLUSION**

The undersigned by signing and submitting this Agreement has the authority to certify the Subrecipient to the terms, representations and/or warrants of this Certification. The Subrecipient, defined as the primary participant in accordance with 45 C.F.R. Part 76, certifies to the best of its knowledge and belief that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
5. shall immediately notify the County if, at any time during the term of this Agreement, it is debarred, suspended, declared ineligible, or voluntarily excluded from participation. The County may pursue available remedies in the event of such occurrence, including immediate termination of this Agreement.
6. shall not enter into a subcontract or sub-recipient agreement with a person or organization that is debarred, suspended, declared ineligible, or voluntarily excluded from participation. The County may pursue available remedies in the event of such occurrence, including immediate termination of this Agreement.

The Subrecipient shall include without modification this Certification's language, entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," with all subgrantees or other contractors; in all lower tier covered transactions and in all solicitations for lower tier covered transactions in accordance with 45 C.F.R. Part 76.

Should the Subrecipient not be able to provide this Certification, an explanation as to why shall be immediately provided to the County, Attention: Community Development Assistant Director, 234 N. Central Ave., Third Floor, Phoenix, AZ 85004.

**AAA. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS**

1. The Parties agree that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on Subrecipient employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 3.908 of the Federal Acquisition Regulation;
2. Subrecipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described in section 3.908 of the Federal Acquisition Regulation. Documentation of such employee notification must be kept on file by Subrecipient and copies provided to County upon request; and
3. Subrecipient shall insert the substance of this clause, including this paragraph (3), in all subcontracts over the simplified acquisition threshold (\$150,000 as of September 2013).

BBB. **ISRAEL BOYCOTT**

Per A.R.S. § 35-393, Subrecipient certifies that they are not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel.

**SECTION II**  
**SPECIAL PROVISIONS**



**MARICOPA COUNTY**  
**HUMAN SERVICES DEPARTMENT**



**A. STANDARDS**

The Subrecipient shall perform the work and provide the services as identified in the Work Statement and shall immediately notify the County whenever the Subrecipient is unable to, or anticipates an inability to, perform any of the work, or provide any of the services required by the terms of this Agreement. The Subrecipient acknowledges that any inability to perform the work and provide the services, or comply with the standards set forth in this Agreement may subject the Subrecipient to the remedies provided in the Default and Remedies for Noncompliance established by the General Provisions.

**B. COMPLIANCE WITH LAWS, RULES & REGULATIONS**

This Agreement and the Parties hereto, are subject to all applicable federal, state, or local laws, rules, and regulations. The Subrecipient shall comply with all applicable laws, rules and regulations, without limitation to those designated within this Agreement. Refer to the Default and Remedies for Noncompliance provided in the General Provisions.

**C. COMPLIANCE WITH REQUIREMENTS REGARDING ELIGIBILITY FOR PUBLIC BENEFITS**

Subrecipient shall comply with State and other laws regarding eligibility for public benefits including ARS § 1-501 and § 1-502 which states that public benefits shall only be provided to eligible applicants who are citizens of the United States, or are Qualified Non-Citizens:

1. All applicants authorized to receive public benefits must provide documentation of their lawful presence in the United States through a verification process.
2. All eligible applicants must also execute a sworn affidavit stating that the documentation provided during the verification process to prove citizenship or qualified non-citizen is true.
3. The Affidavit Demonstrating Lawful Presence in the United States or similar form shall be used to document compliance with requirements 1 and 2, above.
4. Employees of Maricopa County and its subcontracted entities are required to report “discovered violations” of federal immigration law
5. Public benefits are defined in ARS 1-501 as any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.
6. Programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter which meet the following conditions are exempt from ARS 1-501 and 1-502.
  - a. deliver in-kind services at the community level, including through public or private nonprofit agencies;
  - b. do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and
  - c. are necessary for the protection of life or safety.

**D. AUDIT REQUIREMENTS**

The Subrecipient shall, at its own expense, file with the County by March 31st of each Agreement year, either audited financial statements prepared in accordance with federal single audit requirements; or, Financial statements prepared in accordance with generally accepted accounting principles audited by an independent certified public accountant.

E. **SPECIAL FEDERAL AND PROJECT PROVISIONS**

1. In accordance with HOME Program regulations, the Subrecipient agrees to implement the Program fully as described in each Work Statement in accordance with the terms of the Five-Year Consolidated Plan and the Annual Action Plan submitted by the County to HUD for funds to carry out the Program and the Certifications which were submitted concurrently with the Annual Action Plan to HUD, and with any Cooperation Agreements with the Municipality (as applicable). The Annual Action Plan is hereby incorporated by reference into this Agreement. In summary, the Program is described in Work Statement, Section III. The Subrecipient shall be responsible to provide various reports of all activities related to the Work Statement. The Subrecipient agrees to submit to the County required reports:
  - a. **Program Income Reports** are due monthly with supporting documentation and with each Request for Reimbursement.
  - b. **Contract Performance Reports** due on the 15<sup>th</sup> of July, October, January and April of the preceding three months (i.e. July report cover the months of April, May and June). Report shall address all programs described in the Work Statement. Failure to submit timely Agreement Performance Reports will result in suspension of payment reimbursement requests until all reports are brought current. Agreement Progress Reports are continually due for rental projects to ensure that all beneficiary data is regularly updated with beneficiary information during lease-up along with vacant unit reports. Within six months from the date of project completion, if a rental unit remains unoccupied, the Subrecipient must provide the County information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible. Within 18 months from the date of project completion, if efforts to market the unit are unsuccessful and the unit is not occupied by an eligible tenant, HUD will require repayment of all HOME funds invested in the unit. A unit that has not served a low- or very low-income household has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible. This tracking provides the County with early notice of any units at risk of going unrented as described in §92.252.
  - c. **Monthly Request for Reimbursements** Subrecipient must use the required Monthly Request for Reimbursement form and must include all supporting documentation, a Match Log, Monthly Summary of Program Income/Recaptured Funds Report, and supporting documentation;
  - d. **HOME Setup Reports are due within one (1) year from the date this Agreement is fully executed.** According to 92.250 (b): Before Setup Reports are submitted, the Subrecipient must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on owner's or developer's investment in a project and must not commit or invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at a minimum, the period of affordability in 24 CFR 92.252 and 254) and that will not provide a profit or return on the owner's or developer's investment that exceeds the Subrecipient's established standards for the size, type and complexity of the project.
  - e. **HOME Completion Reports** are due no later than sixty (60) days after final payment is requested. HOME Completion Reports must include all required documents as described in this Agreement. The date the HOME Completion Report is entered into the HUD Exchange Integrated Disbursement and Information System (IDIS) is the date the affordability period commences for each activity.
  - f. **Initial Request for Reimbursement** form with required documentation for each activity is due within 45 (forty-five) days of submitting a HOME Setup Report and

no later than 90 (ninety) days thereafter. After the initial request for reimbursement, subsequent requests shall be submitted monthly until project is completed.

- g. **Other HUD**-required reporting data as applicable.

F. **PROGRAM INCOME**

1. Means all gross income received by the Subrecipient directly generated from the use of funds provided by this Agreement or matching contributions. Program income must be used in accordance with the requirements of 24 CFR 92.503. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income may be retained and used by the Subrecipient under the following conditions: submit to the County with documentation supporting the amount of program income received and expended. Monthly Summary Program Income Reports are due to the County by the 15<sup>th</sup> day of the following month (i.e. due on August 15<sup>th</sup> for the month of July).
2. Program income derived from Maricopa HOME Consortium activities undertaken by a Subrecipient which thereafter terminates its participation in the consortium continues to be program income of the consortium and must be returned to the County.
3. Program Income includes, but is not limited to: [1] proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated or constructed with HOME funds or matching contributions, [2] gross income from the use or rental of real property, owned by the Subrecipient that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less cost incidental to generation of the income (program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, Subrecipient or State recipient); [3] payments of principal and interest on loans made using HOME funds or match contributions; [4] Proceeds from the sale of loans made with HOME funds or matching contributions; [5] Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions; [6] Interest earned on program income pending its disposition; and [7] Any other interest or return on the investment permitted under 24 CFR 92.205(b) of HOME funds or matching contributions.
4. Program Income received by the Subrecipient shall be tracked by the Subrecipient and accounted for in a separate fund or account and reported monthly to the County in the required format. Program Income that is received after the end of this Agreement shall be sent to the County in accordance with 24 CFR § 92.503 within 30 days after the expiration of this Agreement.

G. **RECAPTURED FUNDS**

1. Recaptured funds are HOME funds which are recouped by the Subrecipient when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a) (4). The amount of the recapture is determined by the recapture requirements established by the Subrecipient in accordance with 24 CFR 92.254(a) (5) (ii). In accordance with 24 CFR 92.503(c), recaptured funds must be deposited in a separate account and have support back-up evidencing recaptured funds.
2. Recaptured funds must be used for eligible HOME activities in accordance with the requirements of the HOME statute and regulations, in the same manner as program income must be used. However, unlike program income, since recaptured funds represent a return of the original HOME investment, 10% of the recaptured funds may not be used for eligible administrative and planning costs. The Subrecipient must enforce the recapture agreements and account for the source and application of recaptured funds, in accordance with the record keeping requirements of 24 CFR 92.508. Recaptured funds may be retained and used

by the Subrecipient under the following conditions: submit to the County documentation supporting the amount of recaptured funds received and expended. Monthly Summary of Recaptured Fund Reports which are due to the County by the 15th day of the following month (i.e. due on August 15th for the month of July).

3. Recaptured funds received from Maricopa HOME Consortium activities undertaken by the Subrecipient which thereafter terminates its participation in the consortium must be returned to the County.

**H. REAL PROPERTY ACQUIRED or IMPROVED WITH HOME FUNDS**

Upon expiration of this Agreement, any real property under the Subrecipient control that was acquired or improved in whole or in part with HOME funds must be occupied by low and/or very low income households and in compliance with HOME occupancy limits and must meet the requirements to qualify as affordable housing subject to encumbrances and obligations described in any applicable recorded covenants running with the land. The option to use deed restrictions or covenants running with the land must include period of affordability set forth in §92.252 and §92.254.

**I. DEOBLIGATION**

The County may reduce funds from the funding award evidenced by this Agreement, under the following circumstances:

1. The Subrecipient completes performance under the Work Statement without using all funds provided by the County under this Agreement;
2. This Agreement expires all funds are expended;
3. The County original allocation was a loan and the Subrecipient paid the loan;
4. Cancelled or changed an Program required under the Work Statement for reasons other than non-performance;
5. This Agreement has otherwise been terminated. The County may de-obligate funds under this Agreement under the foregoing circumstances upon written notice to the Subrecipient.

**J. REDUCTION IN FUNDS**

The County may reduce funds from the amount of the funding award evidenced by this Agreement, under the following circumstances: 1) The County determines that the Subrecipient failed to use the funds provided by the County under this Agreement in compliance with the terms and conditions outlined herein; or 2) the Subrecipient fails to perform in accordance with the performance obligations set forth in the Statement of Work and Project Schedule or the terms of this Agreement. The County may reduce funds under this Agreement under the foregoing circumstance upon written notice to the Subrecipient.

**K. REPAYMENT OF FUNDS**

Subrecipient agrees to repay funds provided under this Agreement in compliance with the terms of this Agreement or the requirement of applicable laws and regulations. This repayment obligation extends to but is not limited to questioned costs identified in HUD monitoring or Single Audit and repayments required by HUD for failed projects during the period of affordability for projects financed under this agreement. The County may specify in writing, the terms of the repayment or alternative terms in lieu of repayment however in no case shall repayment or alternative terms be accomplished later than one hundred eight (180) days following the written determination of noncompliance by the County.

**L. FUNDS REMAINING AT EXPIRATION**

Upon expiration of the Agreement, the Subrecipient shall transfer to the County any unexpended funds advanced to the Subrecipient by the County under this Agreement.

**M. ADMINISTRATIVE REQUIREMENTS**

In accordance with federal regulations, including 24 CFR § 92 et seq., the County is responsible for ensuring the administration of HOME Program Funds in accordance with all program requirements.

1. **FINANCIAL RECORDS:** Subrecipient accounting system and financial records shall comply with the applicable requirements and standards of 2 CFR 200 *et seq.* Such systems shall be subject to monitoring from time to time by the County or by HUD.
  - a. The Subrecipient agrees to adhere to accounting principles and procedures, to utilize adequate internal controls and maintain necessary source documentation for all costs incurred. The Subrecipient further agrees to maintain an adequate accounting system that provides for appropriate grant accounting (including calculation of program income).
  - b. Subrecipient is to adhere to applicable audit requirements as described and in accordance with 2 CFR 200 *et seq.* In addition, all Subrecipients must provide annual single-audit reports or annual audited financial statements to the County.
  - c. Subrecipient is to adhere to the repayment of investment requirements set forth in 24 CFR § 92.503. Any HOME Funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid in accordance with 24 CFR § 92.503(b)(3).
2. **DOCUMENTATION AND RECORD KEEPING:**
  - a. Records to be Maintained – The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR § 92.508 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to records:
    - i. Demonstrating that the Subrecipient is and remains a qualified Subrecipient;
    - ii. Providing a full description of each projects undertaken and its impact;
    - iii. Required determining the eligibility of activities;
    - iv. Demonstrating compliance with environmental review requirements;
    - v. Required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance (Properties retained shall continue to meet eligibility criteria);
    - vi. Demonstrating citizen participation;
    - vii. Demonstrating compliance regarding acquisitions, displacement, relocation and replacement housing;
    - viii. Demonstrating continuing compliance for all activities and/or compliance with resale or recapture provisions of the affordability standards;
    - ix. Documenting compliance with the fair housing and equal opportunity components of the HOME program;
    - x. Financial records as required by 24 CFR Part 570.502, 2 CFR 200 *et seq.* and OMB Circulars;
    - xi. Other records necessary to document compliance with HOME requirements;
    - xii. Documenting compliance with Section 3 of the Housing Development Act of 1968;
    - xiii. Demonstrating compliance with deeds of trust, promissory notes, and forgivable loans associated with owner-occupied housing activities;
    - xiv. Supporting that the Subrecipient has maintained client data demonstrating clients served meet the income and other criteria required by federal law and that no unlawful discrimination occurs in the solicitation or selection process of low income persons or groups and that no conflict of interest exists.

- xv. As demonstrated compliance with applicable Federal, State and local laws and regulations, including compliance with ARS § 1-501 and § 1-502 (Attachment A).
- b. Outcome Measures – The Subrecipient shall maintain data that supports the accomplishment of the desired outcomes as indicated in the Work Statement.
- c. Disclosure – The Subrecipient understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the County’s or Subrecipient’s responsibilities with respect to services provided under this Agreement is prohibited unless written consent is obtained from such person receiving service.
- d. Program Activity Reports – Such reports as required by the County including, but not limited to HOME Setup/Completion Report, Agreement Performance Reports, Program Income/Recaptured Funds Reports, Match Reports, MBE/WBE information, and other HUD-required reporting data as applicable shall be submitted in accordance with the Current Practices Manual at the completion of each Program which is described under the Work Statement.
- e. Audits and Inspections – All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the County, their designees or the Federal Government, at any time during normal business hours, as often as the County deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. Any relevant deficiencies noted in audit reports must be addressed by the Subrecipient within 45 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements shall constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an Annual Audit conducted in accordance with Current Practices Manual concerning Subrecipient audits. The Annual Audit requirement is applicable to all levels of funding received by Subrecipient via this Agreement, even if the level of funding is less than the current thresholds cited in 2 CFR 200.501
- f. Performance Monitoring – The County shall monitor the Subrecipient to determine if HOME-funded activities are implemented and administered in accordance with all applicable federal requirements and gauge performance of the Subrecipient against goals and performance standards required herein. Subrecipient will prepare for monitoring and assure all required files and documentation are available at scheduled monitoring as set forth in the HOME Consortium Monitoring Current Practices. Failure of Subrecipient to administer, implement and perform as determined by federal regulations and County shall constitute non-compliance with this Agreement. Non-compliance is a violation of this Agreement and may result in the withholding of future payments.
- g. Policy/Administrative Manuals Use – Subrecipient agrees to be familiar with and comply with the policies/procedures established in the most recent Current Practices Manual. Noncompliance with the Current Practices Manual shall constitute a breach of Agreement.

**N. ENVIRONMENTAL REVIEW CONDITIONS**

Completion of the Environmental Review Record (ERR) is mandatory before taking any physical action on a site or entering into choice limiting contracts. Only exempt activities such as administration may be taken and reimbursed by the County prior to receiving a written release of HOME funds to the Subrecipient. Exempt activities described in § 24 CFR 58.34(a)(1)-(11) are activities that generally have no physical impact on the environment. If federal funds are involved in an activity, neither federal nor non-federal funds may be expended or committed by contract (conditional or not) for property acquisition, rehabilitation, conversion, lease, repair or construction

activities, until HUD and/or the County provides written authorization based on approval of an ERR.

An option agreement (to purchase land or a single family residence) on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is contingent upon a HUD authorization to use fund based on a completion ERR. The cost of the option must be a nominal portion of the purchase price.

1. The Subrecipient agrees to comply with: the National Environmental Policy Act of 1969 (P.L. 91-190) pursuant thereto 40 CFR Parts 1500 – 1508; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities pursuant thereto Title 24 CFR Part 58, Subpart A; CPD Notice 01-11 HOME Environmental Review Requirements and with all conditions required in the process of the environmental assessment.
  - a. Air and Water – The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement.
    - i. Clean Air Act, 42 USC § 7401, *et seq.*, as amended.
    - ii. Federal Water Pollution Control Act, as amended, 33 USC § 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder.
    - iii. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
    - iv. Subrecipient agrees to comply with conditions set forth by the Air Quality Department or other County agency, as required.
  - b. Flood Disaster Protection – In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC § 4001), the Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes. The homeowner must obtain and maintain flood insurance as a condition of funding, or funds may not be utilized.
  - c. Historic Preservation – The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC § 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Office for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that is listed or eligible for the National Register of Historic places, or included on any state or local historic property inventory or any archaeological findings.
  - d. Release Of Funds (ROF) – No funds may be encumbered prior to the completion of the Environmental Review. The Environmental Review Record (ERR) must be completed before any funds are obligated. Funding is also conditioned upon the completion of the ERR of every activity site by address. The responsibility for certifying the appropriate Environmental Review Record and ROF shall rest with the County. It is the responsibility of the Subrecipient to notify the County, and to refrain from making any commitments and expenditures on a site until a Release of Funds has been issued by the County. Failure to meet these conditions will mean that requested funds will not be disbursed.

**O. THE SUBRECIPIENT CERTIFIES**

1. That it is a municipality that meets the applicable requirements of the HOME Program.
2. That it possesses legal authority to execute this Agreement.
3. That its governing body has duly adopted or passed as an official act, a resolution, motion, or similar action authorizing the person identified as the official representative of the Subrecipient to execute this Agreement and to comply with the terms of this Agreement.
4. That the activity described shall be carried out and services administered in compliance with all federal laws and regulations as follows:
  - a. Subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of 2 CFR 200, *et seq.*

**P. ADDITIONAL CERTIFICATIONS, WARRANTIES, AND AGREEMENTS**

1. The Parties to this Agreement agree that they will utilize and make available the HOME funds in conformity with the non-discrimination and equal opportunity requirements set out in the HUD regulations in the National Housing Affordability Act. These regulations listed in 24 CFR §§ 92.350-92.454 include:
  - a. The requirements of the Fair Housing Act, 42 CFR §§ 3601-20, and implementing regulations at 24 CFR Part 100: Executive Order 11063 (Equal Opportunity in Housing) as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307) and implementing regulations at 24 CFR §107: and Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, and implementing regulations at 24 CFR Part 1 (Nondiscrimination in Federally Assisted Programs);
  - b. Executive Order 13166 entitled “Improving Access to Services for Persons with Limited English Proficiency” pursuant to Title VI of the Civil Rights Act;
  - c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and the regulations at 24 CFR § 146;
  - d. The prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR Part 8; and, Americans with Disabilities Act 1990;
  - e. The requirements of the Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60 (3 CFR §§ 1964-65, Comp., p. 339);
  - f. The requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1702u (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Activities); and
  - g. The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding Women's Business Enterprise, and Regulations S. 85.36 (e) and of Section 281 of the National Housing Affordability Act.
  - h. The requirements of the Housing and Urban Development Equal Access Rule (24 CFR Part 5 Final Rule 5863) to ensure equal access to housing and services regardless of gender identity.
2. The Parties to this Agreement agree that they will prepare and adopt acceptable procedures and requirements for affirmatively marketing units in the HOME Activities, when HOME assisted housing contains 5 or more rental units, by providing information about the availability of HOME-assisted units that are vacant at the time of completion or that later become vacant. The Parties agree that they will make good faith efforts to provide information and to otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing during the period of affordability. These procedures and requirements are not applicable when units are occupied by families



- referred from a Public Housing Authority's (PHA) waiting list, or to families receiving tenant-based rental assistance provided from HOME funds.
3. HOME funds may not be used for operations or modernization of public housing projects financed under the Housing Act of 1937.
  4. County, as the participating jurisdiction, assumes all the responsibilities for environmental review, decision making, and action under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321) and the other provisions of the law that would apply to HUD were HUD to undertake such Activities as Federal Activities in accordance with 24 CFR Part 58. The County will assume the responsibilities for the Request for Release of Funds. The Subrecipient agrees not to commit or incur expenditures for HOME activities until this environmental review process has been completed. Should it be determined that the Subrecipient has incurred expenses in violation of the NEPA requirements, the Subrecipient will be responsible for the full costs for such expenditures and repayment of any related reimbursements. The Subrecipient agrees to provide all necessary assistance to the County in completing this environmental review process.
  5. The Parties to this Agreement agree to abide with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §§ 4291-4655) and the governmental implementing regulations at 49 CFR Part 24 as they apply to this HOME Program.
  6. The Parties to this Agreement agree to abide with the Davis-Bacon Act (40 U.S.C. § 276a-5) and the Agreement Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).
  7. The Parties to this Agreement agree to abide by the Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4128) as they apply to this HOME Program.
  8. The Parties to this Agreement agree to abide by the Drug-Free Workplace Act of 1988 as it applies to the HOME Program.
  9. Housing assisted with HOME funds constitutes HUD-assisted housing for the purposes of the Lead-Based Paint Poisoning Prevention Act (42.U.S.C. § 4821. et seq.) and is therefore subject to 24 CFR Part 35.
  10. No person who is an employee, agent, consultant, officer or elected official, or appointed official who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, either for themselves or those whom they have family or business ties, during their tenure or for one year thereafter.
  11. The Subrecipient warrants that it is in compliance with A.R.S. § 41-4401 and further acknowledges
    - a. That the Subrecipient and its subcontractors/vendors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214 (A);
    - b. That a breach of a warranty under subsection a above, shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the contact;
    - c. That the County retains the legal right to inspect the employment papers of any Subrecipient or vendors employee who works on the Agreement to ensure that the Subrecipient or vendor is complying with the warranty provided under subsection a above and that the Subrecipient agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection; and
    - d. That nothing herein shall make any Subrecipient, or vendor an agent or employee of the County;
  12. That the Current Practices Manual shall be made accessible to all applicable Subrecipient staff.

**Q. REGARDING SUBCONTRACTS AND VENDORS**

1. Approvals – Unless expressly authorized in the written Agreement by the Subrecipient exempt activities such as architectural, engineering and administration may be undertaken and reimbursed by the County prior to receipt of HUD Request Release of Funds RROF. Exempt activities described in 24 CFR 58.34(1)(1)-(11) are activities that generally have no physical impact on the environment. Otherwise the Subrecipient shall not expend or commit federal or non-federal funds by contract (conditional or not) for property acquisition, rehabilitation, conversion, lease, repair or construction activities, until HUD has provided written authorization based on approved ERR. Any pre-Agreement costs enter into by a subcontract(s) with any agency or individual in the performance of this Program that are not exempt activities without the Release of Funds (ROF) from the County prior to the execution of such Agreement.
2. DUNS Number -- All subcontractors shall have a valid DUNS number and an active profile in the federal System for Award Management, or SAM.
3. Fees – Subrecipient and all subcontractors under this Agreement shall not charge servicing, origination, or other fees for the costs of administering the HOME program, except as permitted by 24 CFR 92.214(b)(1).
4. Selection Process – The Subrecipient shall ensure that all subcontracts let in the performance of this Agreement are awarded on a fair and open competitive basis. Executed copies of all subcontracts shall be forwarded to the County along with documentation, if requested concerning the selection process.
5. Section 3 of the Housing and Urban Development Act of 1968 – The Subrecipient shall include the Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the vendor is in violation of regulations issued by the grantor agency. The Subrecipient shall not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR § 135. The Subrecipient has the responsibility of determining Section 3 eligibility.
6. Monitoring – The Subrecipient shall monitor/review all subcontracted services on an annual basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in Contract Performance Reports and supported with documented evidence, if requested, of follow-up actions taken to correct areas of noncompliance.

**R. THE COUNTY CERTIFIES**

1. That the public purpose is served by the financial participation of the County in the Statement of Work.
2. That the HOME Program funds designated for the Statement of Work constitutes reasonable and prudent assistance necessary for completion of the Program.

**S. PROGRAM COMPLETION**

Upon completion of the Work Statements, all unspent HOME resources shall be forfeited to the County for reallocation as defined by Maricopa HOME Consortium Policies and Procedures. The Subrecipient shall continue to be responsible for compliance activities until all HOME requirements and contractual obligations are met including affordability restrictions. The Subrecipient obligation shall not end until all close-out requirements are completed. The County will notify the Subrecipient in writing that a Completion Report is due to the County within sixty (60) days of one of the following occurrences:

1. Funds have been expended for the activity;
2. The Work Statement has been completed;
3. The Agreement period set forth in this Agreement has expired; or
4. The Agreement has otherwise been terminated.

Following the receipt and approval of the Completion Report for each activity, the County will notify the Subrecipient in writing that each activity is closed. In compliance with 24 CFR 92.502(d) all

project completion data shall be entered in the HUD Exchange Integrated Disbursement and Information System (IDIS) within 120 days of the final drawdown for all activity types. The County shall provide the Subrecipient with notice of the same upon entering all project completion data in IDIS. Project completion means projects have all necessary title transfer and construction work completed, projects comply with HOME requirements including property standards set forth at 24 CFR 92.251, the final draw has been disbursed; and the projection completion data entered into IDIS.

For the purposes of rental project, the project is complete when construction is complete and the units are ready for occupancy. The identification of a beneficiary is not required for project completion. Vacant rental units may be marked as vacant when completion data is entered.

**T. FAILURE TO MAKE PROGRESS**

1. Failure of the Subrecipient to make progress according to the Work Statement may result in Agreement termination, deobligation of funds or recapture of funds. Subrecipient agrees to meet with the County at the site in which the funded activity is taking place to discuss progress and allow the County to provide technical assistance if:
  - a. The Subrecipient fails to complete its Environmental Review pursuant to section 9 within one hundred and eighty (180) calendar days from the date the County executes this Agreement;
  - b. The Subrecipient fails to commit funds to a specific local project in performance of and in accordance with the terms of this Agreement within twelve (12) months from the execution date the County executes this Agreement. Commit for the purposes of this paragraph shall have the same meaning as 24 CFR 92.2(2)(i)-(iii);
  - c. The Subrecipient fails to expend HOME funds in performance of and in accordance with the terms of this Agreement within twenty-four (24) months from the date the County executes this Agreement.
2. The County will terminate any Agreement and recapture funds from the same Agreement in which the Subrecipient does not timely perform the activities described above or in the milestones in the Statement of Work of this Agreement. The County in its sole discretion may forgo providing technical assistance and recapture funds as outlined in this Agreement under Section I hereof and/or terminate the Agreement for cause pursuant to Section I of this Agreement.
3. In the event that a project is not completed within two years from the date that the County executes this agreement, the Subrecipient must repay the HOME funds unless the Subrecipient requests and the Consortium grants an amendment to the Agreement prior to ninety (90) days of Agreement expiration.

**U. GENERAL CONDITIONS**

1. It is expressly understood by the parties hereto that this Agreement has been negotiated and executed in anticipation of receipt of funds by the County from HUD pursuant to the HOME Program and that therefore, the terms, conditions and sums payable under this Agreement are subject to any changes or limitations which may be required by HUD and the HOME Program regulations. Notwithstanding any other provisions of this Agreement, any payment to Subrecipient by County under this Agreement is contingent upon the actual receipt of funds from HUD.
2. Both parties acknowledge that no member of the governing body, nor any employee of the County who exercises any functions or responsibilities in connection with the carrying out of the activity to which this Agreement pertains, has any personal interest direct or indirect in this Agreement.
3. The County may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both organizations and in compliance with the procedures in the Current

Practices Manual. Such amendments shall not invalidate this Agreement nor relieve or release the County or Subrecipient from its obligations under this Agreement. Amendments shall be filed with the original Agreement.

4. Changes – The County may, at any time, by written Amendment executed by the Director or designee, make changes within the general scope of this Agreement in any one or more of the following areas:
  - a. Work Statement activities which do not :
    - i. Increase or decrease the amount of total Agreement funding;
    - ii. Modify the project timeline as long as the last day of the project timeline is within the end date of the Agreement; or
    - iii. Modify terms consistent with any change to the Work Statement required by Federal, State, or County regulations ordinances or policies.
  - b. Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by HUD or local regulations, policies or requirements. It is the responsibility of the Subrecipient to ensure the latest documents are consulted and followed.
  - c. The County may increase or decrease funding resulting from a reallocation pursuant to a majority vote of the Consortium members with the agreement of both parties; provided the change in funding is approved by the Board of Supervisors.
5. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
6. Subrecipient agrees to be familiar with, update as necessary, and comply with the policies/procedures established in the most recent HOME Consortium Current Practices Manual and all provisions in the most recent Current Practices Manual. Non-compliance with the HOME Consortium Current Practices Manual shall constitute a breach of Agreement.
7. Subrecipient agrees to give all notices and comply with all laws, ordinances, and rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If the Subrecipient observes that any of the Agreement documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify the County, in writing, and any necessary changes shall be accomplished by appropriate written modification.
8. Should the Subrecipient perform any work knowing it to be contrary to applicable laws, ordinances, rules, building codes and/or regulations, it shall assume full responsibility, therefore, and shall bear all cost incurred due to its negligence. Any dispute not disposed of by mutual agreement by the parties hereto shall be decided in accordance with the applicable Arizona laws, ordinances, and codes of the state and local governments.
9. Acknowledge the contribution of the County HOME Program in all published literature, brochures, programs, flyers, etc., during the term of the Agreement.
10. Execute and abide by Certifications mandated by HOME Program requirements as listed in HOME Certifications.

#### V. REVERSION OF ASSETS

Upon expiration of this Agreement, the Subrecipient must transfer to the County any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds. Unexpended funds must be deobligated and returned to the County for reallocation. At the expiration of this Agreement, the County, upon recommendation of the Maricopa HOME Consortium staff, may reallocate any unencumbered funds per the Consortium reallocation policy, as stated in the Maricopa HOME Consortium Intergovernmental Agreement -Three Year Cooperative Agreement. A written letter to deobligate funds will be sent to the Subrecipient from the County a minimum of ninety (90) days prior to termination of Agreement.

**SECTION III**  
**WORK STATEMENTS**



**MARICOPA COUNTY**  
**HUMAN SERVICES DEPARTMENT**

**MARICOPA COUNTY  
HOME Investment Partnerships Program  
FY 2016-2017**

DUNS #:077523579

Consortium Member: Glendale, Arizona

Program Year: FY 2016-2017

Project: Housing Rehabilitation

FY 2016-2017 HOME Funds: \$229,571

Type of Property: Single Family

**A. DETAILED SCOPE OF WORK:**

Include the following-

1. Consolidated Plan goals as it relates to this activity, include the priority rating i.e. High, Low High
2. Type of assistance/activity to be provided with HOME funds:  
Single Family Housing Rehabilitation/or Replacement Housing
3. Methods and instruments used for ensuring affordability:  
The HOME funds will be secured by a Deed of Trust and Promissory Note. The City of Glendale will utilize the Recapture Provision secured by Deed and Promissory Note
4. Anticipated use of program income/project proceeds:  
Funds will be invested in future single family projects.

**B. OBJECTIVES AND OUTCOMES (Check appropriate box below.):**

	OUTCOMES		
	AVAILABILITY/ ACCESSIBILITY	AFFORDABILITY	SUSTAINABILITY
<b>DECENT HOUSING</b>	<input checked="" type="checkbox"/> Single Family Housing Rehab and Emergency Rehab, Homebuyer Assistance	<input checked="" type="checkbox"/> Homebuyer Activities, Acquisition/Rehab of housing, Acquisition/New Construction of housing.	<input type="checkbox"/> Housing Activities in a targeted revitalization area

**C. LOGIC MODEL: PERFORMANCE INDICATORS:**

INPUTS/RESOURCES	ACTIVITIES	OUTPUTS	OUTCOMES	IMPACT
In order to accomplish proposed activities, the subrecipient will need the following:	In order to address the issue, the subrecipient will conduct the following activities:	Once completed, these activities will produce the following:	When completed, these activities will lead to the following changes:	Long term changes:
HOME funding	Homeowner Rehab/Replacement Housing	Owner occupied housing rehabilitation	Low to moderate income families have safe and decent housing	Stable neighborhoods

**D. PROPOSED BENEFICIARIES:**

Targeted Population by Income Level	Number of Households	Total Number of Units	Number of <u>HOME Assisted</u> Units in program (if rental)
Households at or below <b>50%</b>	1	1	0
Households at or below <b>60%</b>	1	1	0
Households at or below <b>80%</b>	1	1	0
<b>TOTAL</b>	<b>3</b>	<b>3</b>	<b>0</b>

E. **PRIORITY POPULATIONS:**

Complete the table below only if the Activity will specifically set-aside units for a priority population. Set-asides will be enforced through contract provisions.

Priority Populations	No. of Units
Elderly	0
Physically Disabled	0
Other Priority Populations: Veterans	0

F. **PERFORMANCE REPORTING GOALS-TIMELINE OF ACTIVITIES:**

<u>MILESTONES</u>	<u>START DATE</u>	<u>COMPLETION DATE</u>
HOME Contract signed by City Council	January 2017	February 2017
Qualify Low Income Homeowner	February 2017	February 2019
Scope of Work	February 2017	February 2019
Environmental Review	February 2017	February 2019
RFQ Issued	February 2017	February 2019
Contractor Selected	February 2017	February 2019
Home Set up Report to County	February 2017	February 2019
Rehab and/or Construction to commence	February 2017	February 2019
Rehab complete or Certificate of Occupancy	February 2017	February 2019
Unit Occupied by Low/Moderate Income Person/Family	February 2017	February 2019
Completion Report submitted to City	February 2017	February 2019

**Any change to the Timeline will need to be submitted to and approved by Maricopa County.**

G. **ACTIVITY BUDGET SUMMARY:**

<b>ACTIVITIES</b>	<b>HOME FUNDS FY 2016-2017</b>	<b>Additional Sources* (defined in Table G.)</b>	<b>TOTAL COST</b>
<b>NEW CONSTRUCTION</b>			
Construction Costs-Materials	\$229,571		\$229,571
Builder Overhead			
Builder Profit			
General Requirements			
Consultant/Specialist			
Permits & Fees			
Construction Contingency			
Sales Tax			
Other-Infrastructure			
<b>TOTAL</b>	<b>\$229,571</b>		<b>\$229,571</b>
<b>ADMINISTRATION COSTS</b>			
Program Delivery			
Administrative Costs	\$32,132		\$32,132
Volunteer Labor			
<b>GRAND TOTAL</b>	<b>\$261,703</b>		<b>\$261,703</b>

H. **SOURCE AND AMOUNT OF OTHER RESOURCES:**

<b>FUNDING AGENCY</b>	<b>CASH AMOUNT</b>	<b>VOLUNTEER/ IN-KIND AMOUNT</b>
<b>TOTALS</b>	<b>0\$</b>	<b>0\$</b>

I. **MATCH:**

IDENTIFY MATCH SOURCES AND AMOUNTS THAT HAVE BEEN COMMITTED TO THE PROJECT:

Match commitment must equal 25% of the HOME funds requested.

Documentation is due at the time of request for payment(s).

Match Logs must be submitted annually by June 30<sup>th</sup> of each year.

<b>TYPE</b>	<b>SOURCE/FUNDING AGENCY</b>	<b>TOTAL</b>
Cash or cash equivalents from a non-federal source	General Fund	\$28,696.37
Value of donated materials, equipment, labor and professional services	<b>Donated Volunteer Labor</b>	<b>\$28,696.38</b>
<b>TOTALS</b>		<b>57,392.75</b>



**MARICOPA COUNTY  
HOME Investment Partnerships Program  
FY 2016-2017**

DUNS #: 077523579

Consortium Member: Glendale, Arizona

Program Year: FY 2016-2017

Project: Acquisition of Land and Construction of New Housing

FY 2016-2017 HOME Funds: \$252,412

Type of Property: Single Family

**A. DETAILED SCOPE OF WORK:**

Include the following-

1. Consolidated Plan goals as it relates to this activity, include the priority rating i.e. High, Low High
2. Type of assistance/activity to be provided with HOME funds: Acquisition of Land and Construction of New Housing
3. Methods and instruments used for ensuring affordability: Recapture provision (insert description of how the funds will be recaptured ie paid in full, pro-rated etc.) The HOME funds will be secured by a Deed of Trust and Promissory Note using the recapture provision
4. Anticipated use of program income/project proceeds:  
Program income is not applicable for this project.

**B. OBJECTIVES AND OUTCOMES (Check appropriate box below.):**

	OUTCOMES		
	AVAILABILITY/ ACCESSIBILITY	AFFORDABILITY	SUSTAINABILITY
<b>DECENT HOUSING</b>	<input type="checkbox"/> Single Family Housing Rehab and Emergency Rehab, Homebuyer Assistance	<input checked="" type="checkbox"/> Homebuyer Activities, Acquisition/Rehab of housing, Acquisition/New Construction of housing.	<input type="checkbox"/> Housing Activities in a targeted revitalization area

**C. LOGIC MODEL: PERFORMANCE INDICATORS:**

<b>INPUTS/RESOURCES</b> In order to accomplish proposed activities, the subrecipient will need the following:	<b>ACTIVITIES</b> In order to address the issue, the subrecipient will conduct the following activities:	<b>OUTPUTS</b> Once completed, these activities will produce the following:	<b>OUTCOMES</b> When completed, these activities will lead to the following changes:	<b>IMPACT</b> Long term changes:
HOME funding	New Construction of Single Family Housing	Expand affordable housing opportunities	Low to moderate income families become first time homebuyers	Stable neighborhoods

**D. PROPOSED BENEFICIARIES:**

<b>Targeted Population by Income Level</b>	<b>Number of Households</b>	<b>Total Number of Units</b>	<b>Number of HOME Assisted Units in program (if rental)</b>
Households at or below <b>50%</b>	0	0	0
Households at or below <b>60%</b>	3	3	0
Households at or below <b>80%</b>	0	0	0
<b>TOTAL</b>	<b>3</b>	<b>3</b>	<b>0</b>

**E. PRIORITY POPULATIONS:**

Complete the table below only if the Activity will specifically set-aside units for a priority population. Set-asides will be enforced through contract provisions.

<b>Priority Populations</b>	<b>No. of Units</b>
Elderly	0
Physically Disabled	0
Other Priority Populations: Veterans	0

**F. PERFORMANCE REPORTING GOALS-TIMELINE OF ACTIVITIES:**

<b><u>MILESTONES</u></b>	<b><u>START DATE</u></b>	<b><u>COMPLETION DATE</u></b>
HOME Contract signed by City Council	January 2017	February 2017
Market Study	October 2015	November 2015
Underwriting	October 2015	November 2015
Environmental Review	November 2016	May 2018
Obtain Site Control	Nov 2016	February 2018
RFQ Issued	N/A	N/A
Developer Selected and Signed Development Contract	February 2017	February 2017
Home Set up Report to County	February 2017	February 2019
Acquisition and/or Construction to commence	February 2017	February 2019
Certificate of Occupancy	February 2017	February 2019
Unit Occupied by Low/Moderate Income Person/Family	February 2017	February 2019
Completion Report submitted to City	February 2017	February 2019

**Any change to the Timeline will need to be submitted to and approved by Maricopa County.**

**G. ACTIVITY BUDGET SUMMARY:**

<b>ACTIVITIES</b>	<b>HOME FUNDS FY 2016-2017</b>	<b>Additional Sources* (defined in Table G.)</b>	<b>TOTAL COST</b>
<b>ACQUISITION</b>			
Land		120,000	120,000
Buildings			
Closing Costs			
Legal Fees			
<b>TOTAL</b>		120,000	120,000
<b>SITE &amp; DEMOLITION</b>			
Site Work	60,000		60,000
Demolition			
<b>TOTAL</b>	60,000		60,000
<b>NEW CONSTRUCTION</b>			
Construction Costs-Materials	152,171	72,829	225,000
Builder Overhead			
Builder Profit			
General Requirements			
Consultant/Specialist			
Permits & Fees		15,000	15,000
Construction Contingency			
Sales Tax			
Other-Developer Fee	25,241		25,241
<b>TOTAL</b>	177,412	87,829	<b>265,241</b>
<b>CONSTRUCTION INTEREST &amp; FEES &amp; LEGAL FEES</b>			
Construction Interest			
Bond Premium			
Title & recording			
Insurance			
Legal Fees			
Other - Home Buyer Assistance	15,000		15,000
<b>TOTAL</b>	15,000		15,000
<b>ADMINISTRATION COSTS</b>			
Program Delivery			
Personnel Costs		19,000	19,000
Volunteer Labor		108,000	108,000
<b>TOTAL</b>		127,000	127,000
<b>GRAND TOTAL</b>	<b>\$252,412</b>	<b>\$334,829</b>	<b>\$587,241</b>

**H. SOURCE AND AMOUNT OF OTHER RESOURCES:**

<b>FUNDING AGENCY</b>	<b>CASH AMOUNT</b>	<b>VOLUNTEER/ IN-KIND AMOUNT</b>
Home Sponsorships	226,829	
Volunteer Labor		108,000
<b>TOTALS</b>	<b>\$226,829</b>	<b>\$108,000</b>

**I. MATCH:**

IDENTIFY MATCH SOURCES AND AMOUNTS THAT HAVE BEEN COMMITTED TO THE PROJECT:

Match commitment must equal 25% of the HOME funds requested.

Documentation is due at the time of request for payment(s).

Match Logs must be submitted annually by June 30<sup>th</sup> of each year.

<b>TYPE</b>	<b>SOURCE/FUNDING AGENCY</b>	<b>TOTAL</b>
Cash or cash equivalents from a non-federal source	Home Sponsorships	\$63,103
<b>TOTAL</b>		<b>\$63,103</b>

SECTION IV  
COMPENSATION



MARICOPA COUNTY  
HUMAN SERVICES DEPARTMENT

**A. COMPENSATION**

1. Subrecipient shall be reimbursed utilizing Catalog of Federal Domestic Assistance (CFDA): 14.239, HOME Investment Partnerships Program provided to the County through the U.S. Department of Housing and Urban Development (HUD).
2. Subject to the availability and authorization of funds for the explicit purposes set forth below, County will pay the Subrecipient compensation for services rendered as indicated in the following subsections.

**B. METHOD OF PAYMENT**

1. Subrecipient agrees to submit monthly reimbursement requests utilizing the approved Reimbursement Request Form (Attachment A) to County. Subrecipient may request funds only after the Subrecipient has satisfied the funding contingencies and federal Environmental Review conditions and has a written agreement in place for project activities. Request for reimbursement must be made using the Request for Reimbursement form incorporated in this Agreement.
2. Subrecipient may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the Subrecipient requests funds from the County.
3. County agrees to reimburse Subrecipient for actual allowable costs incurred, upon certification of HUD Environmental Release of Funds and submittal by Subrecipient of an itemized statement of actual expenditures incurred, supported by appropriate documentation. Reimbursement by County is not to be construed as final in the event that HUD disallows reimbursement for the Program or any portion thereof. Upon receipt of a request for reimbursement, the County has 10 days to request additional supporting documentation. After receipt of fully supported request for reimbursement or additional documentation supporting a request, the County will issue reimbursement within 30 days.
4. Subrecipient must maintain proof of said expenditures including checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges as may be required by applicable federal rules and regulations, including requirements by the Federal Office of Management and Budget, and as may otherwise be reasonably required by the County to determine or confirm that any such expenditures are pursuant and within the scope of work.

**C. TIMELINESS**

Subrecipient will submit Requests for Reimbursements to the County at least monthly after the initial request for reimbursement. Subrecipient must seek reimbursement of expenditures within the same fiscal year in which the expenditures are incurred. The fiscal year runs July 1 through June 30 and all Requests for Reimbursement shall be submitted no later than July 10<sup>th</sup> for the preceding fiscal year.

**D. REIMBURSEMENT**

The County shall provide financial assistance in an amount up to Five Hundred Fourteen Thousand and One Hundred Fifteen Dollars (\$514,115) subject to the terms of this Agreement and availability of funds. This Agreement price constitutes the County entire participation and obligation in the performance and completion of all work to be performed under this Agreement.

**E. RELEASE OF FUNDS (ROF)**

No funds may be encumbered prior to the completion of the Environmental Review except for exempt activities as described in 24 CFR 58.34(a)(1)-(11) that generally have no physical impact on the environment. The Environmental Review Record (ERR) must be completed before any funds are obligated. Funding is also conditioned upon the completion of the ERR of every activity site by address. The responsibility for certifying the appropriate Environmental Review Record and ROF

shall rest with the County. It is the responsibility of the Subrecipient to notify the County, and to refrain from making any commitments and expenditures on a site until a Release of Funds has been issued by the County. Failure to meet these conditions will mean that requested funds will not be disbursed.

SECTION V  
ATTACHMENTS & FORMS



MARICOPA COUNTY  
HUMAN SERVICES DEPARTMENT



## Attachment A

**SUBRECIPIENT HOME CERTIFICATION**

In accordance with the provisions of the Home Investment Partnerships Act and with 24 CFR 92.150 of the HOME Investment Partnerships Program Rule, the Subrecipient certifies that:

- (A) Before committing any funds to a activity, the Subrecipient will evaluate the activity in accordance with 24 CFR 92.504 and the guidelines that it adopts for this purpose and complete all assessments required by the rules, including, but not limited to:
  - 1. Complete all income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guideline, homebuyer program policies and affordability requires;
  - 2. Complete a timely environmental review;
  - 3. Complete an underwriting review; assess developer capacity, fiscal soundness and neighborhood market conditions; and
  - 4. The Subrecipient will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing.
- (B) The Subrecipient will only utilize HOME funds to pay for eligible activities and costs of those activities permitted in 24 CFR 92.205 through 92.209 and not specifically prohibited under 92.214.
- (C) The Subrecipient understands tenant-based rental assistance is an element of the Consolidated Plan. However, tenant-based rental assistance must be approved as part of an original application for project funding.
- (D) The submission of the program description is authorized under State and local law (as applicable), and that the Subrecipient possesses the legal authority to carry out the Home Investment Partnership (HOME) Program, in accordance with the HOME regulations;
- (E) The Subrecipient will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations and the requirements of 24 CFR 92.353;
- (F) The Subrecipient will use HOME funds pursuant to its Consolidated Plan(s) approved by the U.S. Department of Housing and Urban Development HUD and all requirements of 24 CFR Part 92;
- (G) The Subrecipient will provide a drug-free workplace by:
  - 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 2. Establishing an ongoing drug-free awareness program to inform employees about:
    - i. The dangers of drug abuse in the workplace;
    - ii. The participating jurisdiction's policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
  - 4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:

- i. Abide by the terms of the statement; and
- ii. Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- 5. Notifying the County in writing, within ten calendar days after receiving notice under paragraph 4 ii. from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4ii., with respect to any employee who is so convicted
  - i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency.
- 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

(H) To the best of its knowledge and belief:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the County, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant, loan, or cooperative agreement;
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions; and
- 3. The Subrecipient will require that the language of paragraph (F) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and agreements under grants, loans, and cooperative agreements) and that all Vendors shall certify and disclose accordingly.

(I) The Subrecipient shall, upon proper notice or with knowledge obtained by itself or others, take any and all proactive actions necessary, and provide any and all applicable remedies to address and correct any act by itself, its employees, officials, successors, assigns, Subrecipients, or vendors that resulted in any wrongdoing (intentional or unintentional); misuse or misappropriation of funds; the incorrect or improper disposition of funds; any violation of any federal, state, or local law, rule, or regulation; or the breach of any certification or warranty provided in this Agreement.

\_\_\_\_\_  
Signature (Subrecipient Representative)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed/Typed Name

\_\_\_\_\_  
Title

### **JURISDICTION CERTIFICATION**

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing --** The jurisdiction shall affirmatively further fair housing, which means it shall conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan --** It shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Drug Free Workplace --** It shall or shall continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that shall be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about -
  - (a) The dangers of drug abuse in the workplace;
  - (b) The grantee's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee shall -
  - (a) Abide by the terms of the statement; and
  - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -
  - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

#### **Affirmative Marketing -24 CFR 92.351**

1. Subrecipient must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If the jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with 24 CFR §92.253(d)(3), the jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.
2. The affirmative marketing requirements and procedures adopted must include:
  - (i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
  - (ii) Requirements and practices each Subrecipient and owner must adhere to in order to carry out the jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
  - (iii) Procedures to be used by Subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
  - (iv) Records that will be kept describing actions taken by the jurisdiction and by Subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and
  - (v) A description of how the jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
3. A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in 24 CFR 92.351.

#### **Minority outreach-24 CFR 92.351**

The Subrecipient must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

**Anti-Lobbying --** To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or shall be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It shall require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all sub awards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all Subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction --** The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan --** The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

**Section 3 --** It shall comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

**Equal Access Rule –** It shall comply with requirements of the Housing and Urban Development Equal Access Rule (24 CFR Part 5 Final Rule 5863) to ensure equal access to housing and services regardless of gender identity.

\_\_\_\_\_  
Signature/Authorized City Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed/Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Name

**APPENDIX TO CERTIFICATIONS****INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE  
REQUIREMENTS:****Lobbying Certification**

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

**Drug-Free Workplace Certification**

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings); or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:
  - a. Place of Performance: City of Glendale
  - b. Check \_\_\_ if there are workplaces on file that are not identified here.
  - c. The certification with regard to the drug free-workplace is required by 24 CFR Part 24, subpart F.

7. Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:
- a. "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);
  - b. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;
  - c. "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;
  - d. "Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees, unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent Subrecipients not on the grantee's payroll; or employees of Subrecipients or vendors in covered workplaces).







## Attachment C

2015 HOME Program Maximum Per-Unit Subsidy Limits for all HOME assisted project activities as of  
November 18, 2015

<b>BR Size</b>	<b>Section 234 ELEVATOR BASE LIMITS</b>	<b>X</b>	<b>240% HCP</b>	<b>=</b>	<b>Max Per Unit HOME Subsidy Limit</b>
	<i>[most current Dated 11/18/15]</i>				
<b>0BR</b>	<b>\$ 58,378</b>	<b>X</b>	<b>2.4</b>	<b>=</b>	<b>\$ 140,107</b>
<b>1BR</b>	<b>66,923</b>	<b>X</b>	<b>2.4</b>	<b>=</b>	<b>160,615</b>
<b>2BR</b>	<b>81,377</b>	<b>X</b>	<b>2.4</b>	<b>=</b>	<b>195,305</b>
<b>3BR</b>	<b>105,276</b>	<b>X</b>	<b>2.4</b>	<b>=</b>	<b>252,662</b>
<b>4BR+</b>	<b>115,560</b>	<b>X</b>	<b>2.4</b>	<b>=</b>	<b>277,344</b>

For additional information, refer to [HUD Informational Bulletin CPD-16-01](#).







## Legislation Description

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**File #: 16-645, Version: 1**

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### **RESOLUTION NO. 5192 NEW SERIES**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF GRANT AGREEMENT NO. 2014-280; ACCEPTANCE OF A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF CRIME ACT (VOCA); AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE GRANT PROGRAM FOR FISCAL YEAR 2016-17.**

Staff Contact: Rick St. John, Police Chief

### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to accept a Victims of Crime Act (VOCA) award in the approximate amount of \$155,173 through the Arizona Department of Public Safety (DPS) for Crime Victim Services in fiscal year 2016-17, and enter into grant award agreement number 2014-280 to continue a VOCA project initially funded in the previous year.

### **Background**

The Glendale Police Department has been accepting VOCA grants for over ten years. Since 2006, the VOCA grants have partially and fully funded both part-time and full-time Victim Assistance (VA) Caseworker positions. VA Caseworkers provide services to sexual abuse victims, sexual assault victims, domestic violence victims, child abuse victims, and their families. Previously, the VA Caseworkers worked traditional business hours and were only available on an "on call" basis for after hours, weekends, and holidays.

A new VOCA grant received in fiscal year 2015-16 provided for the Glendale Police Department Victim Assistance Crisis Intervention Patrol Expanded Program, allowing for two new full-time VA Caseworkers. The new VA Caseworkers were patrol based, working weekends and alternate hours (swing shift and/or graveyard hours). The addition of the two new VA Caseworkers increased the capacity of the VA Program, providing additional crisis intervention victim services within the patrol division, and helped to decrease the need for "call outs." The new VA Caseworkers are working in conjunction with the Glendale Fire Department Crisis Response Team to provide assistance, guidance, grief support and referrals to victims, families and witnesses after a traumatic event, as well as to guide citizens in the right direction after the event. These recurring grant funds in fiscal year 2016-17 will allow for the continued funding of the salary, benefits, training, and equipment for the two full-time VA Caseworkers.

The Glendale Police Department Victim Assistance Program is part of a nationwide movement to better serve victims of crime by enhancing and expanding direct services in accordance with the VOCA. The program assists victims in exercising their rights and helping them to gain stability in their lives. The program also ensures the Police Department continues to maintain compliance with Arizona's Crime Victims' Rights

mandates. VA Caseworkers play a crucial role in ensuring that victims of crime are treated with dignity and respect, and these highly dedicated staff members serve the citizens of Glendale around the clock.

**Analysis**

If approved by Council, acceptance of this grant will allow the Glendale Police Department to maintain VA Caseworkers with a project period of October 1, 2016 through September 30, 2017. Staff is recommending Council adopt the proposed resolution authorizing the City Manager to accept the VOCA award in the approximate amount of \$155,173 and enter into grant agreement number 2014-280.

**Previous Related Council Action**

On January 26, 2016, Council approved the acceptance of a VOCA award from DPS in the amount of \$157,493.

**Community Benefit/Public Involvement**

The Victim Assistance Program provides direct services to Glendale residents, and their families, who have become crime victims. Services offered through the Victim Assistance Program include: resource referrals, crisis counseling, court accompaniment, crime prevention, as well as advocacy services.

**Budget and Financial Impacts**

The grant award totals \$155,173 and there is a \$38,793 financial match required. The salary currently budgeted for one current full-time Victim Assistance Caseworker qualifies as the required financial match; therefore, funds for the financial match are available in the FY 2016-17 Glendale Police Department operating budget. A specific account will be established in Fund 1840, the city's grant fund, once the grant agreement is awarded and formally executed.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$38,793</b>	<b>1000-12150-500200, General Fund-Crime Investigations-Salaries</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5192 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF GRANT AGREEMENT NO. 2014-280; ACCEPTANCE OF A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF CRIME ACT (VOCA); AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE GRANT PROGRAM FOR FISCAL YEAR 2016-17.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Grant Agreement No. 2014-280 with the Arizona Department of Public Safety, Victims of Crime Act (VOCA) be entered into, and accept the grant funds in the approximate amount of \$155,173 for the Glendale Police Department's Victim Assistance Program for Fiscal Year 2016-17, on behalf of the City of Glendale.

SECTION 2. That the City of Glendale will commit matching funds in the amount of \$38,793 for the Victim Assistance Program.

SECTION 3. That the City Manager or designee and the City Clerk be authorized and directed to execute and deliver any and all documents necessary for the entering into and acceptance of said grant on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 20th day of December, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

DOUGLAS A. DUCEY      FRANK L. MILSTEAD  
Governor                      Director

November 14, 2016

Melissa Brickhouse-Thomas  
Glendale Police Department  
6830 N. 57th Drive  
Glendale, AZ 85301-2811

**RE: Fiscal Year 2016/2017 DPS-VOCA Award**

Dear Mrs. Brickhouse-Thomas:

Congratulations! Your agency has been awarded \$155,173 in DPS-VOCA funds for the 2016/2017 program year. Enclosed is the grant award agreement package for your DPS-VOCA grant. Please read and be familiar with the General and any applicable Special Conditions contained in the agreement.

Your agency has 60 days from the date of this letter to accept this offer by signing and returning the enclosed agreement and required certifications; however, reimbursement of VOCA grant funds will not be made until the entire agreement package has been returned to DPS and is fully negotiated. Please see the attached list of items associated with your Subgrant Award Agreement and further instructions for compliance with each item.

Please call me at (602) 223-2491 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Sheri Doll".

Sheri Doll  
Grant Coordinator



## Subgrant Award Agreement Attachments

1. **Subgrant Award Agreement.** This agreement shall be signed by the authorized officials listed on the signature page. Return the *entire* agreement with original signatures to DPS. A copy will be mailed to you once it has been signed by the DPS Director.
2. **Certification Form (EEOP).** Complete and sign the Equal Employment Opportunity Plan (EEOP) Certification Form and return to DPS with the Award Agreement.
3. **Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters.** (These certifications have been combined into one form.) **Lobbying:** Any subgrantee that receives over \$100,000 in federal funding in a fiscal year shall complete, sign and return this form certifying that it shall comply with "New Restrictions on Lobbying," 28 CFR Part 69. **Debarment, Suspension and Other Responsibility Matters:** This certification is required by the regulations implementing Executive Order 12549, "Debarment and Suspension," 2 CFR Part 2867. This certifies that your agency is eligible to receive a federal grant, and that neither your agency nor its employees have been debarred from doing business with the federal government. This completed certification shall be returned to DPS with the signed Award Agreement.
4. **Disclosure of Lobbying Activities.** Any subgrantee that receives more than \$100,000 in federal funding in a fiscal year and has engaged in reportable federal lobbying activities shall complete and return this form to disclose those activities. Any subgrantee that receives more than \$100,000 in federal funding in a fiscal year and has not engaged in reportable federal lobbying activities shall mark "Not Applicable," sign and return this form. If your agency receives less than \$100,000 in federal funding in a fiscal year, mark "Not Applicable," sign and return this form.
5. **Federal Civil Rights Requirements.** In accordance with Federal regulations and as a condition of award, your organization shall comply with all applicable Federal Civil Rights requirements of nondiscrimination. This completed certification shall be returned to DPS with the signed Award Agreement.
6. **Proof of Nonprofit Status.** Nonprofit subgrantee agencies shall provide proof of nonprofit status by providing the relevant documentation as outlined in the attached document. This documentation shall be returned to DPS with the signed Award Agreement.
7. **Proof of Federally Negotiated Indirect Cost Rate or Certification regarding de minimis rate of 10% of Modified Total Direct Costs (MTDC) eligibility.** Any subgrantee awarded indirect costs based on a federally negotiated indirect cost rate shall provide a copy of the Indirect Cost Negotiated Agreement. This documentation shall be returned to DPS with the signed Award Agreement. Any subgrantee awarded indirect costs based on a de minimis rate of 10% of MTDC shall complete the attached certification regarding its eligibility.
8. **Certification Regarding Non-Supplanting.** State and local **governmental subgrantees** shall certify the agency's adherence to the prohibition against supplanting of State or local funds with Federal funds. This completed certification shall be returned to DPS with the signed Award Agreement.
9. **Financial Management and System of Internal Controls Questionnaire.** Adequate accounting systems shall meet criteria as outlined in the DOJ Grants Financial Guide. Subgrantees shall complete the Financial Management and System of Internal Controls Questionnaire and return it to DPS with the signed Award Agreement.
10. **Subgrant Award Report (SAR).** Complete the Subgrant Award Report as it pertains to this award and return to DPS with the signed Award Agreement.

ARIZONA DEPARTMENT OF PUBLIC SAFETY  
VICTIMS OF CRIME ACT (VOCA)  
VICTIM ASSISTANCE GRANT PROGRAM  
FEDERAL GRANT #2014-VA-GX-0018  
CFDA #16-575  
SUBGRANT AWARD AGREEMENT

SUBRECIPIENT

AGENCY: Glendale Police Department

ADDRESS: 6835 N. 57th Drive

CITY: Glendale STATE: AZ ZIP: 85301-3218

2016/2017 AWARD AMOUNT: \$155,173

2016/2017 REQUIRED MATCH (NON-FEDERAL SOURCE): \$38,793

PROJECT PERIOD: 10/01/2016 to 09/30/2017

PROJECT PURPOSE: To provide assistance to victims of crime.

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This agreement is made under the authority of the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, 42 USC 10601, et seq as amended.

The purpose of this agreement shall be to award Victims of Crime Act (VOCA) Assistance funds to the subrecipient to provide services to victims of crime as authorized by the Victims of Crime Act. Awards may be supplemented by other federal, state, local, and private funds. Subrecipient's agreement or amended agreement(s) is incorporated by reference into this Subgrant Award Agreement.

This award is subject to agreement by the subrecipient, including any DPS VOCA funded positions and their immediate supervisors, to conform to the provisions of Victims of Crime Act of 1984; the DPS VOCA victim assistance grant program guidelines; the sub-recipient's application; the attached general conditions and applicable special conditions; the most recent version of the Department of Justice Grants Financial Guide; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 and supplemented by the Department of Justice in 2 CFR Part 2800 (together, the "Part 200 Uniform Requirements"; Executive Order 12372; and 28 CFR pts. 66 and 70, all of which are incorporated by reference as if fully stated herein.

Sub-recipients, and all their contractors, will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 CFR pts. 18, 22, 23, 30, 35, 38 (as amended on May 4, 2016), 42, 61, and 63, and the award term in 2 CFR § 175.15 (b); section 106 of the National Historic Preservation Act of 1966 (16 USC § 470); Executive Order 11593; the Archaeological and Historical Preservation Act of 1974 (16 USC § 469 a-1 et seq.); the National Environmental Policy Act of 1969 (42 USC § 4321); and any applicable statutorily-imposed nondiscrimination requirements, which may include Title VI of the Civil Rights Act of 1964, as amended, (42 USC § 2000d and 28 CFR § 42.101 et seq); Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 and 28 CFR § 42.501 et seq); the Age Discrimination Act of 1975 (42 USC § 6102 and 28 CFR § 42.700 et seq); Title IX of the Education Amendments of 1972 (20 USC § 1681 and 28 CFR pt 54); the Omnibus Crime Control and Safe Streets Act of 1968 (42 USC § 3789d(c) and 28 CFR § 42.201 et seq); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 USC § 5672(b)); Section 1407 of the Victims of Crime Act of 1984 (42 USC § 10604(e)); Title II of the Americans with Disabilities Act of 1990 (42 USC § 12131-34 and 28 CFR pt. 35); and Equal Treatment for Faith-Based Organizations (28 CFR pt 38 and Executive Order 13279); and State Executive Order No. 2009-09. The above referenced federal and state laws prohibit discrimination on the basis of race, color, religion, sex, disability, and national origin (including limited English proficiency) in the delivery of services and employment practices, and prohibit discrimination on the basis of age in the delivery of services.

Governmental entities will comply with the requirements of Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 USC § 4601 et seq.), and 5 USC §§ 1501-08 and §§ 7324-28 which limit certain political activities of State and local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

The Arizona Department of Public Safety agrees to pay subrecipient the above shown AWARD AMOUNT subject to the conditions provided herein:

General Conditions

- 1.0 Definition of Terms.** As used in this subgrant award agreement, the terms listed below are defined as follows:
- 1.1 “Agreement” means a written online Request for Grant Application (RFGA) approved by the Arizona Department of Public Safety.
  - 1.2 “Agreement Amendment” means a written online document approved by the Arizona Department of Public Safety that is requested by the subrecipient agency for the purpose of making changes in the agreement.
  - 1.3 “Application” means a written online Request for Grant Application (RFGA).
  - 1.4 “Days” means calendar days unless otherwise specified.
  - 1.5 “Direct Service” means supportive services provided through direct contact with a victim in-person, by phone or hotline, or by email.
  - 1.6 “Director” means the head of the Arizona Department of Public Safety, or his/her designee, who is duly authorized by the State to enter into grant agreements and make written determinations with respect to those agreements.
  - 1.7 “DPS” means the Arizona Department of Public Safety.
  - 1.8 “Grant” means the furnishing of financial or other assistance, including state or federal grant funds, by the Department of Public Safety to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
  - 1.9 “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
  - 1.10 “Match” means additional resources (cash or in-kind) provided by the subrecipient to support the DPS VOCA funded project. Cash match shall be from a non-Federal source.
  - 1.11 “Project” means activities and services supported by Victims of Crime Act (VOCA) funds plus required match, relating to this subgrant award agreement only.
  - 1.12 “Services” means the furnishing of labor, time or effort by a subrecipient which does not involve the delivery of a specific end product other than required reports and performance. Allowable services include those efforts that (1) respond to the emotional and physical needs [healing] of crime victims; (2) assist primary and secondary victims of crime to stabilize [restitution/economic restabilization] their lives after a victimization; (3) assist victims to understand and participate in the criminal [justice] system; and (4) provide victims of crime with a measure of [safety] and security.
  - 1.13 “State” means the State of Arizona and Department or Agency of the State that executes the subgrant award agreement.
  - 1.14 “Subgrant award agreement” means a written signed agreement between the Arizona Department of Public Safety and the grant recipient for the award of DPS VOCA funds.
  - 1.15 “Subrecipient” means the legal entity to which a subaward is made and which is accountable to DPS for the use of the funds provided.

1.16 “VOCA” means Victims of Crime Act of 1984, as amended, 42 USC 10601, et seq.

**2.0 Subgrant award agreement interpretation.**

2.1 Arizona Law. The Arizona law applies to this grant award agreement, including the Solicitation and Award of Grants, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 24, and its implementing rules.

2.2 Subgrant Award Agreement Order of Precedence. In the event of a conflict in the provisions of the subgrant award agreement, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.2.1 Special Conditions;

2.2.2 General Conditions;

2.2.3 DPS / VOCA Guidelines;

2.2.4 Federal VOCA Guidelines; DOJ Grants Financial Guide; and Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR Part 200.

2.3 Relationship of parties. The subrecipient under this subgrant award agreement is an independent subrecipient. Neither party to this subgrant award agreement shall be deemed to be the employee or agent of the other party to the subgrant award agreement.

2.4 Severability. The provisions of this subgrant award agreement are severable. Any condition deemed illegal or invalid shall not affect any other condition of the subgrant award agreement.

2.5 No parole evidence. This subgrant award agreement is intended by the parties as a final and complete expression of their agreement. No prior dealings between the parties shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.6 No waiver. Either party’s failure to insist on strict performance of any condition of the subgrant award agreement shall not be deemed a waiver of that condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

**3.0 Subgrant award agreement administration and operation.**

3.1 Non-Discrimination. The subrecipient shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations related to the prohibition against discrimination, including Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, the Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the Victims of Crime Act of 1984, the Americans with Disabilities Act of 1990, Department of Justice implementing regulations and Equal Treatment for Faith-Based Organizations.

If in the three years prior to the date of the grant award, a federal or state court or administrative agency makes an adverse finding of discrimination after a due process hearing against the subrecipient agency on the grounds of race, color, national origin, religion, sex, or disability, the subrecipient shall forward a copy of the finding to the Department of Justice, Office of Justice Programs, Office for Civil Rights and DPS.

3.1.1 Providing Services to Limited English Proficiency (LEP) Individuals. In accordance with Department of Justice guidance, recipients (and subrecipients) of Federal financial assistance shall take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP).

3.1.2 Faith-Based Organizations. Department of Justice regulations prohibit faith-based organizations from using financial assistance from the Department of Justice to fund inherently religious activities. While faith-based organizations can engage in non-funded inherently (or explicitly) religious activities, they shall be held separately from the Department of Justice funded program, and customers or beneficiaries cannot be

compelled to participate in them. Regulation also makes clear that organizations participating in programs funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion.

- 3.1.3 Equal Employment Opportunity Plan. The subrecipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if required to submit one pursuant to 28 CFR Section 42.302) that is approved by the Office for Civil Rights is a violation of its Standard Assurances and may result in suspension or termination of funding, until such time as the subrecipient is in compliance.
- 3.1.4 Civil Rights Compliance Review. The subrecipient shall provide relevant information regarding civil rights policies and procedures during the DPS-VOCA Civil Rights Compliance Review process.
- 3.2 Certification Regarding Lobbying. Subrecipient agencies entering into a VOCA grant or cooperative agreement over \$100,000 shall certify that no Federal funds have been paid or will be paid, by or on behalf of the subrecipient, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement. Federal funds include but are not limited to such grants as Victims of Crime Act (VOCA), Violence Against Women Act (VAWA), Family Violence Prevention and Services Act (Rural Safe Home Network Program), and the Children's Justice Act, which may be administered through a State or other local governmental agency. Additionally, subrecipient agencies shall disclose to DPS any lobbying activities that have been paid or will be paid with any funds other than Federal funds.
  - 3.2.1 Lobbying Activities. The subrecipient understands and agrees that it cannot use any federal funds, either directly or indirectly, to support or oppose the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government.
- 3.3 Required reports. The subrecipient will submit reports on such data in such form and at such times as required by DPS, to include:
  - 3.3.1 Monthly financial report due the 15<sup>th</sup> of each month;
  - 3.3.2 Quarterly statistical and programmatic report due 30 days following the close of each quarter;
  - 3.3.3 Annual narrative report due 30 days following the close of the grant period;
  - 3.3.4 DPS victim assistance survey due annually upon request; and
  - 3.3.5 Year-end Amendment, if applicable, due 30 days following the close of the grant period.

Failure to submit complete, accurate and timely reports may result in a reduction of the current award. Any three combined occurrences of monthly or quarterly reports submitted over 15 days late and/or three combined occurrences relating to the submission of incomplete or inaccurate monthly or quarterly reports may result in up to a 10% award reduction as determined by DPS.

- 3.3.6 If DPS determines that the subrecipient has failed to meet the acceptable standard for maintaining financial and/or programmatic documentation or is identified as a high risk subrecipient, additional financial or programmatic documentation may be required.
- 3.4 Records. The subrecipient shall retain all financial records, supporting documentation, statistical records and all other records pertinent to this award until March 31 of the seventh year following the year indicated in the Federal Grant Number of this Subgrant Award Agreement. (Federal Grant #2014-VA-GX-0018 plus seven years – keep through March 31 of that seventh year). In addition, with a 24-hour notice, the subrecipient will allow DPS and the Department of Justice's Office for Victims of Crime and/or the Office of the Chief Financial Officer (or their representatives) to review all of the subrecipient's records concerning this grant project.
- 3.5 Capital equipment. Any purchase of capital equipment shall be approved by DPS prior to purchase to include submission of the subrecipient's procurement or purchasing policies and procedures and related quote(s) for item purchase. The subrecipient shall maintain all capital equipment and furniture (costs in excess of \$5,000 per unit) purchased through this subgrant award agreement in accordance with the DOJ Grants Financial Guide. The subrecipient shall submit documentation relevant to the purchase as required by

DPS. All capital equipment and furniture shall be used for victim services as identified in the subrecipient's application and this subgrant award agreement. Any deviation from this provision shall be approved in writing by DPS.

- 3.5.1 The subrecipient must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$150,000).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP website at <http://ojp.gov/funding/explore/noncompetitiveprocurement.htm>.

- 3.6 Authorization of use. DPS reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and authorize others to use for government purposes, the copyright of any work developed under this award and any rights of copyright to which a subrecipient purchases ownership with support through this subgrant award agreement.
- 3.7 Research or statistical information. The subrecipient shall not use or reveal any research or statistical information under this project that is identifiable to any specific person except for the purpose for which the information was obtained, in accordance with VOCA.
- 3.8 Site inspections. The continuance of the subrecipient's subgrant award agreement is contingent upon successful completion of random or for-cause inspections. Failure to satisfactorily comply with Required Action items identified during the site inspection can result in termination of the subgrant award agreement.
- 3.9 Audit requirements. The subrecipient shall comply with the audit requirements of Title 2 F.F.R. Subpart F (§ 200.500 et seq.) of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the DPS VOCA guidelines. If an audit is required, a copy of the audit report shall be sent to DPS.
- 3.10 Financial statement availability. The nonprofit subrecipient shall make its financial statements available online (either on the subrecipient's or another publicly available website). Subrecipient organizations that have Federal 501(c)(3) tax status are considered in compliance with this requirement to the extent that such organizations file IRS Form 990 or similar tax documents (e.g., 990-EZ), as several sources already provide searchable online databases of such financial statements.
- 3.11 Certification of nonprofit status. The nonprofit subrecipient shall certify its nonprofit status by submitting a statement to DPS affirmatively asserting that the subrecipient is a nonprofit organization, and by providing either 1) a copy of its 501(c)(3) designation letter; 2) a letter from the Arizona Department of Revenue or Arizona Attorney General's Office stating that the subrecipient is a nonprofit organization operating within Arizona; or 3) a copy of the agency's Arizona certificate of incorporation that substantiates its nonprofit status. Subrecipients that are local nonprofit affiliates of Arizona or national nonprofits should have available proof of (1), (2) or (3), and a statement by the Arizona or national parent organization that the subrecipient is a local nonprofit affiliate.
- 3.12 Potential fraud, waste, abuse or misconduct. The subrecipient shall promptly notify the DOJ Office of the Inspector General (OIG) and DPS in writing of any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has in connection with funds under this award either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award shall be reported to the OIG by 1) mail directly to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 950 Pennsylvania Avenue, N.W. Room 4706, Washington DC 20530; 2) e-mail to: [oig.hotline@usdoj.gov](mailto:oig.hotline@usdoj.gov); and/or 3) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <http://www.usdoj.gov/oig>.

No subrecipient under this award may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information. The foregoing is not intended to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

The subrecipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rules, or regulation related to a federal grant.

The subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the subrecipient is to contact the OJP and DPS for guidance.

- 3.13 Prohibited activities. The following activities are prohibited under this subgrant award agreement:  
1. New construction. 2. Any renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historical Places or (b) located within a 100-year floodplain. 3. A renovation which will change the basic prior use of a facility or significantly change its size. 4. Research and technology whose anticipated and future application could be expected to have an effect on the environment. 5. Implementation of a program involving the use of chemicals.
- 3.14 Subgrant award agreement renewal. DPS has the option to renew this project for a specified additional time period. The renewal of this project is contingent upon satisfactory performance, availability of funds, and demonstrated need.
- 3.15 System for Award Management. The subrecipient agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM). After the initial registration, subrecipients are required to review and update the information at least annually and more frequently if required by changes in the subrecipient's information or another award item. Additional information about registration procedures may be found at the SAM website ([www.sam.gov](http://www.sam.gov)).
- 4.0 Cost and Payments.**
- 4.1 Available funds. Any award is dependent upon receipt of the VOCA Assistance funds from the U.S. Department of Justice, and there is no obligation on the part of DPS to award funds other than the federal VOCA Assistance funds.
- 4.2 Match waiver. Any award made with a match waiver pending approval from the U.S. Department of Justice is subject to reduction if the match waiver is not approved.
- 4.3 Compliance. Failure of the subrecipient to utilize DPS VOCA funds for direct services to crime victims or for training purposes as stated in the approved budget may be subject to immediate cancellation. The subrecipient shall not utilize VOCA funds for projects which serve perpetrators of crime or crime prevention, and/or for any other non-allowable cost or activity in accordance with DPS / VOCA guidelines. The subrecipient agrees to reimburse DPS for any VOCA funds the subrecipient expends that are not in full compliance with this subgrant award agreement.
- 4.4 No charge to victims. Subrecipients shall provide services to crime victims, at no charge, through the VOCA-funded project. The purpose of the VOCA victim assistance grant program is to provide services to all crime victims regardless of their ability to pay for services rendered or availability of insurance or other third-party payment resources.

## DPS Grant Agreement No. 2014-280

- 4.5 On-call time. The subrecipient shall not utilize VOCA funds to support on-call time for staff. DPS may approve the use of on-call time as program match.
- 4.6 Non-supplantation. VOCA crime victim assistance funds will be used to enhance or expand services and shall not be used to supplant state and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(c), codified at 42 USC 10603(a)(2)(C). This supplantation clause applies to state and local public agencies only.
- 4.7 Mandated services. The subrecipient shall not utilize VOCA funds to support legally mandated services.
- 4.8 Funds management. The subrecipient shall provide appropriate accounting and monitoring procedures to ensure fiscal control and efficient management of funds, in accordance with the U.S. Department of Justice, Office of Justice Programs, Grants Financial Guide, effective edition.
- 4.9 Unexpended funds. The subrecipient shall immediately contact DPS to make arrangements to amend its budget to expend remaining funds or to reduce the contracted amount when it becomes apparent that not all VOCA grant funds will be expended by the end of the grant period. Any VOCA funds not expended or encumbered prior to the end of the award period shall be reverted to DPS within 30 days of the close of the grant period. Any funds not matched as required shall be reverted to DPS within 30 days of receipt of written notification from DPS.
- 4.10 Matching funds. The subrecipient shall commit, track and report matching funds at approximately the same percentage rate as expenditures. The subrecipient may commit, track and report match funds at a higher percentage rate each month, not to exceed the total required match amount. The subgrant award agreement is subject to cancellation if the required match funding committed, tracked, and reported each month is more than 10% less than the rate of expenditures.
- 4.11 Training and conference expense. The subrecipient agrees to comply with all applicable laws, regulations, policies, and Official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), meetings, training, and other events, including the provision of food and/or beverage and costs of attendance at such events.
- 4.12 Training or training materials. The subrecipient understands and agrees that any training or training materials developed or delivered with funding provided under this award shall adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <http://www.ojp.usdoj.gov/funding/ojptrainingguidingprinciples.htm>.
- 4.13 Duplicate funding. The subrecipient agrees that if it currently has an open award of federal or state funds or if it receives an award of federal or state funds other than this award, and those award funds have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the subrecipient shall promptly notify DPS and, if so requested by DPS, seek an agreement amendment request to eliminate any duplication of funding.
- 5.0 Subgrant Award Agreement Changes.**
- 5.1 Agreement Amendment. This subgrant award agreement is issued under the authority of the Director of the Arizona DPS and may be modified only through an Agreement Amendment, approved by DPS.
- 5.2 Assignment of duties. The subrecipient shall not assign or transfer any of its duties under this agreement without express written permission of DPS.
- 5.3 Scope of work. Awards are based on information presented in the subrecipient's on-line application. Any deviation from the scope of the project as stated in the Narrative and Budget sections of the subrecipient's application shall be approved in writing by DPS prior to the use of such funds.
- 5.4 Subcontracts. The subrecipient shall not enter into any subcontract under this subgrant award agreement without the advance written approval of DPS. The subrecipient shall clearly list any proposed subcontractors



and the subcontractor's proposed responsibilities in the application for funding or agreement amendment. The subcontract shall incorporate by reference the terms and conditions of this subgrant award agreement.

**6.0 Indemnification.**

Subrecipient Indemnification. The parties to this subgrant award agreement agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the subrecipient for vicarious liability of the State as a result of entering into this agreement. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

**7.0 Grant Remedies.**

7.1 Right to Assurance. If DPS in good faith has reason to believe that the subrecipient does not intend to, or is unable to perform or continue performing under this subgrant award agreement, DPS may demand in writing that the subrecipient give a written assurance of intent to perform. Failure by the subrecipient to provide written assurance within the number of days specified in the demand may, at DPS's option, be the basis for terminating the subgrant award agreement under the General Conditions or other rights and remedies available by law or provided by the subgrant award agreement.

7.2 Project implementation. If a project is not operational within 60 days of the original start date of the project period, the subrecipient shall submit written documentation to DPS explaining steps taken to initiate the project, the reasons for the delay, and the expected start date. If a project is not operational within 90 days of the original start date of the project period, the subrecipient shall submit a second written statement explaining the implementation delay. DPS reserves the right to cancel the agreement if the proposed project is not operational within 90 days of the original start date.

**8.0 Grant Termination.**

8.1 Cancellation for conflict of interest. Pursuant to A.R.S. § 38-511, the State may cancel this agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the State is or becomes at any time while the agreement or an extension of the agreement is in effect an employee of or a consultant to any other party to this agreement with respect to the subject matter of the agreement. The cancellation shall be effective when the subrecipient receives written notice of the cancellation unless the notice specifies a later time. If the subrecipient is a political subdivision of the State, it may also cancel this agreement as provided in A.R.S. § 38-511. In the event of cancellation under this paragraph, any unexpended funds received by the subrecipient shall be reverted within 30 days of the cancellation notification.

8.2 Gratuities. DPS may, by written notice, terminate this subgrant award agreement, in whole or in part, if DPS determines that employment or a gratuity was offered or made by the subrecipient or a representative of the subrecipient to any officer or employee of the state for the purpose of influencing the outcome of the grant award or in securing the subgrant award agreement, an amendment to the subgrant award agreement, or favorable treatment concerning the subgrant award agreement, including the making of any determination or decision about subgrant award agreement performance. DPS, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the subrecipient.

8.3 Suspension or Debarment. DPS may, by written notice to the subrecipient, immediately terminate this subgrant award agreement if DPS determines that the subrecipient has been debarred, suspended or otherwise lawfully prohibited from or ineligible for participation in federal assistance programs or activities, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an application for funding or execution of a subgrant award agreement shall attest that the subrecipient is not currently suspended or debarred. If the subrecipient becomes suspended or debarred, the subrecipient shall immediately notify DPS.

- 8.4 Termination for convenience. DPS reserves the right to terminate the subgrant award agreement, in whole or in part any time, when in the best interest of DPS without penalty or recourse. Upon receipt of the written notice, the subrecipient shall stop all work as directed in the notice and minimize all further costs to DPS. In the event of termination under this paragraph, any unexpended funds received by the subrecipient shall be reverted within 30 days of the termination notification.
- 8.5 Termination for default. In addition to the rights reserved in the contract, DPS may terminate the subgrant award agreement in whole or in part due to the failure of the subrecipient to comply with any term or condition of the subgrant award agreement or to make satisfactory progress in performing the subgrant award agreement. An award is subject to cancellation if less than 20% of the awarded funds are expended or encumbered within 4 months of the contract start date, 40% within 7 months, and 70% within 10 months. DPS shall provide a 30-day written notice of termination and the reasons for termination to the subrecipient. In the event of termination under this paragraph, any unexpended funds received by the subrecipient shall be reverted within 30 days of the termination notification. The subrecipient has the option to appeal within 20 calendar days of the date of the written notice of termination. The final decision will be at the discretion of the DPS Director or his designee.
- 8.6 Continuation of performance through termination. The subrecipient shall continue to perform, in accordance with the requirements of the subgrant award agreement, up to the date of termination, as directed in the termination notice.
- 8.7 Termination by subrecipient. Upon written notice to DPS, the subrecipient may cancel this subgrant award agreement. Any unexpended funds shall immediately be reverted to DPS.

**9.0 Arbitration.**

The parties to this subgrant award agreement agree to resolve all disputes arising out of or relating to this subgrant award agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes (Title 41).

**10.0 Other Service Requirements and Prohibited Activities.**

- 10.1 Collaboration. The subrecipient agrees to continually and proactively participate in developing partner relationships among other service providers in the effort to aid crime victims within the community served.
- 10.2 Demographics. The subrecipient agrees to maintain information on victim services provided through this project by race, national origin, sex, age and disability.
- 10.3 Key staff changes. The subrecipient agrees to promptly notify DPS of changes in key staff members identified in the grant application, to include Project Contact, Civil Rights Contact, Crime Victim Compensation Coordinator, Project Director, Financial Contact, Authorizing Official, and VOCA funded staff and/or staff used as match.
- 10.4 Vacancies. The subrecipient agrees to promptly notify DPS in writing when any VOCA funded employee position is vacated, and when any VOCA funded employee position is filled.
- 10.5 Surveys. The subrecipient agrees to utilize customer feedback surveys to assist the agency with contracted project outcome and quality measures. Feedback and satisfaction surveys will utilize the Likert Scale of Measurement (Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree).
- 10.6 Victim Compensation. The subrecipient agrees to assist eligible victims in seeking available crime victim compensation benefits provided by the state victim compensation program. The subrecipient shall designate a Victim Compensation Coordinator within its agency. The Victim Compensation Coordinator shall receive victim compensation training from his/her county attorney's office or complete the Arizona Criminal Justice Commission (ACJC) on-line Introduction to Crime Victim Compensation training module (<http://www.azcjc.gov/ACJC.Web/victim/cbttraining.aspx>). If training has not been received, the

subrecipient shall arrange for and attend training within 90 days from the first day of this subgrant award agreement or 90 days after reassignment of new staff in this role.

- 10.7 Victims' Rights. The subrecipient agrees to notify victims of Victims' Rights (A.R.S. Title 13, Chapter 40 Crime Victims' Rights; and A.R.S. Title 8, Chapter 3, Article 7 Victims' Rights for Juvenile Offenses) and to offer to connect the victim with a representative from the prosecutor's or county attorney's office if the victim so chooses. Subrecipients shall ensure that all DPS-VOCA funded and match staff and their first line supervisor have received victims' rights training from the Arizona Attorney General's Office.
- 10.8 Civil Rights. The subrecipient shall designate a Civil Rights Contact Person within its agency. This person shall complete the on-line civil rights training program offered by the Office for Civil Rights (OCR), Office of Justice Programs (OJP), Department of Justice (DOJ) via the Arizona Criminal Justice Commission (ACJC) website. The subrecipient shall ensure the Civil Rights Contact Person completes the training within 90 days from the first day of this subgrant award agreement or 90 days after reassignment of new staff in this role.
- 10.9 Volunteers. The subrecipient agrees to incorporate the use of volunteers to assist in carrying out the agency's mission. The use of volunteers is a current and ongoing requirement for all projects.
- 10.10 Text messaging policy. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department of Justice (DOJ) encourages subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
- 10.11 Human Trafficking. The subrecipient must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons. The details of the subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP website at <http://ojp.gov/funding/explore/prohibitedconduct-trafficking.htm>.
- 10.12 Consolidated Appropriations Act. The subrecipient shall comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2016, are set forth below.

*Publicity or Propaganda.* Federal funds are not legally available, and may not be used (whether directly or indirectly, including by private contractors), for publicity or propaganda purposes not authorized by Congress.

*Employee Trainings.* Federal funds are not legally available, and may not be used, for any employee training that:

1. does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;
2. contains elements likely to induce high levels of emotional response or psychological stress in some participants;
3. does not require prior employee notification of the content and methods to be used in the training and written end-of-course evaluation;
4. contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems as defined in Equal Employment Opportunity Commission Notice N-915.022, dated September 2, 1988; or
5. is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace.

Nothing in this provision prohibits, restricts, or otherwise precludes an agency from conducting training bearing directly upon the performance of official duties.

*Nondisclosure policies, forms, and agreements.* Federal funds are not legally available, and may not be used, to implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following provisions:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing federal statute or Executive Order relating to 1) classified information; 2) communications to Congress; 3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or 4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and federal statutory provisions are incorporated into this agreement and are controlling.”

*Acorn and related organizations.* Absent express prior written approval from OJP, federal funds may not be provided to the Association of Community Organizers for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.

*Nondiscrimination in programs involving students.* Funds appropriated under the Department of Justice Appropriations Act, 2016, and awarded by OJP are not legally available, and may not be used, to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or those of their parents or legal guardians.

*Blocking of pornography on computer networks.* Funds appropriated under the Department of Justice Appropriations Act, 2016, and awarded by OJP are not legally available and, may not be used, to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. Nothing in this provision limits the use of funds necessary for any federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, adjudication, or other law enforcement or victim assistance-related activity.

*Award or incentive fees to contractors.* Funds appropriated under the Department of Justice Appropriations Act, 2016, and awarded by OJP are not legally available, and may not be used, to pay award or incentive fees for contractor performance that has been judged to be below satisfactory performance or for performance that does not meet the basic requirements of a contract.

- 10.13 Israel Boycott Divestments. Subrecipient warrants it is not engaged in a boycott of Israel as defined by A.R.S. § 35-393.01.

**2016 - 2017  
APPROVED BUDGET**

<b>Budget line items:</b>	<b>Federal</b>	<b>Match</b>	<b>Total</b>
<b>Salaries and Wages</b>	\$95,352	\$32,600	\$127,952
<b>Fringe Benefits</b>	\$48,410	\$ 6,193	\$54,603
<b>Travel</b>	\$ 0	\$ 0	\$ 0
<b>Professional/Outside Services</b>	\$ 0	\$ 0	\$ 0
<b>Equipment</b>	\$ 0	\$ 0	\$ 0
<b>Other Operating</b>	\$11,411	\$ 0	\$11,411
<b>Total</b>	\$155,173	\$38,793	\$193,966

For the Arizona Department of Public Safety:

\_\_\_\_\_  
Frank L. Milstead, Colonel  
Director  
Arizona Department of Public Safety

\_\_\_\_\_  
Date

This Subgrant Award Agreement has been approved as to form by the Arizona Department of Public Safety Legal Section as of November 12, 2016.

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For the Subrecipient:

Project Director:

Signature:   
David Madeya, Police Lieutenant

Date: 12-8-16

Authorizing Official:

Signature:   
Rick St. John, Police Chief

Date: 12-8-16

Approved as to form:

\_\_\_\_\_  
Attorney for Subrecipient (optional)

# CERTIFICATION FORM

## Compliance with the Equal Employment Opportunity Plan (EEOP) Requirements

Please read carefully the Instructions (see below) and then complete Section A or Section B or Section C, not all three. If recipient completes Section A or C and sub-grants a single award over \$500,000, in addition, please complete Section D.

Recipient's Name:	CITY OF Glendale Police Department	
Address:	6935 N. 57th Drive Glendale AZ 85301	
Is agency a; <input checked="" type="checkbox"/> Direct or <input type="checkbox"/> Sub recipient of OJP, OVW or COPS funding?   Law Enforcement Agency? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
DUNS Number:	111 21 5518	Vendor Number (only if direct recipient)
Name and Title of Contact Person:	Kevin Phelps	
Telephone Number:	623 930-2870	E-Mail Address: KPhelps@GlendaleAZ.com

### Section A—Declaration Claiming Complete Exemption from the EEOP Requirement

Please check all the following boxes that apply.

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Less than fifty employees. | <input type="checkbox"/> Indian Tribe            | <input type="checkbox"/> Medical Institution.                            |
| <input type="checkbox"/> Nonprofit Organization     | <input type="checkbox"/> Educational Institution | <input type="checkbox"/> Receiving a single award(s) less than \$25,000. |

I, \_\_\_\_\_ [responsible official],  
certify that \_\_\_\_\_ [recipient]  
is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R § 42.302.  
I further certify that \_\_\_\_\_ [recipient] will comply  
with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.  
*If recipient sub-grants a single award over \$500,000, in addition, please complete Section D*

Print or Type Name and Title

Signature

Date

### Section B—Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review

If a recipient agency has fifty or more employees and is receiving a single award or, subaward, of \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to the OCR for review as long as it certifies the following (42 C.F.R. § 42.305):

I, Kevin Phelps [responsible official], certify that CITY OF Glendale [recipient], which has fifty or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR pt. 42, subpt. E. I further certify that within the last twenty-four months, the proper authority has formulated and signed into effect the EEOP and, as required by applicable federal law, it is available for review by the public, employees, the appropriate state planning agency, and the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice. The EEOP is on file at the following office:

CITY OF Glendale  
[organization],

5850 W. Glendale Ave Glendale AZ 85301  
[address].

Kevin Phelps CITY MANAGER  
[signature]

Print or Type Name and Title

Signature

Date

### Section C—Declaration Stating that an EEOP Short Form Has Been Submitted to the Office for Civil Rights for Review

If a recipient agency has fifty or more employees and is receiving a single award, or subaward, of \$500,000 or more, then the recipient agency must send an EEOP Short Form to the OCR for review.

I, \_\_\_\_\_ [responsible official], certify that \_\_\_\_\_ [recipient], which has fifty or more employees and is receiving a single award of \$500,000 or more, has formulated an EEOP in accordance with 28 CFR pt. 42, subpt. E, and sent it for review on \_\_\_\_\_ [date] to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

*If recipient sub-grants a single award over \$500,000, in addition, please complete Section D*

Print or Type Name and Title

Signature

Date

**Section D—Declaration Stating that Recipient Subawards a Single Award Over \$500,000**

*If a recipient agency, subawards a single award of \$500,000 or more then the granting agency should provide a list; including, name, address and DUNS # of each such sub-recipient.*

Sub-Recipient Agency Name/Address	Sub-Recipient DUNS Number

**MNIA**

*If additional space in necessary, please duplicate this page.*



# INSTRUCTIONS Completing the Certification Form Compliance with the Equal Employment

## Opportunity Plan (EEO) Requirements

The federal regulations implementing the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, require some recipients of financial assistance from the U.S. Department of Justice subject to the statute's administrative provisions to create, keep on file, submit to the Office for Civil Rights (OCR) at the Office of Justice Programs (OJP) for review, and implement an Equal Employment Opportunity Plan (EEO). See 28 C.F.R. pt. 42, subpt. E. All awards from the Office of Community Oriented Policing Services (COPS) are subject to the EEO requirements; many awards from OJP, including awards from the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office for Victims of Crime (OVC) are subject to the EEO requirements; and many awards from the Office on Violence Against Women (OVW) are also subject to the EEO requirements. If you have any questions as to whether your award from the U.S. Department of Justice is subject to the Safe Streets Act's EEO requirements, please consult your grant award document, your program manager, or the OCR.

**Recipients should complete *either* Section A *or* Section B *or* Section C, not all three. If recipient completes Section A *or* C and sub-grants a single award over \$500,000, in addition, please complete Section D.**

### Section A

The regulations exempt some recipients from all of the EEO requirements. Your organization may claim an exemption from all of the EEO requirements if it meets any of the following criteria: it is a nonprofit organization, an educational institution, a medical institution, or an Indian tribe; *or* it received an award under \$25,000; *or* it has less than fifty employees. To claim the complete exemption from the EEO requirements, complete Section A.

### Section B

Although the regulations require some recipients to create, maintain on file, and implement an EEO, the regulations allow some recipients to forego submitting the EEO to the OCR for review. Recipients that (1) are a unit of state or local government, an agency of state or local government, or a private business; *and* (2) have fifty or more employees; *and* (3) have received a single grant award of \$25,000 or more, but less than \$500,000, may claim the limited exemption from the submission requirement by completing Section B. In completing Section B, the recipient should note that the EEO on file has been prepared within twenty-four months of the date of the most recent grant award.

### Section C

Recipients that (1) are a unit of state or local government, an agency of state or local government, or a private business, *and* (2) have fifty or more employees, *and* (3) have received a single grant award of \$500,000 or more, must prepare, maintain on file, *submit to the OCR for review*, and implement an EEO. Recipients that have submitted an EEO Utilization Report (or in the process of submitting one) to the OCR, should complete Section C.

### Section D

Recipients that (1) receive a single award over \$500,000; *and* (2) subaward a single award of \$500,000 or more must provide a list; including, name, address and DUNS # of each such sub-recipient by completing Section D.

### Submission Process

Recipients should download the online Certification Form, complete required sections, have the appropriate official sign it, electronically scan the signed document, and then send the signed document to the following e-mail address: [EEOPForms@usdoj.gov](mailto:EEOPForms@usdoj.gov). *The document must have the following title: EEO Certification.* If you have questions about completing or submitting the Certification Form, please contact the Office for Civil Rights, Office of Justice Programs, 810 7th Street, NW, Washington, DC 20531 (Telephone: (202) 307-0690 and TTY: (202) 307-2027).

## **Public Reporting Burden Statement**

Paperwork Reduction Act Notice. Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a current valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated minimum average time to complete and file this application is 20 minutes per form. If you have any comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Office of Justice Programs, 810 7th Street, N.W., Washington, D.C. 20531.

**U.S. Department of Justice  
Office of Justice Programs  
Office of the Chief Financial Officer**

**Certifications Regarding Lobbying; Debarment,  
Suspension and Other Responsibility Matters  
(Dated 7/15/2015)**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Acceptance of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," 2 CFR Part 2867, "DOJ Implementation of OMB Guidance on Nonprocurement Debarment and Suspension," and 28 CFR Part 83, "Government-wide Debarment and Suspension."

The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

**Certification Regarding Lobbying**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

Pursuant to Executive Order 12549, Debarment and Suspension, implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Section 2867.20(a), and other requirements:

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Have not within a two-year period preceding this application been convicted of a felony criminal violation under any Federal law, unless such felony criminal conviction has been disclosed in writing to the Office of Justice Programs (OJP) at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov), and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

(d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(e) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**Federal Taxes**

A. If the applicant is a corporation, the applicant certifies that either (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov), and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certification.

Subrecipient (organization) name: CITY OF GLENDALE - POLICE DEPARTMENT

Address: 6835 N. 57TH AVE GLENDALE AZ 85301

DPS Contract #: 2614-281 Federal Employer Identification #: 86-6000247

Printed Name & Title of Authorizing Official: BRAD STODDARD - DIRECTOR PUBLIC AFFAIRS

Signature: 

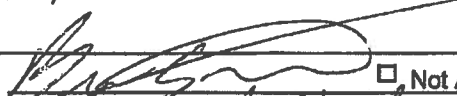
Date: 12-1-16

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB  
0348-0048

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input checked="" type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input checked="" type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  <div style="text-align: center; font-size: 1.2em;">N/A</div> Congressional District, if known: 4c	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  <div style="text-align: center; font-size: 1.2em;">N/A</div> Congressional District, if known:	
<b>6. Federal Department/Agency:</b>  <div style="text-align: center; font-size: 1.2em;">N/A</div>	<b>7. Federal Program Name/Description:</b>  <div style="text-align: center; font-size: 1.2em;">N/A</div> CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>  <div style="text-align: center; font-size: 1.2em;">N/A</div>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>  <div style="text-align: center; font-size: 1.2em;">N/A</div>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature:  <input type="checkbox"/> Not Applicable Print Name: <u>Brent Stoddard</u> Title: <u>Director of Public Affairs</u> Telephone No.: <u>623-930-2078</u> Date: <u>12/6/16</u>	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

# Arizona Department of Public Safety Victims of Crime Act (VOCA) Administration



## Complying with Federal Civil Rights Program Requirements

### **Ensuring Access to Federally Assisted Programs**

Federal laws prohibit recipients (and subrecipients) of federal financial assistance from discrimination on the basis of race, color, national origin, religion, sex, or disability in funded program or activities, not only in respect to employment practices but also in the delivery of services or benefits. Federal law also prohibits funded programs or activities from discriminating on the basis of age in the delivery of services or benefits.

### **Providing Services to Limited English Proficiency (LEP) Individuals**

In accordance with Department of Justice Guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients (and subrecipients) of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please refer to <http://www.lep.gov>.

### **Ensuring Equal Treatment for Faith-Based Organizations**

The Department of Justice has published a regulation specifically pertaining to the funding of faith-based organizations. In general, the regulation, Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants, and known as the Equal Treatment Regulation 28 C.F.R. part 38, prohibits faith-based organizations from using financial assistance from the Department of Justice to fund inherently (or explicitly) religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must be held separately from the Department of Justice funded program, and customers or beneficiaries cannot be compelled to participate in them. The Equal Treatment Regulation also makes clear that organizations participating in programs funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. For more information on the regulation, please go to the Office for Civil Rights website at [http://ojp.gov/about/ocr/equal\\_fbo.htm](http://ojp.gov/about/ocr/equal_fbo.htm).

### **Nondiscrimination Notification**

DPS-VOCA subrecipient agencies must have a method of notifying employees, clients, customers, or program participants that the subrecipient agency does not discriminate in employment practices or delivery of services, and must have a written policy that includes the procedures for filing a complaint, and the names and contact information for the agencies that receive complaints.

### **Discrimination Complaints**

Employees, clients, customers, or program participants of a DPS-VOCA subrecipient who wish to file a complaint of discrimination, may file a complaint directly with the subrecipient; or with the Arizona Department of Public Safety VOCA Administration Unit ([http://www.azdps.gov/Services/Crime\\_Victims/](http://www.azdps.gov/Services/Crime_Victims/)); the Arizona Office of the Attorney General, Office for Civil Rights ([http://www.azag.gov/civil\\_rights/](http://www.azag.gov/civil_rights/)); or the Office for Civil Rights (OCR), Office of Justice Programs, Department of Justice (<http://www.justice.gov/crt/>).

### **Submitting Findings of Discrimination**

If in the three years prior to the date of the grant award, a federal or state court or administrative agency makes an adverse finding of discrimination after a due process hearing against the subrecipient agency on the grounds of race, color, national origin, religion, sex, or disability, the subrecipient shall forward a copy of the finding to the Department of Justice, Office of Justice Programs, Office for Civil Rights and DPS-VOCA.

I, Kevin Phelps (printed name of authorizing official), certify that the

the City of Glendale (name of subrecipient organization) will comply with the Federal Civil

Rights Program requirements as outlined above.

Authorizing Official's Title: CITY MANAGER DPS Contract Number: 2014-280

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

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

**Arizona Department of Public Safety  
Victims of Crime Act (VOCA) Administration**



**Proof of Nonprofit Status**

Non-profit subgrantees shall demonstrate nonprofit status by any of the following means:

- (1) Provide proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code;
- (2) A statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual;
- (3) A certified copy of a certificate of incorporation or similar document establishing nonprofit status; or
- (4) Any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate.

This documentation shall be returned to DPS with the signed Award Agreement.

I certify \_\_\_\_\_ (name of subrecipient organization) is a nonprofit agency and attached is documentation demonstrating proof of nonprofit status according to the requirements outlined in item number \_\_\_\_\_ listed above.

\_\_\_\_\_  
Signature of Authorizing Official

\_\_\_\_\_  
Printed Name and Title of Authorizing Official

\_\_\_\_\_  
Date

**Arizona Department of Public Safety  
Victims of Crime Act (VOCA) Administration**



**Certification regarding eligibility for  
de minimis rate of 10% of Modified Total Direct Costs (MTDC)**

Pursuant to § 200.414 Indirect (F&A) Costs of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B), may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

Additionally, pursuant to § 200.414(g), any non-Federal entity that has a federally negotiated indirect cost rate may apply for a one-time extension of a current negotiated indirect cost rate for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate.

I certify to the best of my knowledge \_\_\_\_\_ (name of subrecipient organization) has never received a federally negotiated rate and will conform to the requirements listed above when utilizing the de minimis rate of 10% of modified total direct costs (MTDC).

\_\_\_\_\_  
Signature of Authorizing Official

\_\_\_\_\_  
Printed Name and Title of Authorizing Official

\_\_\_\_\_  
Date



**Arizona Department of Public Safety  
Victims of Crime Act (VOCA) Administration**



**Certification regarding Non-Supplanting**

As outlined in the U.S. Department of Justice, Office of Justice Programs, Federal Financial Guide, Federal funds must be used to **supplement** existing State and local funds for program activities and must not supplant those funds that have been appropriated for the same purpose. Furthermore, supplanting is defined as “to deliberately reduce State or local funds because of the existence of Federal funds. For example, when State funds are appropriated for a stated purpose and Federal funds are awarded for that same purpose, the State replaces its State funds with Federal funds, thereby reducing the total amount available for the stated purpose.”

The following example is provided in the Federal Financial Guide to help clarify the difference between supplementing and supplanting:

State funds are appropriated to hire 50 new police officers, and Federal funds are awarded for hiring 60 new police officers. At the end of the year, the State has hired 60 new police officers, and the Federal funds have been exhausted. The State has not used its funds towards hiring new officers, but instead reduced its appropriation for that purpose and assigned or appropriated the funds to another purpose. In this case, the State has supplanted its appropriation with the Federal funds. If supplanting had not occurred, 110 new officers would have been hired using Federal funds for 60 officers and State funds for 50 officers.

As a subrecipient of Victims of Crime Act (VOCA) Assistance funds, each agency shall certify its understanding of and adherence to the prohibition against supplanting of State or local funds with Federal funds.

I certify that the CITY of Glendale Police Dept (name of subrecipient organization)

will comply with the prohibition against supplanting as outlined above.

\_\_\_\_\_  
Signature of Authorizing Official

Kevin Phillips, CITY MANAGER  
Printed Name and Title of Authorizing Official

\_\_\_\_\_  
Date



**FINANCIAL MANAGEMENT AND SYSTEM OF INTERNAL CONTROLS QUESTIONNAIRE**

- The financial management system of each non-Federal entity must provide for the following
- Retention requirements for records
  - Requests for transfer of records
  - Methods for collection, transmission and storage of information
  - Access to records
  - Restrictions on public access to records
- (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
- (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program.
- (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes
- (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to document the receipt and disbursement of Federal funds including procedures to minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means
- (7) Written procedures for determining the allowability of costs.

**APPLICANT ORGANIZATIONAL INFORMATION**

1. Name of Organization and Address: City of Glendale 5850 W. Glendale Ave Suite 302 Glendale, AZ 85301		
2. Authorized Representative's Name and Title: Lisette Camacho - Controller		
3. Phone: 623 930-2492 ext.	4. Fax:	5. Email: Lcamacho@glendaleAZ.com
6. Year Established: 6/18/10	7. Employer Identification Number (EIN): 86-6060247	8. DUNS Number: 077523579
9. Type of Organization:		
<input type="checkbox"/> State <input checked="" type="checkbox"/> Municipality <input type="checkbox"/> Non-Profit <input type="checkbox"/> Higher Education <input type="checkbox"/> Tribal <input type="checkbox"/> For-Profit <input type="checkbox"/> Other		



**AUDIT INFORMATION**

An audit is conducted using generally accepted auditing standards (GAAS) or Generally Accepted Governmental Auditing Standards (GAGAS) and results in an audit report with an opinion.

10. The organization has had the undergone the following types of audit(s) (Please check all that apply):

OMB A-133 Single Audit     Financial Statement Audit     Defense Contract Agency Audit (DCAA)

None

Programmatic Audit & Agency: \_\_\_\_\_

Other Audit & Agency: \_\_\_\_\_

11. Fiscal Year of Last Audit: June 30, 2015

Name of Audit Agency/Firm:  
Clifton Larson Allen

**AUDITOR'S OPINION:**

12. On the most recent audit, what was the auditor's opinion?

Unqualified Opinion     Qualified Opinion     Disclaimer, Going Concern or Adverse Opinions

Please enter the number of findings: None

Please enter the amount of questioned costs:

Were material weaknesses noted in either the Financial Statement or Single Audit?     Yes     No

**ACCOUNTING SYSTEM**

13. Which of the following best describes your accounting system:

Manual     Automated     Combination

14. Does the accounting system identify the receipt and expenditure of program funds separately for each grant?

Yes     No     Not Sure

15. Does the accounting system provide for the recording of expenditures for each grant/contract by budget cost categories shown in the approved budget?

Yes     No     Not Sure

16. Does your accounting system have the capability to document the recording of cost sharing or match for each grant? Can you determine if documentation is available to support recorded match or cost share?

Yes     No     Not Sure

17. Are time distribution records maintained for each employee that specifically identify effort charged to a particular grant or cost objective?

Yes     No     Not Sure

18. Does the accounting/financial system include budgetary controls to preclude incurring obligations or costs in excess of total funds available or by budget cost category (e.g. Personnel, Travel, etc.)?

Yes     No     Not Sure

19. Is the organization familiar with the existing Federal regulation and guidelines containing the Cost Principles and procedures for the determination and allowance of costs in connection with Federal grants?

Yes     No     Not Sure



**PROPERTY STANDARDS, PROCUREMENT STANDARDS,  
AND TRAVEL POLICIES**

**PROPERTY STANDARDS**

20. Does your property management system(s) provide for maintaining: (1) a description of the equipment; (2) an identification number; (3) source of the property, including the award number; (4) where title vests; (5) acquisition date; (6) federal share of property cost; (7) location and condition of the property; (8) acquisition cost; & (9) ultimate disposition information?  Yes  No  Not Sure

**PROCUREMENT STANDARDS**

21. Does your organization maintain written procurement procedures which (1) avoid unnecessary purchases; (2) provide an analysis of lease and purchase alternatives; and (3) provide a process for soliciting goods and services?  Yes  No  Not Sure

22. Does your procurement system provide for the conduct to determine selection on a competitive basis and documentation of cost or price analysis for each procurement action?  Yes  No  Not Sure

23. Does your procurement system include provisions for checking the "Excluded Parties List" system for suspended or debarred sub-grantees and contractors, prior to award? <https://www.sam.gov/>  Yes  No  Not Sure

**TRAVEL POLICY**

24. Does your organization:  
(a) maintain a standard travel policy?  Yes  No  
(b) adhere to the Federal Travel Regulation? (FTR)  Yes  No

**SUBRECIPIENT MANAGEMENT AND MONITORING**

25. (For Pass-through entities only). Does your organization have controls in place to monitor activities of subrecipients, as necessary, to determine that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of the award and that performance goals are achieved (2 CFR200)?  Yes  No  Not Sure  
 N/A (Your organization does not make subawards.)

**STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS  
AND APPLICANT CERTIFICATION**

I certify that the above information is complete and correct to the best of my knowledge. This document must be certified by the organization's Authorized Representative, Executive Director, Chief Financial Officer, Chairman of the Board of Directors, or similar position.

Name: Rosette Carnal Date: 12/11/14  
Title:  Executive Director  Chief Financial Officer  Chairman  Other: Cashier  
Phone: 623 930-2492 ext.

## Subgrant Award Report (SAR)

Subrecipient Organization Name: City of Blendale Police Department

DPS-VOCA Contract # 2014-280

### Subrecipient Organization Type

*INSTRUCTIONS: Check the appropriate box that best reflects your agency type.*

#### **A. Government Agencies Only:**

Which designation best describes this government agency (**select one response**)?

- Corrections
- Courts
- Juvenile justice
- Law enforcement
- Prosecutor

Other government agency Identify: \_\_\_\_\_

#### **B. Nonprofit Organizations Only:**

Which designation best describes this nonprofit organization (**select one response**)?

- Child abuse service organization (e.g., child advocacy center)
- Coalition (e.g., state domestic violence or sexual assault coalition)
- Domestic and family violence organization
- Faith-based organization
- Organization provides domestic and family violence and sexual assault services
- Organization by and/or for underserved victims of crime (e.g., drunk driving, homicide, elder abuse)
- Sexual assault services organization (e.g., rape crisis center)
- Multi-service agency

Other type of organization serving victims of crime: Identify: \_\_\_\_\_

#### **C. Federally Recognized Tribal Governments, Agencies, and Organizations Only:**

Which designation best describes this tribal agency or organization (**select one response**)?

- Child abuse service organization (e.g., child advocacy center)
- Court
- Domestic and family violence organization
- Faith-based organization
- Juvenile justice
- Law enforcement
- Organization provides domestic and family violence and sexual assault services
- Prosecutor
- Sexual assault services organization (e.g., rape crisis center)
- Other justice-based agency
- Other agency that is NOT justice-based (e.g., human services, health, education)
- Organization by and/or for a specific traditionally underserved community
- Organization by and/or for underserved victims of crime (e.g., drunk driving, homicide, elder abuse)
- Other: Identify: \_\_\_\_\_

#### **D. Campus Organizations Only:**

Which designation best describes this campus organization (**select one response**)?

- Campus-based victim services
- Law enforcement
- Physical or mental health service program
- Other: Identify: \_\_\_\_\_

## Use of VOCA and Match Funds:

**INSTRUCTIONS:** For this subaward, check the category of service and subcategory that best identifies the types of services or activities that will be provided by this VOCA-funded project, as described below.

Note: Report only those program activities that will be implemented with this VOCA award. Do not report services offered by another VOCA award received by your agency or any another agency.

### A. INFORMATION & REFERRAL

- Information about the criminal justice process
- Information about victim rights, how to obtain notifications, etc.
- Referral to other victim service programs
- Referral to other services, supports, and resources (includes legal, medical, faith-based organizations, address confidentiality programs, etc.)

### B. PERSONAL ADVOCACY/ACCOMPANIMENT

- Victim advocacy/accompaniment to emergency medical care
- Victim advocacy/accompaniment to medical forensic exam
- Law enforcement interview advocacy/accompaniment
- Individual advocacy (assistance in applying for public benefits, return of personal property or effects)
- Performance of medical forensic exam or interview, or medical evidence collection
- Immigration assistance (e.g., special visas, continued presence application, other immigration relief)
- Intervention with employer, creditor, landlord, or academic institution
- Child and/or dependent care assistance (includes coordination of services)
- Transportation assistance (includes coordination of services)
- Interpreter services

### C. EMOTIONAL SUPPORT OR SAFETY SERVICES

- Crisis intervention (in-person, includes safety planning, etc.)
- Hotline/crisis line counseling
- On-scene crisis response (e.g., community crisis response)
- Individual counseling
- Support groups (facilitated or peer)
- Therapy (traditional, cultural, or alternative healing; art, writing, or play therapy; etc.)
- Emergency financial assistance (includes emergency loans, payments for items such as food, clothing, changing windows and/or locks, taxis, prophylactic and nonprophylactic meds, durable/medical equipment, etc.)

### D. SHELTER/HOUSING SERVICES

- Emergency shelter or safe house
- Transitional housing
- Relocation assistance (includes assistance with obtaining housing)

### E. CRIMINAL/CIVIL JUSTICE SYSTEM ASSISTANCE

- Notification of criminal justice events (e.g., case status, arrest, court proceedings, case disposition, release, etc.)
- Victim impact statement assistance
- Assistance with restitution (includes assistance in requesting and when collection efforts are not successful)
- Civil legal assistance in obtaining protection or restraining order
- Civil legal assistance with family law issues (e.g., custody, visitation, or support)
- Other emergency justice-related assistance
- Immigration assistance (e.g., special visas, continued presence application, and other immigration relief)
- Prosecution interview advocacy/accompaniment (includes accompaniment with prosecuting attorney and with victim/witness)
- Law enforcement interview advocacy/accompaniment
- Criminal advocacy/accompaniment
- Other legal advice and/or counsel

F. ASSISTANCE IN FILING COMPENSATION CLAIMS (CHOICE IS REQUIRED)

- Assists potential recipients in seeking crime victim compensation benefits

**Types of Victimitizations**

- Adult Physical Assault (includes Aggravated and Simple Assault)
- Adult Sexual Assault
- Adults Sexually Abused/Assaulted as Children
- Arson
- Bullying (Verbal, Cyber, or Physical)
- Burglary
- Child Physical Abuse or Neglect
- Child Pornography
- Child Sexual Abuse/Assault
- Domestic and/or Family Violence
- DUI/DWI Incidents
- Elder Abuse or Neglect
- Hate Crime: Racial/Religious/Gender/Sexual Orientation/Other
- Human Trafficking: Labor
- Human Trafficking: Sex
- Identity Theft/Fraud/Financial Crime
- Kidnapping (noncustodial)
- Kidnapping (custodial)
- Mass Violence (Domestic/International)
- Other Vehicular Victimitization (e.g. Hit and Run)
- Robbery
- Stalking/Harassment
- Survivors of Homicide Victims
- Teen Dating Victimitization
- Terrorism (Domestic/International)
- Other – Please identify: Property Crimes

**Staffing**

**INSTRUCTIONS:** Indicate your agency's total number of paid full-time equivalent staff for all victimization programs and/or services for the current fiscal year. This FTE count should include the entire agency's direct service staff (including both VOCA funded and non-VOCA funded).

Number of Full Time Equivalent (FTE) Staff: 8.5



## Legislation Description

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**File #:** 16-646, **Version:** 1

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### **RESOLUTION NO. 5193 NEW SERIES**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF GRANT AGREEMENT NO. 2014-281; ACCEPTANCE OF A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF CRIME ACT (VOCA); AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE PROGRAM IN FISCAL YEAR 2016-17.**

Staff Contact: Rick St. John, Police Chief

### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to accept a Victims of Crime Act (VOCA) award in the approximate amount of \$180,090 through the Arizona Department of Public Safety (DPS) for Crime Victim Services in fiscal year 2016-17, and enter into grant agreement number 2014-281 to continue a VOCA project originally funded in a previous year.

### **Background**

The Glendale Police Department has been accepting VOCA grants for over ten years. Since 2006, the VOCA grants have partially and fully funded both part-time and full-time Victim Assistance (VA) Caseworker positions; and in 2008, the grant began funding a part-time VA Volunteer Coordinator as well. VA Caseworkers provide services to sexual abuse victims, sexual assault victims, domestic violence victims, child abuse victims, and their families. The VA Volunteer Coordinator manages and mentors volunteers for the Glendale Family Advocacy Center.

This VOCA grant has been a recurring grant and will allow for the continued funding of the salary, benefits, and training for one full-time VA Caseworker. This grant will also allow the continued full-time funding of the salary, benefits, and training for a VA Caseworker who was previously part-time. Lastly, the grant allows for the continued funding of salary and training for one part-time VA Volunteer Coordinator.

The Glendale Police Department Victim Assistance Program is part of a nationwide movement to better serve victims of crime by enhancing and expanding direct services in accordance with the VOCA. The program assists victims in exercising their rights and helping them to gain stability in their lives. The program also ensures the Police Department continues to maintain compliance with Arizona's Crime Victims' Rights mandates. VA Caseworkers play a crucial role in ensuring that victims of crime are treated with dignity and respect, and these highly dedicated staff members serve the citizens of Glendale around the clock.

### **Analysis**



If approved by Council, acceptance of this grant will allow the Police Department to move forward with continued funding of the current full-time VA Caseworker, continue full-time funding for the VA Caseworker who was previously part-time, and continue funding one part-time VA Volunteer Coordinator, with the project period of October 1, 2016 through September 30, 2017. Staff is recommending Council adopt the proposed resolution authorizing the City Manager to accept the VOCA award in the approximate amount of \$180,090 and enter into grant agreement number 2014-281.

**Previous Related Council Action**

On January 26, 2016, Council approved the acceptance of a VOCA award from DPS in the approximate amount of \$180,090.

**Community Benefit/Public Involvement**

The Victim Assistance Program provides direct services to Glendale residents, and their families, who have become crime victims. Services offered through the Victim Assistance Program include: resource referrals, crisis counseling, court accompaniment, crime prevention, as well as advocacy services.

**Budget and Financial Impacts**

The grant award totals \$180,090 and there is a \$45,023 financial match required. The salary currently budgeted for one full-time Victim Assistance Caseworker qualifies as the required financial match; therefore, funds for the financial match are available in the FY 2016-17 Glendale Police Department operating budget. A specific account will be established in Fund 1840, the city's grant fund, once the grant agreement is awarded and formally executed.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$45,023</b>	<b>1000-12150-500200, General Fund-Crime Investigations-Salaries</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5193 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF GRANT AGREEMENT NO. 2014-281; ACCEPTANCE OF A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF CRIME ACT (VOCA); AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE PROGRAM IN FISCAL YEAR 2016-17.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Grant Agreement No. 2014-281 with the Arizona Department of Public Safety, Victims of Crime Act (VOCA) be entered into, and accept the grant funds in the approximate amount of \$180,090 for the Glendale Police Department's Victim Assistance Program in Fiscal Year 2016-17, on behalf of the City of Glendale.

SECTION 2. That the City of Glendale will commit matching funds in the amount of \$45,023 for the Victim Assistance Program.

SECTION 3. That the City Manager or designee and the City Clerk be authorized and directed to execute and deliver any and all documents necessary for the entering into and acceptance of said grant on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 20th day of December, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager



## ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

DOUGLAS A. DUCEY      FRANK L. MILSTEAD  
Governor                      Director

November 14, 2016

Melissa Brickhouse-Thomas  
Glendale Police Department  
6830 N. 57th Drive  
Glendale, AZ 85301-2811

**RE: Fiscal Year 2016/2017 DPS-VOCA Award**

Dear Mrs. Brickhouse-Thomas:

Congratulations! Your agency has been awarded \$180,090 in DPS-VOCA funds for the 2016/2017 program year. Enclosed is the grant award agreement package for your DPS-VOCA grant. Please read and be familiar with the General and any applicable Special Conditions contained in the agreement.

Your agency has 60 days from the date of this letter to accept this offer by signing and returning the enclosed agreement and required certifications; however, reimbursement of VOCA grant funds will not be made until the entire agreement package has been returned to DPS and is fully negotiated. Please see the attached list of items associated with your Subgrant Award Agreement and further instructions for compliance with each item.

Please call me at (602) 223-2491 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Sheri Doll".

Sheri Doll  
Grant Coordinator

## Subgrant Award Agreement Attachments

- 1. Subgrant Award Agreement.** This agreement shall be signed by the authorized officials listed on the signature page. Return the *entire* agreement with original signatures to DPS. A copy will be mailed to you once it has been signed by the DPS Director.
- 2. Certification Form (EEOP).** Complete and sign the Equal Employment Opportunity Plan (EEOP) Certification Form and return to DPS with the Award Agreement.
- 3. Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters.** (These certifications have been combined into one form.) **Lobbying:** Any subgrantee that receives over \$100,000 in federal funding in a fiscal year shall complete, sign and return this form certifying that it shall comply with “New Restrictions on Lobbying,” 28 CFR Part 69. **Debarment, Suspension and Other Responsibility Matters:** This certification is required by the regulations implementing Executive Order 12549, “Debarment and Suspension,” 2 CFR Part 2867. This certifies that your agency is eligible to receive a federal grant, and that neither your agency nor its employees have been debarred from doing business with the federal government. This completed certification shall be returned to DPS with the signed Award Agreement.
- 4. Disclosure of Lobbying Activities.** Any subgrantee that receives more than \$100,000 in federal funding in a fiscal year and has engaged in reportable federal lobbying activities shall complete and return this form to disclose those activities. Any subgrantee that receives more than \$100,000 in federal funding in a fiscal year and has not engaged in reportable federal lobbying activities shall mark “Not Applicable,” sign and return this form. If your agency receives less than \$100,000 in federal funding in a fiscal year, mark “Not Applicable,” sign and return this form.
- 5. Federal Civil Rights Requirements.** In accordance with Federal regulations and as a condition of award, your organization shall comply with all applicable Federal Civil Rights requirements of nondiscrimination. This completed certification shall be returned to DPS with the signed Award Agreement.
- 6. Proof of Nonprofit Status.** Nonprofit subgrantee agencies shall provide proof of nonprofit status by providing the relevant documentation as outlined in the attached document. This documentation shall be returned to DPS with the signed Award Agreement.
- 7. Proof of Federally Negotiated Indirect Cost Rate or Certification regarding de minimis rate of 10% of Modified Total Direct Costs (MTDC) eligibility.** Any subgrantee awarded indirect costs based on a federally negotiated indirect cost rate shall provide a copy of the Indirect Cost Negotiated Agreement. This documentation shall be returned to DPS with the signed Award Agreement. Any subgrantee awarded indirect costs based on a de minimis rate of 10% of MTDC shall complete the attached certification regarding its eligibility.
- 8. Certification Regarding Non-Supplanting.** State and local governmental subgrantees shall certify the agency’s adherence to the prohibition against supplanting of State or local funds with Federal funds. This completed certification shall be returned to DPS with the signed Award Agreement.
- 9. Financial Management and System of Internal Controls Questionnaire.** Adequate accounting systems shall meet criteria as outlined in the DOJ Grants Financial Guide. Subgrantees shall complete the Financial Management and System of Internal Controls Questionnaire and return it to DPS with the signed Award Agreement.
- 10. Subgrant Award Report (SAR).** Complete the Subgrant Award Report as it pertains to this award and return to DPS with the signed Award Agreement.

ARIZONA DEPARTMENT OF PUBLIC SAFETY  
VICTIMS OF CRIME ACT (VOCA)  
VICTIM ASSISTANCE GRANT PROGRAM  
FEDERAL GRANT #2014-VA-GX-0018  
CFDA #16-575  
SUBGRANT AWARD AGREEMENT

SUBRECIPIENT

AGENCY: Glendale Police Department

ADDRESS: 6835 N. 57th Drive

CITY: Glendale STATE: AZ ZIP: 85301-3218

2016/2017 AWARD AMOUNT: \$180,090

2016/2017 REQUIRED MATCH (NON-FEDERAL SOURCE): \$45,023

PROJECT PERIOD: 10/01/2016 to 09/30/2017

PROJECT PURPOSE: To provide assistance to victims of crime.

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This agreement is made under the authority of the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, 42 USC 10601, et seq as amended.

The purpose of this agreement shall be to award Victims of Crime Act (VOCA) Assistance funds to the subrecipient to provide services to victims of crime as authorized by the Victims of Crime Act. Awards may be supplemented by other federal, state, local, and private funds. Subrecipient's agreement or amended agreement(s) is incorporated by reference into this Subgrant Award Agreement.

This award is subject to agreement by the subrecipient, including any DPS VOCA funded positions and their immediate supervisors, to conform to the provisions of Victims of Crime Act of 1984; the DPS VOCA victim assistance grant program guidelines; the sub-recipient's application; the attached general conditions and applicable special conditions; the most recent version of the Department of Justice Grants Financial Guide; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 and supplemented by the Department of Justice in 2 CFR Part 2800 (together, the "Part 200 Uniform Requirements"; Executive Order 12372; and 28 CFR pts. 66 and 70, all of which are incorporated by reference as if fully stated herein.

Sub-recipients, and all their contractors, will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 CFR pts. 18, 22, 23, 30, 35, 38 (as amended on May 4, 2016), 42, 61, and 63, and the award term in 2 CFR § 175.15 (b); section 106 of the National Historic Preservation Act of 1966 (16 USC § 470); Executive Order 11593; the Archaeological and Historical Preservation Act of 1974 (16 USC § 469 a-1 et seq.); the National Environmental Policy Act of 1969 (42 USC § 4321); and any applicable statutorily-imposed nondiscrimination requirements, which may include Title VI of the Civil Rights Act of 1964, as amended, (42 USC § 2000d and 28 CFR § 42.101 et seq); Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 and 28 CFR § 42.501 et seq); the Age Discrimination Act of 1975 (42 USC § 6102 and 28 CFR § 42.700 et seq); Title IX of the Education Amendments of 1972 (20 USC § 1681 and 28 CFR pt 54); the Omnibus Crime Control and Safe Streets Act of 1968 (42 USC § 3789d(c) and 28 CFR § 42.201 et seq); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 USC § 5672(b)); Section 1407 of the Victims of Crime Act of 1984 (42 USC § 10604(e)); Title II of the Americans with Disabilities Act of 1990 (42 USC § 12131-34 and 28 CFR pt. 35); and Equal Treatment for Faith-Based Organizations (28 CFR pt 38 and Executive Order 13279); and State Executive Order No. 2009-09. The above referenced federal and state laws prohibit discrimination on the basis of race, color, religion, sex, disability, and national origin (including limited English proficiency) in the delivery of services and employment practices, and prohibit discrimination on the basis of age in the delivery of services.

Governmental entities will comply with the requirements of Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 USC § 4601 et seq.), and 5 USC §§ 1501-08 and §§ 7324-28 which limit certain political activities of State and local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

The Arizona Department of Public Safety agrees to pay subrecipient the above shown AWARD AMOUNT subject to the conditions provided herein:

General Conditions

- 1.0 Definition of Terms.** As used in this subgrant award agreement, the terms listed below are defined as follows:
- 1.1 “Agreement” means a written online Request for Grant Application (RFGA) approved by the Arizona Department of Public Safety.
  - 1.2 “Agreement Amendment” means a written online document approved by the Arizona Department of Public Safety that is requested by the subrecipient agency for the purpose of making changes in the agreement.
  - 1.3 “Application” means a written online Request for Grant Application (RFGA).
  - 1.4 “Days” means calendar days unless otherwise specified.
  - 1.5 “Direct Service” means supportive services provided through direct contact with a victim in-person, by phone or hotline, or by email.
  - 1.6 “Director” means the head of the Arizona Department of Public Safety, or his/her designee, who is duly authorized by the State to enter into grant agreements and make written determinations with respect to those agreements.
  - 1.7 “DPS” means the Arizona Department of Public Safety.
  - 1.8 “Grant” means the furnishing of financial or other assistance, including state or federal grant funds, by the Department of Public Safety to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
  - 1.9 “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
  - 1.10 “Match” means additional resources (cash or in-kind) provided by the subrecipient to support the DPS VOCA funded project. Cash match shall be from a non-Federal source.
  - 1.11 “Project” means activities and services supported by Victims of Crime Act (VOCA) funds plus required match, relating to this subgrant award agreement only.
  - 1.12 “Services” means the furnishing of labor, time or effort by a subrecipient which does not involve the delivery of a specific end product other than required reports and performance. Allowable services include those efforts that (1) respond to the emotional and physical needs [healing] of crime victims; (2) assist primary and secondary victims of crime to stabilize [restitution/economic restabilization] their lives after a victimization; (3) assist victims to understand and participate in the criminal [justice] system; and (4) provide victims of crime with a measure of [safety] and security.
  - 1.13 “State” means the State of Arizona and Department or Agency of the State that executes the subgrant award agreement.
  - 1.14 “Subgrant award agreement” means a written signed agreement between the Arizona Department of Public Safety and the grant recipient for the award of DPS VOCA funds.
  - 1.15 “Subrecipient” means the legal entity to which a subaward is made and which is accountable to DPS for the use of the funds provided.

1.16 “VOCA” means Victims of Crime Act of 1984, as amended, 42 USC 10601, et seq.

**2.0 Subgrant award agreement interpretation.**

2.1 Arizona Law. The Arizona law applies to this grant award agreement, including the Solicitation and Award of Grants, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 24, and its implementing rules.

2.2 Subgrant Award Agreement Order of Precedence. In the event of a conflict in the provisions of the subgrant award agreement, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.2.1 Special Conditions;

2.2.2 General Conditions;

2.2.3 DPS / VOCA Guidelines;

2.2.4 Federal VOCA Guidelines; DOJ Grants Financial Guide; and Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR Part 200.

2.3 Relationship of parties. The subrecipient under this subgrant award agreement is an independent subrecipient. Neither party to this subgrant award agreement shall be deemed to be the employee or agent of the other party to the subgrant award agreement.

2.4 Severability. The provisions of this subgrant award agreement are severable. Any condition deemed illegal or invalid shall not affect any other condition of the subgrant award agreement.

2.5 No parol evidence. This subgrant award agreement is intended by the parties as a final and complete expression of their agreement. No prior dealings between the parties shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.6 No waiver. Either party’s failure to insist on strict performance of any condition of the subgrant award agreement shall not be deemed a waiver of that condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

**3.0 Subgrant award agreement administration and operation.**

3.1 Non-Discrimination. The subrecipient shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations related to the prohibition against discrimination, including Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, the Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the Victims of Crime Act of 1984, the Americans with Disabilities Act of 1990, Department of Justice implementing regulations and Equal Treatment for Faith-Based Organizations.

If in the three years prior to the date of the grant award, a federal or state court or administrative agency makes an adverse finding of discrimination after a due process hearing against the subrecipient agency on the grounds of race, color, national origin, religion, sex, or disability, the subrecipient shall forward a copy of the finding to the Department of Justice, Office of Justice Programs, Office for Civil Rights and DPS.

3.1.1 Providing Services to Limited English Proficiency (LEP) Individuals. In accordance with Department of Justice guidance, recipients (and subrecipients) of Federal financial assistance shall take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP).

3.1.2 Faith-Based Organizations. Department of Justice regulations prohibit faith-based organizations from using financial assistance from the Department of Justice to fund inherently religious activities. While faith-based organizations can engage in non-funded inherently (or explicitly) religious activities, they shall be held separately from the Department of Justice funded program, and customers or beneficiaries cannot be

compelled to participate in them. Regulation also makes clear that organizations participating in programs funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion.

- 3.1.3 Equal Employment Opportunity Plan. The subrecipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if required to submit one pursuant to 28 CFR Section 42.302) that is approved by the Office for Civil Rights is a violation of its Standard Assurances and may result in suspension or termination of funding, until such time as the subrecipient is in compliance.
- 3.1.4 Civil Rights Compliance Review. The subrecipient shall provide relevant information regarding civil rights policies and procedures during the DPS-VOCA Civil Rights Compliance Review process.
- 3.2 Certification Regarding Lobbying. Subrecipient agencies entering into a VOCA grant or cooperative agreement over \$100,000 shall certify that no Federal funds have been paid or will be paid, by or on behalf of the subrecipient, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement. Federal funds include but are not limited to such grants as Victims of Crime Act (VOCA), Violence Against Women Act (VAWA), Family Violence Prevention and Services Act (Rural Safe Home Network Program), and the Children's Justice Act, which may be administered through a State or other local governmental agency. Additionally, subrecipient agencies shall disclose to DPS any lobbying activities that have been paid or will be paid with any funds other than Federal funds.
- 3.2.1 Lobbying Activities. The subrecipient understands and agrees that it cannot use any federal funds, either directly or indirectly, to support or oppose the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government.
- 3.3 Required reports. The subrecipient will submit reports on such data in such form and at such times as required by DPS, to include:
  - 3.3.1 Monthly financial report due the 15<sup>th</sup> of each month;
  - 3.3.2 Quarterly statistical and programmatic report due 30 days following the close of each quarter;
  - 3.3.3 Annual narrative report due 30 days following the close of the grant period;
  - 3.3.4 DPS victim assistance survey due annually upon request; and
  - 3.3.5 Year-end Amendment, if applicable, due 30 days following the close of the grant period.

Failure to submit complete, accurate and timely reports may result in a reduction of the current award. Any three combined occurrences of monthly or quarterly reports submitted over 15 days late and/or three combined occurrences relating to the submission of incomplete or inaccurate monthly or quarterly reports may result in up to a 10% award reduction as determined by DPS.

- 3.3.6 If DPS determines that the subrecipient has failed to meet the acceptable standard for maintaining financial and/or programmatic documentation or is identified as a high risk subrecipient, additional financial or programmatic documentation may be required.
- 3.4 Records. The subrecipient shall retain all financial records, supporting documentation, statistical records and all other records pertinent to this award until March 31 of the seventh year following the year indicated in the Federal Grant Number of this Subgrant Award Agreement. (Federal Grant #2014-VA-GX-0018 plus seven years – keep through March 31 of that seventh year). In addition, with a 24-hour notice, the subrecipient will allow DPS and the Department of Justice's Office for Victims of Crime and/or the Office of the Chief Financial Officer (or their representatives) to review all of the subrecipient's records concerning this grant project.
- 3.5 Capital equipment. Any purchase of capital equipment shall be approved by DPS prior to purchase to include submission of the subrecipient's procurement or purchasing policies and procedures and related quote(s) for item purchase. The subrecipient shall maintain all capital equipment and furniture (costs in excess of \$5,000 per unit) purchased through this subgrant award agreement in accordance with the DOJ Grants Financial Guide. The subrecipient shall submit documentation relevant to the purchase as required by



DPS Grant Agreement No. 2014-281

DPS. All capital equipment and furniture shall be used for victim services as identified in the subrecipient's application and this subgrant award agreement. Any deviation from this provision shall be approved in writing by DPS.

- 3.5.1 The subrecipient must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$150,000).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP website at <http://ojp.gov/funding/explore/noncompetitiveprocurement.htm>.

- 3.6 Authorization of use. DPS reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and authorize others to use for government purposes, the copyright of any work developed under this award and any rights of copyright to which a subrecipient purchases ownership with support through this subgrant award agreement.
- 3.7 Research or statistical information. The subrecipient shall not use or reveal any research or statistical information under this project that is identifiable to any specific person except for the purpose for which the information was obtained, in accordance with VOCA.
- 3.8 Site inspections. The continuance of the subrecipient's subgrant award agreement is contingent upon successful completion of random or for-cause inspections. Failure to satisfactorily comply with Required Action items identified during the site inspection can result in termination of the subgrant award agreement.
- 3.9 Audit requirements. The subrecipient shall comply with the audit requirements of Title 2 F.F.R. Subpart F (§ 200.500 et seq.) of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the DPS VOCA guidelines. If an audit is required, a copy of the audit report shall be sent to DPS.
- 3.10 Financial statement availability. The nonprofit subrecipient shall make its financial statements available online (either on the subrecipient's or another publicly available website). Subrecipient organizations that have Federal 501(c)(3) tax status are considered in compliance with this requirement to the extent that such organizations file IRS Form 990 or similar tax documents (e.g., 990-EZ), as several sources already provide searchable online databases of such financial statements.
- 3.11 Certification of nonprofit status. The nonprofit subrecipient shall certify its nonprofit status by submitting a statement to DPS affirmatively asserting that the subrecipient is a nonprofit organization, and by providing either 1) a copy of its 501(c)(3) designation letter; 2) a letter from the Arizona Department of Revenue or Arizona Attorney General's Office stating that the subrecipient is a nonprofit organization operating within Arizona; or 3) a copy of the agency's Arizona certificate of incorporation that substantiates its nonprofit status. Subrecipients that are local nonprofit affiliates of Arizona or national nonprofits should have available proof of (1), (2) or (3), and a statement by the Arizona or national parent organization that the subrecipient is a local nonprofit affiliate.
- 3.12 Potential fraud, waste, abuse or misconduct. The subrecipient shall promptly notify the DOJ Office of the Inspector General (OIG) and DPS in writing of any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has in connection with funds under this award either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award shall be reported to the OIG by 1) mail directly to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 950 Pennsylvania Avenue, N.W. Room 4706, Washington DC 20530; 2) e-mail to: [oig.hotline@usdoj.gov](mailto:oig.hotline@usdoj.gov); and/or 3) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <http://www.usdoj.gov/oig>.

No subrecipient under this award may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information. The foregoing is not intended to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

The subrecipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rules, or regulation related to a federal grant.

The subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the subrecipient is to contact the OJP and DPS for guidance.

- 3.13 Prohibited activities. The following activities are prohibited under this subgrant award agreement:  
1. New construction. 2. Any renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historical Places or (b) located within a 100-year floodplain. 3. A renovation which will change the basic prior use of a facility or significantly change its size. 4. Research and technology whose anticipated and future application could be expected to have an effect on the environment. 5. Implementation of a program involving the use of chemicals.
- 3.14 Subgrant award agreement renewal. DPS has the option to renew this project for a specified additional time period. The renewal of this project is contingent upon satisfactory performance, availability of funds, and demonstrated need.
- 3.15 System for Award Management. The subrecipient agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM). After the initial registration, subrecipients are required to review and update the information at least annually and more frequently if required by changes in the subrecipient's information or another award item. Additional information about registration procedures may be found at the SAM website ([www.sam.gov](http://www.sam.gov)).
- 4.0 Cost and Payments.**
- 4.1 Available funds. Any award is dependent upon receipt of the VOCA Assistance funds from the U.S. Department of Justice, and there is no obligation on the part of DPS to award funds other than the federal VOCA Assistance funds.
- 4.2 Match waiver. Any award made with a match waiver pending approval from the U.S. Department of Justice is subject to reduction if the match waiver is not approved.
- 4.3 Compliance. Failure of the subrecipient to utilize DPS VOCA funds for direct services to crime victims or for training purposes as stated in the approved budget may be subject to immediate cancellation. The subrecipient shall not utilize VOCA funds for projects which serve perpetrators of crime or crime prevention, and/or for any other non-allowable cost or activity in accordance with DPS / VOCA guidelines. The subrecipient agrees to reimburse DPS for any VOCA funds the subrecipient expends that are not in full compliance with this subgrant award agreement.
- 4.4 No charge to victims. Subrecipients shall provide services to crime victims, at no charge, through the VOCA-funded project. The purpose of the VOCA victim assistance grant program is to provide services to all crime victims regardless of their ability to pay for services rendered or availability of insurance or other third-party payment resources.

- 4.5 On-call time. The subrecipient shall not utilize VOCA funds to support on-call time for staff. DPS may approve the use of on-call time as program match.
- 4.6 Non-supplantation. VOCA crime victim assistance funds will be used to enhance or expand services and shall not be used to supplant state and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(c), codified at 42 USC 10603(a)(2)(C). This supplantation clause applies to state and local public agencies only.
- 4.7 Mandated services. The subrecipient shall not utilize VOCA funds to support legally mandated services.
- 4.8 Funds management. The subrecipient shall provide appropriate accounting and monitoring procedures to ensure fiscal control and efficient management of funds, in accordance with the U.S. Department of Justice, Office of Justice Programs, Grants Financial Guide, effective edition.
- 4.9 Unexpended funds. The subrecipient shall immediately contact DPS to make arrangements to amend its budget to expend remaining funds or to reduce the contracted amount when it becomes apparent that not all VOCA grant funds will be expended by the end of the grant period. Any VOCA funds not expended or encumbered prior to the end of the award period shall be reverted to DPS within 30 days of the close of the grant period. Any funds not matched as required shall be reverted to DPS within 30 days of receipt of written notification from DPS.
- 4.10 Matching funds. The subrecipient shall commit, track and report matching funds at approximately the same percentage rate as expenditures. The subrecipient may commit, track and report match funds at a higher percentage rate each month, not to exceed the total required match amount. The subgrant award agreement is subject to cancellation if the required match funding committed, tracked, and reported each month is more than 10% less than the rate of expenditures.
- 4.11 Training and conference expense. The subrecipient agrees to comply with all applicable laws, regulations, policies, and Official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), meetings, training, and other events, including the provision of food and/or beverage and costs of attendance at such events.
- 4.12 Training or training materials. The subrecipient understands and agrees that any training or training materials developed or delivered with funding provided under this award shall adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <http://www.ojp.usdoj.gov/funding/ojptrainingguidingprinciples.htm>.
- 4.13 Duplicate funding. The subrecipient agrees that if it currently has an open award of federal or state funds or if it receives an award of federal or state funds other than this award, and those award funds have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the subrecipient shall promptly notify DPS and, if so requested by DPS, seek an agreement amendment request to eliminate any duplication of funding.
- 5.0 Subgrant Award Agreement Changes.**
- 5.1 Agreement Amendment. This subgrant award agreement is issued under the authority of the Director of the Arizona DPS and may be modified only through an Agreement Amendment, approved by DPS.
- 5.2 Assignment of duties. The subrecipient shall not assign or transfer any of its duties under this agreement without express written permission of DPS.
- 5.3 Scope of work. Awards are based on information presented in the subrecipient's on-line application. Any deviation from the scope of the project as stated in the Narrative and Budget sections of the subrecipient's application shall be approved in writing by DPS prior to the use of such funds.
- 5.4 Subcontracts. The subrecipient shall not enter into any subcontract under this subgrant award agreement without the advance written approval of DPS. The subrecipient shall clearly list any proposed subcontractors

and the subcontractor's proposed responsibilities in the application for funding or agreement amendment. The subcontract shall incorporate by reference the terms and conditions of this subgrant award agreement.

**6.0 Indemnification.**

Subrecipient Indemnification. The parties to this subgrant award agreement agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the subrecipient for vicarious liability of the State as a result of entering into this agreement. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

**7.0 Grant Remedies.**

7.1 Right to Assurance. If DPS in good faith has reason to believe that the subrecipient does not intend to, or is unable to perform or continue performing under this subgrant award agreement, DPS may demand in writing that the subrecipient give a written assurance of intent to perform. Failure by the subrecipient to provide written assurance within the number of days specified in the demand may, at DPS's option, be the basis for terminating the subgrant award agreement under the General Conditions or other rights and remedies available by law or provided by the subgrant award agreement.

7.2 Project implementation. If a project is not operational within 60 days of the original start date of the project period, the subrecipient shall submit written documentation to DPS explaining steps taken to initiate the project, the reasons for the delay, and the expected start date. If a project is not operational within 90 days of the original start date of the project period, the subrecipient shall submit a second written statement explaining the implementation delay. DPS reserves the right to cancel the agreement if the proposed project is not operational within 90 days of the original start date.

**8.0 Grant Termination.**

8.1 Cancellation for conflict of interest. Pursuant to A.R.S. § 38-511, the State may cancel this agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the State is or becomes at any time while the agreement or an extension of the agreement is in effect an employee of or a consultant to any other party to this agreement with respect to the subject matter of the agreement. The cancellation shall be effective when the subrecipient receives written notice of the cancellation unless the notice specifies a later time. If the subrecipient is a political subdivision of the State, it may also cancel this agreement as provided in A.R.S. § 38-511. In the event of cancellation under this paragraph, any unexpended funds received by the subrecipient shall be reverted within 30 days of the cancellation notification.

8.2 Gratuities. DPS may, by written notice, terminate this subgrant award agreement, in whole or in part, if DPS determines that employment or a gratuity was offered or made by the subrecipient or a representative of the subrecipient to any officer or employee of the state for the purpose of influencing the outcome of the grant award or in securing the subgrant award agreement, an amendment to the subgrant award agreement, or favorable treatment concerning the subgrant award agreement, including the making of any determination or decision about subgrant award agreement performance. DPS, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the subrecipient.

8.3 Suspension or Debarment. DPS may, by written notice to the subrecipient, immediately terminate this subgrant award agreement if DPS determines that the subrecipient has been debarred, suspended or otherwise lawfully prohibited from or ineligible for participation in federal assistance programs or activities, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an application for funding or execution of a subgrant award agreement shall attest that the subrecipient is not currently suspended or debarred. If the subrecipient becomes suspended or debarred, the subrecipient shall immediately notify DPS.

- 8.4 Termination for convenience. DPS reserves the right to terminate the subgrant award agreement, in whole or in part any time, when in the best interest of DPS without penalty or recourse. Upon receipt of the written notice, the subrecipient shall stop all work as directed in the notice and minimize all further costs to DPS. In the event of termination under this paragraph, any unexpended funds received by the subrecipient shall be reverted within 30 days of the termination notification.
- 8.5 Termination for default. In addition to the rights reserved in the contract, DPS may terminate the subgrant award agreement in whole or in part due to the failure of the subrecipient to comply with any term or condition of the subgrant award agreement or to make satisfactory progress in performing the subgrant award agreement. An award is subject to cancellation if less than 20% of the awarded funds are expended or encumbered within 4 months of the contact start date, 40% within 7 months, and 70% within 10 months. DPS shall provide a 30-day written notice of termination and the reasons for termination to the subrecipient. In the event of termination under this paragraph, any unexpended funds received by the subrecipient shall be reverted within 30 days of the termination notification. The subrecipient has the option to appeal within 20 calendar days of the date of the written notice of termination. The final decision will be at the discretion of the DPS Director or his designee.
- 8.6 Continuation of performance through termination. The subrecipient shall continue to perform, in accordance with the requirements of the subgrant award agreement, up to the date of termination, as directed in the termination notice.
- 8.7 Termination by subrecipient. Upon written notice to DPS, the subrecipient may cancel this subgrant award agreement. Any unexpended funds shall immediately be reverted to DPS.

**9.0 Arbitration.**

The parties to this subgrant award agreement agree to resolve all disputes arising out of or relating to this subgrant award agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes (Title 41).

**10.0 Other Service Requirements and Prohibited Activities.**

- 10.1 Collaboration. The subrecipient agrees to continually and proactively participate in developing partner relationships among other service providers in the effort to aid crime victims within the community served.
- 10.2 Demographics. The subrecipient agrees to maintain information on victim services provided through this project by race, national origin, sex, age and disability.
- 10.3 Key staff changes. The subrecipient agrees to promptly notify DPS of changes in key staff members identified in the grant application, to include Project Contact, Civil Rights Contact, Crime Victim Compensation Coordinator, Project Director, Financial Contact, Authorizing Official, and VOCA funded staff and/or staff used as match.
- 10.4 Vacancies. The subrecipient agrees to promptly notify DPS in writing when any VOCA funded employee position is vacated, and when any VOCA funded employee position is filled.
- 10.5 Surveys. The subrecipient agrees to utilize customer feedback surveys to assist the agency with contracted project outcome and quality measures. Feedback and satisfaction surveys will utilize the Likert Scale of Measurement (Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree).
- 10.6 Victim Compensation. The subrecipient agrees to assist eligible victims in seeking available crime victim compensation benefits provided by the state victim compensation program. The subrecipient shall designate a Victim Compensation Coordinator within its agency. The Victim Compensation Coordinator shall receive victim compensation training from his/her county attorney's office or complete the Arizona Criminal Justice Commission (ACJC) on-line Introduction to Crime Victim Compensation training module (<http://www.azcjc.gov/ACJC.Web/victim/cbtraining.aspx>). If training has not been received, the

subrecipient shall arrange for and attend training within 90 days from the first day of this subgrant award agreement or 90 days after reassignment of new staff in this role.

- 10.7 Victims' Rights. The subrecipient agrees to notify victims of Victims' Rights (A.R.S. Title 13, Chapter 40 Crime Victims' Rights; and A.R.S. Title 8, Chapter 3, Article 7 Victims' Rights for Juvenile Offenses) and to offer to connect the victim with a representative from the prosecutor's or county attorney's office if the victim so chooses. Subrecipients shall ensure that all DPS-VOCA funded and match staff and their first line supervisor have received victims' rights training from the Arizona Attorney General's Office.
- 10.8 Civil Rights. The subrecipient shall designate a Civil Rights Contact Person within its agency. This person shall complete the on-line civil rights training program offered by the Office for Civil Rights (OCR), Office of Justice Programs (OJP), Department of Justice (DOJ) via the Arizona Criminal Justice Commission (ACJC) website. The subrecipient shall ensure the Civil Rights Contact Person completes the training within 90 days from the first day of this subgrant award agreement or 90 days after reassignment of new staff in this role.
- 10.9 Volunteers. The subrecipient agrees to incorporate the use of volunteers to assist in carrying out the agency's mission. The use of volunteers is a current and ongoing requirement for all projects.
- 10.10 Text messaging policy. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department of Justice (DOJ) encourages subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
- 10.11 Human Trafficking. The subrecipient must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons. The details of the subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP website at <http://ojp.gov/funding/explore/prohibitedconduct-trafficking.htm>.
- 10.12 Consolidated Appropriations Act. The subrecipient shall comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2016, are set forth below.

*Publicity or Propaganda.* Federal funds are not legally available, and may not be used (whether directly or indirectly, including by private contractors), for publicity or propaganda purposes not authorized by Congress.

*Employee Trainings.* Federal funds are not legally available, and may not be used, for any employee training that:

1. does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;
2. contains elements likely to induce high levels of emotional response or psychological stress in some participants;
3. does not require prior employee notification of the content and methods to be used in the training and written end-of-course evaluation;
4. contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems as defined in Equal Employment Opportunity Commission Notice N-915.022, dated September 2, 1988; or
5. is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace.

Nothing in this provision prohibits, restricts, or otherwise precludes an agency from conducting training bearing directly upon the performance of official duties.

*Nondisclosure policies, forms, and agreements.* Federal funds are not legally available, and may not be used, to implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following provisions:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing federal statute or Executive Order relating to 1) classified information; 2) communications to Congress; 3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or 4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and federal statutory provisions are incorporated into this agreement and are controlling.”

*Acorn and related organizations.* Absent express prior written approval from OJP, federal funds may not be provided to the Association of Community Organizers for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.

*Nondiscrimination in programs involving students.* Funds appropriated under the Department of Justice Appropriations Act, 2016, and awarded by OJP are not legally available, and may not be used, to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or those of their parents or legal guardians.

*Blocking of pornography on computer networks.* Funds appropriated under the Department of Justice Appropriations Act, 2016, and awarded by OJP are not legally available and, may not be used, to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. Nothing in this provision limits the use of funds necessary for any federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, adjudication, or other law enforcement or victim assistance-related activity.

*Award or incentive fees to contractors.* Funds appropriated under the Department of Justice Appropriations Act, 2016, and awarded by OJP are not legally available, and may not be used, to pay award or incentive fees for contractor performance that has been judged to be below satisfactory performance or for performance that does not meet the basic requirements of a contract.

- 10.13 Israel Boycott Divestments. Subrecipient warrants it is not engaged in a boycott of Israel as defined by A.R.S. § 35-393.01.

**2016 - 2017  
APPROVED BUDGET**

<b>Budget line items:</b>	<b>Federal</b>	<b>Match</b>	<b>Total</b>
<b>Salaries and Wages</b>	\$124,401	\$37,831	\$162,232
<b>Fringe Benefits</b>	\$43,508	\$ 7,192	\$50,700
<b>Travel</b>	\$ 0	\$ 0	\$ 0
<b>Professional/Outside Services</b>	\$ 0	\$ 0	\$ 0
<b>Equipment</b>	\$ 0	\$ 0	\$ 0
<b>Other Operating</b>	\$12,181	\$ 0	\$12,181
<b>Total</b>	\$180,090	\$45,023	\$225,113



For the Arizona Department of Public Safety:

\_\_\_\_\_  
Frank L. Milstead, Colonel  
Director  
Arizona Department of Public Safety

\_\_\_\_\_  
Date

This Subgrant Award Agreement has been approved as to form by the Arizona Department of Public Safety Legal Section as of November 12, 2016.

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For the Subrecipient:

Project Director:

Signature:   
David Madeya, Police Lieutenant

Date: 12-8-16

Authorizing Official:

Signature:   
Rick St. John, Police Chief

Date: 12-7-16

Approved as to form:

\_\_\_\_\_  
Attorney for Subrecipient (optional)

# CERTIFICATION FORM

## Compliance with the Equal Employment Opportunity Plan (EEO) Requirements

Please read carefully the Instructions (see below) and then complete Section A or Section B or Section C, not all three. If recipient completes Section A or C and sub-grants a single award over \$500,000, in addition, please complete Section D.

Recipient's Name:	CITY OF Glendale Police Department	
Address:	6935 N. 57th Drive Glendale AZ 85301	
Is agency a; <input checked="" type="checkbox"/> Direct or <input type="checkbox"/> Sub recipient of OJP, OVW or COPS funding?   Law Enforcement Agency? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
DUNS Number:	111215518	Vendor Number (only if direct recipient)
Name and Title of Contact Person:	Kevin Phelps	
Telephone Number:	623 930-2870	E-Mail Address: KPhelps@GlendaleAZ.com

### Section A—Declaration Claiming Complete Exemption from the EEO Requirement

Please check all the following boxes that apply.

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Less than fifty employees. | <input type="checkbox"/> Indian Tribe            | <input type="checkbox"/> Medical Institution.                            |
| <input type="checkbox"/> Nonprofit Organization     | <input type="checkbox"/> Educational Institution | <input type="checkbox"/> Receiving a single award(s) less than \$25,000. |

I, \_\_\_\_\_ [responsible official],  
certify that \_\_\_\_\_ [recipient]

is not required to prepare an EEO for the reason(s) checked above, pursuant to 28 C.F.R § 42.302.

I further certify that \_\_\_\_\_ [recipient] will comply  
with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

*If recipient sub-grants a single award over \$500,000, in addition, please complete Section D*

Print or Type Name and Title

Signature

Date

### Section B—Declaration Claiming Exemption from the EEO Submission Requirement and Certifying That an EEO Is on File for Review

If a recipient agency has fifty or more employees and is receiving a single award or, subaward, of \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEO to the OCR for review as long as it certifies the following (42 C.F.R. § 42.305):

I, Kevin Phelps [responsible  
official], certify that CITY OF Glendale

[recipient], which has fifty or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEO in accordance with 28 CFR pt. 42, subpt. E. I further certify that within the last twenty-four months, the proper authority has formulated and signed into effect the EEO and, as required by applicable federal law, it is available for review by the public, employees, the appropriate state planning agency, and the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice. The EEO is on file at the following office:

CITY OF Glendale  
[organization],

5850 W. Glendale Ave Glendale AZ 85301  
[address].

Kevin Phelps CITY MANAGER  
[signature]

Print or Type Name and Title

Signature

Date

### Section C—Declaration Stating that an EEO Short Form Has Been Submitted to the Office for Civil Rights for Review

If a recipient agency has fifty or more employees and is receiving a single award, or subaward, of \$500,000 or more, then the recipient agency must send an EEO Short Form to the OCR for review.

I, \_\_\_\_\_ [responsible  
official], certify that \_\_\_\_\_

[recipient], which has fifty or more employees and is receiving a single award of \$500,000 or more, has formulated an EEO in accordance with 28 CFR pt. 42, subpt. E, and sent it for review on \_\_\_\_\_

[date] to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

*If recipient sub-grants a single award over \$500,000, in addition, please complete Section D*

Print or Type Name and Title

Signature

Date

**Section D—Declaration Stating that Recipient Subawards a Single Award Over \$500,000**

*If a recipient agency, subawards a single award of \$500,000 or more then the granting agency should provide a list; including, name, address and DUNS # of each such sub-recipient.*

Sub-Recipient Agency Name/Address	Sub-Recipient DUNS Number

**NIIA**

*If additional space in necessary, please duplicate this page.*

## **INSTRUCTIONS Completing the Certification Form Compliance with the Equal Employment Opportunity Plan (EEO) Requirements**

The federal regulations implementing the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, require some recipients of financial assistance from the U.S. Department of Justice subject to the statute's administrative provisions to create, keep on file, submit to the Office for Civil Rights (OCR) at the Office of Justice Programs (OJP) for review, and implement an Equal Employment Opportunity Plan (EEO). See 28 C.F.R. pt. 42, subpt. E. All awards from the Office of Community Oriented Policing Services (COPS) are subject to the EEO requirements; many awards from OJP, including awards from the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office for Victims of Crime (OVC) are subject to the EEO requirements; and many awards from the Office on Violence Against Women (OVW) are also subject to the EEO requirements. If you have any questions as to whether your award from the U.S. Department of Justice is subject to the Safe Streets Act's EEO requirements, please consult your grant award document, your program manager, or the OCR.

**Recipients should complete *either* Section A *or* Section B *or* Section C, not all three. If recipient completes Section A *or* C and sub-grants a single award over \$500,000, in addition, please complete Section D.**

### **Section A**

The regulations exempt some recipients from all of the EEO requirements. Your organization may claim an exemption from all of the EEO requirements if it meets any of the following criteria: it is a nonprofit organization, an educational institution, a medical institution, or an Indian tribe; *or* it received an award under \$25,000; *or* it has less than fifty employees. To claim the complete exemption from the EEO requirements, complete Section A.

### **Section B**

Although the regulations require some recipients to create, maintain on file, and implement an EEO, the regulations allow some recipients to forego submitting the EEO to the OCR for review. Recipients that (1) are a unit of state or local government, an agency of state or local government, or a private business; *and* (2) have fifty or more employees; *and* (3) have received a single grant award of \$25,000 or more, but less than \$500,000, may claim the limited exemption from the submission requirement by completing Section B. In completing Section B, the recipient should note that the EEO on file has been prepared within twenty-four months of the date of the most recent grant award.

### **Section C**

Recipients that (1) are a unit of state or local government, an agency of state or local government, or a private business, *and* (2) have fifty or more employees, *and* (3) have received a single grant award of \$500,000 or more, must prepare, maintain on file, *submit to the OCR for review*, and implement an EEO. Recipients that have submitted an EEO Utilization Report (or in the process of submitting one) to the OCR, should complete Section C.

### **Section D**

Recipients that (1) receive a single award over \$500,000; *and* (2) subaward a single award of \$500,000 or more must provide a list; including, name, address and DUNS # of each such sub-recipient by completing Section D.

### **Submission Process**

Recipients should download the online Certification Form, complete required sections, have the appropriate official sign it, electronically scan the signed document, and then send the signed document to the following e-mail address: [EEOPForms@usdoj.gov](mailto:EEOPForms@usdoj.gov). *The document must have the following title: EEO Certification.* If you have questions about completing or submitting the Certification Form, please contact the Office for Civil Rights, Office of Justice Programs, 810 7th Street, NW, Washington, DC 20531 (Telephone: (202) 307-0690 and TTY: (202) 307-2027).

## **Public Reporting Burden Statement**

Paperwork Reduction Act Notice. Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a current valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated minimum average time to complete and file this application is 20 minutes per form. If you have any comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Office of Justice Programs, 810 7th Street, N.W., Washington, D.C. 20531.

**U.S. Department of Justice  
Office of Justice Programs  
Office of the Chief Financial Officer**

**Certifications Regarding Lobbying; Debarment,  
Suspension and Other Responsibility Matters  
(Dated 7/15/2015)**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Acceptance of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," 2 CFR Part 2867, "DOJ Implementation of OMB Guidance on Nonprocurement Debarment and Suspension," and 28 CFR Part 83, "Government-wide Debarment and Suspension."

The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

**Certification Regarding Lobbying**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

Pursuant to Executive Order 12549, Debarment and Suspension, implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Section 2867.20(a), and other requirements:

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Have not within a two-year period preceding this application been convicted of a felony criminal violation under any Federal law, unless such felony criminal conviction has been disclosed in writing to the Office of Justice Programs (OJP) at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov), and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

(d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(e) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### Federal Taxes

A. If the applicant is a corporation, the applicant certifies that either (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov), and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certification.

Subrecipient (organization) name: CITY OF GLENDALE - POLICE DEPARTMENT

Address: 6835 N. 57TH DRIVE GLENDALE AZ 85301

DPS Contract #: 2014-281 Federal Employer Identification #: 86-6000247

Printed Name & Title of Authorizing Official: Brent Studdard - Director Public Affairs

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

Date: 12-1-16

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB  
0348-0048

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input checked="" type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input checked="" type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  <p style="text-align: center; font-size: 1.5em;">N/A</p> Congressional District, if known: 4c	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  <p style="text-align: center; font-size: 1.5em;">N/A</p> Congressional District, if known:	
<b>6. Federal Department/Agency:</b>  <p style="text-align: center; font-size: 1.5em;">N/A</p>	<b>7. Federal Program Name/Description:</b>  <p style="text-align: center; font-size: 1.5em;">N/A</p> CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):  <p style="text-align: center; font-size: 1.5em;">N/A</p>	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):  <p style="text-align: center; font-size: 1.5em;">N/A</p>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature:  <input type="checkbox"/> Not Applicable Print Name: <u>Brent Stoddard</u> Title: <u>Director of Public Affairs</u> Telephone No.: <u>623-930-2078</u> Date: <u>12/6/16</u>	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)



# Arizona Department of Public Safety Victims of Crime Act (VOCA) Administration



## Complying with Federal Civil Rights Program Requirements

### **Ensuring Access to Federally Assisted Programs**

Federal laws prohibit recipients (and subrecipients) of federal financial assistance from discrimination on the basis of race, color, national origin, religion, sex, or disability in funded program or activities, not only in respect to employment practices but also in the delivery of services or benefits. Federal law also prohibits funded programs or activities from discriminating on the basis of age in the delivery of services or benefits.

### **Providing Services to Limited English Proficiency (LEP) Individuals**

In accordance with Department of Justice Guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients (and subrecipients) of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please refer to <http://www.lep.gov>.

### **Ensuring Equal Treatment for Faith-Based Organizations**

The Department of Justice has published a regulation specifically pertaining to the funding of faith-based organizations. In general, the regulation, Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants, and known as the Equal Treatment Regulation 28 C.F.R. part 38, prohibits faith-based organizations from using financial assistance from the Department of Justice to fund inherently (or explicitly) religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must be held separately from the Department of Justice funded program, and customers or beneficiaries cannot be compelled to participate in them. The Equal Treatment Regulation also makes clear that organizations participating in programs funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. For more information on the regulation, please go to the Office for Civil Rights website at [http://ojp.gov/about/ocr/equal\\_fbo.htm](http://ojp.gov/about/ocr/equal_fbo.htm).

### **Nondiscrimination Notification**

DPS-VOCA subrecipient agencies must have a method of notifying employees, clients, customers, or program participants that the subrecipient agency does not discriminate in employment practices or delivery of services, and must have a written policy that includes the procedures for filing a complaint, and the names and contact information for the agencies that receive complaints.

### **Discrimination Complaints**

Employees, clients, customers, or program participants of a DPS-VOCA subrecipient who wish to file a complaint of discrimination, may file a complaint directly with the subrecipient; or with the Arizona Department of Public Safety VOCA Administration Unit ([http://www.azdps.gov/Services/Crime\\_Victims/](http://www.azdps.gov/Services/Crime_Victims/)); the Arizona Office of the Attorney General, Office for Civil Rights ([http://www.azag.gov/civil\\_rights/](http://www.azag.gov/civil_rights/)); or the Office for Civil Rights (OCR), Office of Justice Programs, Department of Justice (<http://www.justice.gov/crt/>).

### **Submitting Findings of Discrimination**

If in the three years prior to the date of the grant award, a federal or state court or administrative agency makes an adverse finding of discrimination after a due process hearing against the subrecipient agency on the grounds of race, color, national origin, religion, sex, or disability, the subrecipient shall forward a copy of the finding to the Department of Justice, Office of Justice Programs, Office for Civil Rights and DPS-VOCA.

I, Kevin Phelps (printed name of authorizing official), certify that the

The City of Glendale (name of subrecipient organization) will comply with the Federal Civil Rights Program requirements as outlined above.

Authorizing Official's Title: City Manager

DPS Contract Number: 2014-281

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

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

**Arizona Department of Public Safety  
Victims of Crime Act (VOCA) Administration**



**Proof of Nonprofit Status**

Non-profit subgrantees shall demonstrate nonprofit status by any of the following means:

- (1) Provide proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code;
- (2) A statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual;
- (3) A certified copy of a certificate of incorporation or similar document establishing nonprofit status; or
- (4) Any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate.

This documentation shall be returned to DPS with the signed Award Agreement.

I certify \_\_\_\_\_ (name of subrecipient organization) is a nonprofit agency and attached is documentation demonstrating proof of nonprofit status according to the requirements outlined in item number \_\_\_\_\_ listed above.

\_\_\_\_\_  
Signature of Authorizing Official

\_\_\_\_\_  
Printed Name and Title of Authorizing Official

\_\_\_\_\_  
Date

**Arizona Department of Public Safety  
Victims of Crime Act (VOCA) Administration**



**Certification regarding eligibility for  
de minimis rate of 10% of Modified Total Direct Costs (MTDC)**

Pursuant to § 200.414 Indirect (F&A) Costs of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B), may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

Additionally, pursuant to § 200.414(g), any non-Federal entity that has a federally negotiated indirect cost rate may apply for a one-time extension of a current negotiated indirect cost rate for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate.

I certify to the best of my knowledge \_\_\_\_\_ (name of subrecipient organization) has never received a federally negotiated rate and will conform to the requirements listed above when utilizing the de minimis rate of 10% of modified total direct costs (MTDC).

\_\_\_\_\_  
Signature of Authorizing Official

\_\_\_\_\_  
Printed Name and Title of Authorizing Official

\_\_\_\_\_  
Date

**Arizona Department of Public Safety  
Victims of Crime Act (VOCA) Administration**



**Certification regarding Non-Supplanting**

As outlined in the U.S. Department of Justice, Office of Justice Programs, Federal Financial Guide, Federal funds must be used to **supplement** existing State and local funds for program activities and must not supplant those funds that have been appropriated for the same purpose. Furthermore, supplanting is defined as “to deliberately reduce State or local funds because of the existence of Federal funds. For example, when State funds are appropriated for a stated purpose and Federal funds are awarded for that same purpose, the State replaces its State funds with Federal funds, thereby reducing the total amount available for the stated purpose.”

The following example is provided in the Federal Financial Guide to help clarify the difference between supplementing and supplanting:

State funds are appropriated to hire 50 new police officers, and Federal funds are awarded for hiring 60 new police officers. At the end of the year, the State has hired 60 new police officers, and the Federal funds have been exhausted. The State has not used its funds towards hiring new officers, but instead reduced its appropriation for that purpose and assigned or appropriated the funds to another purpose. In this case, the State has supplanted its appropriation with the Federal funds. If supplanting had not occurred, 110 new officers would have been hired using Federal funds for 60 officers and State funds for 50 officers.

As a subrecipient of Victims of Crime Act (VOCA) Assistance funds, each agency shall certify its understanding of and adherence to the prohibition against supplanting of State or local funds with Federal funds.

I certify that the CITY of Glendale Police Dept (name of subrecipient organization)

will comply with the prohibition against supplanting as outlined above.

\_\_\_\_\_  
Signature of Authorizing Official

Kevin Phelps, City Manager  
Printed Name and Title of Authorizing Official

\_\_\_\_\_  
Date



**FINANCIAL MANAGEMENT AND SYSTEM OF INTERNAL CONTROLS QUESTIONNAIRE**

The financial management system of each non-Federal entity must provide for the following

- Retention requirements for records
- Requests for transfer of records
- Methods for collection, transmission and storage of information
- Access to records
- Restrictions on public access to records

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to document the receipt and disbursement of Federal funds including procedures to minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means

(7) Written procedures for determining the allowability of costs.

**APPLICANT ORGANIZATIONAL INFORMATION**

1. Name of Organization and Address:

City of Glendale  
5850 W. Glendale Ave Suite 302  
Glendale, AZ 85301

2. Authorized Representative's Name and Title:

Lisette Camacho - Controller

3. Phone: 623-930-2492 ext.

4. Fax:

5. Email: Lcamacho@GlendaleAZ.com

6. Year Established:

6/18/10

7. Employer Identification Number (EIN):

86-6060247

8. DUNS Number:

077523579

9. Type of Organization:

- State  Municipality  Non-Profit  Higher Education  Tribal  For-Profit  Other



**AUDIT INFORMATION**

An audit is conducted using generally accepted auditing standards (GAAS) or Generally Accepted Governmental Auditing Standards (GAGAS) and results in an audit report with an opinion.

10. The organization has had the undergone the following types of audit(s)(Please check all that apply):

OMB A-133 Single Audit     Financial Statement Audit     Defense Contract Agency Audit (DCAA)

None

Programmatic Audit & Agency: \_\_\_\_\_

Other Audit & Agency: \_\_\_\_\_

11. Fiscal Year of Last Audit: June 30, 2015

Name of Audit Agency/Firm:  
Clifton Larson Allen

**AUDITOR'S OPINION:**

12. On the most recent audit, what was the auditor's opinion?

Unqualified Opinion     Qualified Opinion     Disclaimer, Going Concern or Adverse Opinions

Please enter the number of findings: None

Please enter the amount of questioned costs:

Were material weaknesses noted in either the Financial Statement or Single Audit?     Yes     No

**ACCOUNTING SYSTEM**

13. Which of the following best describes your accounting system:

Manual     Automated     Combination

14. Does the accounting system identify the receipt and expenditure of program funds separately for each grant?     Yes     No     Not Sure

15. Does the accounting system provide for the recording of expenditures for each grant/contract by budget cost categories shown in the approved budget?     Yes     No     Not Sure

16. Does your accounting system have the capability to document the recording of cost sharing or match for each grant? Can you determine if documentation is available to support recorded match or cost share?     Yes     No     Not Sure

17. Are time distribution records maintained for each employee that specifically identify effort charged to a particular grant or cost objective?     Yes     No     Not Sure

18. Does the accounting/financial system include budgetary controls to preclude incurring obligations or costs in excess of total funds available or by budget cost category (e.g. Personnel, Travel, etc.)?     Yes     No     Not Sure

19. Is the organization familiar with the existing Federal regulation and guidelines containing the Cost Principles and procedures for the determination and allowance of costs in connection with Federal grants?     Yes     No     Not Sure



**PROPERTY STANDARDS, PROCUREMENT STANDARDS,  
AND TRAVEL POLICIES**

**PROPERTY STANDARDS**

20. Does your property management system(s) provide for maintaining: (1) a description of the equipment; (2) an identification number; (3) source of the property, including the award number; (4) where title vests; (5) acquisition date; (6) federal share of property cost; (7) location and condition of the property; (8) acquisition cost; & (9) ultimate disposition information?  Yes  No  Not Sure

**PROCUREMENT STANDARDS**

21. Does your organization maintain written procurement procedures which (1) avoid unnecessary purchases; (2) provide an analysis of lease and purchase alternatives; and (3) provide a process for soliciting goods and services?  Yes  No  Not Sure

22. Does your procurement system provide for the conduct to determine selection on a competitive basis and documentation of cost or price analysis for each procurement action?  Yes  No  Not Sure

23. Does your procurement system include provisions for checking the "Excluded Parties List" system for suspended or debarred sub-grantees and contractors, prior to award? <https://www.sam.gov/>  Yes  No  Not Sure

**TRAVEL POLICY**

24. Does your organization:  
(a) maintain a standard travel policy?  Yes  No  
(b) adhere to the Federal Travel Regulation? (FTR)  Yes  No

**SUBRECIPIENT MANAGEMENT AND MONITORING**

25. (For Pass-through entities only). Does your organization have controls in place to monitor activities of subrecipients, as necessary, to determine that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of the award and that performance goals are achieved (2 CFR200)?  Yes  No  Not Sure  
 N/A (Your organization does not make subawards.)

**STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS  
AND APPLICANT CERTIFICATION**

I certify that the above information is complete and correct to the best of my knowledge. This document must be certified by the organization's Authorized Representative, Executive Director, Chief Financial Officer, Chairman of the Board of Directors, or similar position.

Name: Adriana Carnalis Date: 12/11/14  
Title:  Executive Director  Chief Financial Officer  Chairman  Other: Controller

Phone: 623 930-2492 ext.

## Subgrant Award Report (SAR)

Subrecipient Organization Name: CITY of blendale - Police Department

DPS-VOCA Contract # 2014-281

### Subrecipient Organization Type

**INSTRUCTIONS:** Check the appropriate box that best reflects your agency type.

#### **A. Government Agencies Only:**

Which designation best describes this government agency (**select one response**)?

- Corrections
- Courts
- Juvenile justice
- Law enforcement
- Prosecutor

Other government agency Identify: \_\_\_\_\_

#### **B. Nonprofit Organizations Only:**

Which designation best describes this nonprofit organization (**select one response**)?

- Child abuse service organization (e.g., child advocacy center)
- Coalition (e.g., state domestic violence or sexual assault coalition)
- Domestic and family violence organization
- Faith-based organization
- Organization provides domestic and family violence and sexual assault services
- Organization by and/or for underserved victims of crime (e.g., drunk driving, homicide, elder abuse)
- Sexual assault services organization (e.g., rape crisis center)
- Multi-service agency

Other type of organization serving victims of crime: Identify: \_\_\_\_\_

#### **C. Federally Recognized Tribal Governments, Agencies, and Organizations Only:**

Which designation best describes this tribal agency or organization (**select one response**)?

- Child abuse service organization (e.g., child advocacy center)
- Court
- Domestic and family violence organization
- Faith-based organization
- Juvenile justice
- Law enforcement
- Organization provides domestic and family violence and sexual assault services
- Prosecutor
- Sexual assault services organization (e.g., rape crisis center)
- Other justice-based agency
- Other agency that is NOT justice-based (e.g., human services, health, education)
- Organization by and/or for a specific traditionally underserved community
- Organization by and/or for underserved victims of crime (e.g., drunk driving, homicide, elder abuse)
- Other: Identify: \_\_\_\_\_

#### **D. Campus Organizations Only:**

Which designation best describes this campus organization (**select one response**)?

- Campus-based victim services
- Law enforcement
- Physical or mental health service program
- Other: Identify: \_\_\_\_\_



## Use of VOCA and Match Funds:

**INSTRUCTIONS:** For this subaward, check the category of service and subcategory that best identifies the types of services or activities that will be provided by this VOCA-funded project, as described below.

Note: Report only those program activities that will be implemented with this VOCA award. Do not report services offered by another VOCA award received by your agency or any another agency.

### A. INFORMATION & REFERRAL

- Information about the criminal justice process
- Information about victim rights, how to obtain notifications, etc.
- Referral to other victim service programs
- Referral to other services, supports, and resources (includes legal, medical, faith-based organizations, address confidentiality programs, etc.)

### B. PERSONAL ADVOCACY/ACCOMPANIMENT

- Victim advocacy/accompaniment to emergency medical care
- Victim advocacy/accompaniment to medical forensic exam
- Law enforcement interview advocacy/accompaniment
- Individual advocacy (assistance in applying for public benefits, return of personal property or effects)
- Performance of medical forensic exam or interview, or medical evidence collection
- Immigration assistance (e.g., special visas, continued presence application, other immigration relief)
- Intervention with employer, creditor, landlord, or academic institution
- Child and/or dependent care assistance (includes coordination of services)
- Transportation assistance (includes coordination of services)
- Interpreter services

### C. EMOTIONAL SUPPORT OR SAFETY SERVICES

- Crisis intervention (in-person, includes safety planning, etc.)
- Hotline/crisis line counseling
- On-scene crisis response (e.g., community crisis response)
- Individual counseling
- Support groups (facilitated or peer)
- Therapy (traditional, cultural, or alternative healing; art, writing, or play therapy; etc.)
- Emergency financial assistance (includes emergency loans, payments for items such as food, clothing, changing windows and/or locks, taxis, prophylactic and nonprophylactic meds, durable/medical equipment, etc.)

### D. SHELTER/HOUSING SERVICES

- Emergency shelter or safe house
- Transitional housing
- Relocation assistance (includes assistance with obtaining housing)

### E. CRIMINAL/CIVIL JUSTICE SYSTEM ASSISTANCE

- Notification of criminal justice events (e.g., case status, arrest, court proceedings, case disposition, release, etc.)
- Victim impact statement assistance
- Assistance with restitution (includes assistance in requesting and when collection efforts are not successful)
- Civil legal assistance in obtaining protection or restraining order
- Civil legal assistance with family law issues (e.g., custody, visitation, or support)
- Other emergency justice-related assistance
- Immigration assistance (e.g., special visas, continued presence application, and other immigration relief)
- Prosecution interview advocacy/accompaniment (includes accompaniment with prosecuting attorney and with victim/witness)
- Law enforcement interview advocacy/accompaniment
- Criminal advocacy/accompaniment
- Other legal advice and/or counsel

**F. ASSISTANCE IN FILING COMPENSATION CLAIMS (CHOICE IS REQUIRED)**

- Assists potential recipients in seeking crime victim compensation benefits

**Types of Victimitizations**

- Adult Physical Assault (includes Aggravated and Simple Assault)
- Adult Sexual Assault
- Adults Sexually Abused/Assaulted as Children
- Arson
- Bullying (Verbal, Cyber, or Physical)
- Burglary
- Child Physical Abuse or Neglect
- Child Pornography
- Child Sexual Abuse/Assault
- Domestic and/or Family Violence
- DUI/DWI Incidents
- Elder Abuse or Neglect
- Hate Crime: Racial/Religious/Gender/Sexual Orientation/Other
- Human Trafficking: Labor
- Human Trafficking: Sex
- Identity Theft/Fraud/Financial Crime
- Kidnapping (noncustodial)
- Kidnapping (custodial)
- Mass Violence (Domestic/International)
- Other Vehicular Victimitization (e.g. Hit and Run)
- Robbery
- Stalking/Harassment
- Survivors of Homicide Victims
- Teen Dating Victimitization
- Terrorism (Domestic/International)
- Other – Please identify: PROPERTY CRIMES

**Staffing**

**INSTRUCTIONS:** Indicate your agency's total number of paid full-time equivalent staff for all victimization programs and/or services for the current fiscal year. This FTE count should include the entire agency's direct service staff (including both VOCA funded and non-VOCA funded).

Number of Full Time Equivalent (FTE) Staff: 8.5



## Legislation Description

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**File #:** 16-654, **Version:** 1

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### **ORDINANCE NO. 3033 NEW SERIES**

#### **AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING AND REPLACING GLENDALE CITY CODE, CHAPTER 2, ARTICLE II, SECTIONS 31-33, PRESCRIBING STANDARDS OF FINANCIAL DISCLOSURE FOR LOCAL ELECTED OFFICIALS; AND DECLARING AN EMERGENCY.**

Staff Contact: Michael Bailey, City Attorney, and Julie K. Bower, City Clerk

#### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt an ordinance amending Glendale City Code, Chapter 2, Administration, Article II, City Council, Division 2, Financial Disclosure, Section 2-31 Definitions, Section 2-32 Financial Disclosure Statement and Section 2-33 Candidates, with an emergency clause.

#### **Background**

In 2013, City Council adopted Ordinance No. 2837, which prescribed the standards of financial disclosure for local elected officials in Glendale. This past legislative session, H.B. 2429 amended the financial disclosure statement that is required for candidates and public officers.

#### **Analysis**

The primary change to the financial disclosure was the addition of a new category on the statement that requires reporting of certain travel-related expenses. Additionally, the law no longer requires the specific names of the public officer's spouse or children to be included on the statement. The law takes effect on January 1, 2017 and that is why the ordinance is being passed with an emergency clause.

#### **Previous Related Council Action**

On January 22, 2013, City Council adopted Ordinance No. 2837, which added language to Chapter 2, Article II of the Glendale City Code to conform with changes that were made to the financial disclosure provisions in state law. Previously, Council had adopted financial disclosure provisions for local Glendale elected officials by resolution - Resolution No. 2125 in 1983.

#### **Community Benefit/Public Involvement**

One of Council's key priorities is transparency. The reporting of travel-related expenses will improve transparency for the community.

**Budget and Financial Impacts**

There are no budget impacts associated with the request.

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WHEREAS, pursuant to the provisions of A.R.S. § 38-545, as amended, the City of Glendale is required to adopt standards of financial disclosure consistent with the provisions of Title 38, Chapter 3.1, Article 1, Arizona Revised Statutes, as amended; and

WHEREAS, the City Council has determined that the standards of financial disclosure hereinafter adopted are, with respect to the City of Glendale, consistent with such standards of financial disclosure within the meaning of A.R.S § 38-545.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That Glendale City Code, Chapter 2, Sections 2-31 through 2-33 are hereby replaced with the following:

SEC. 2-31

DEFINITIONS. Unless the context otherwise requires:

1. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.
2. "Compensation" means anything of value of advantage, present or prospective, including the forgiveness of debt.
3. "Controlled business" means any business in which the local public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty percent interest.
4. "Dependent business" means any business in which the local public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a ten percent interest, and during the preceding calendar year the business received from a single source more than ten thousand dollars and more than fifty percent of its gross income.
5. "Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large. "Gift" does not include travel-related

expenses that are publicly reported as required by law or political campaign contributions that are publicly reported pursuant to Title 16, Chapter 6.

6. "Local public officer" means a person holding an elective office of the City of Glendale.
7. "Member of household" means a local public officer's spouse and any minor child of whom the local public officer has legal custody.
8. "Travel-related expenses" means any costs associated with transportation, food, lodging and registration fees and other expenses directly related to travel to, or from, a meeting, conference or other event where the local public officer is participating in the local public officer's official capacity.

#### SEC. 2-32

#### DUTY TO FILE FINANCIAL DISCLOSURE STATEMENT; CONTENTS; EXCEPTIONS.

- A. In addition to other statements and reports required by law, every local public officer, as a matter of public record, shall file with the City Clerk on a form prescribed by the City Clerk a verified financial disclosure statement covering the preceding calendar year ending December 31. The statement shall disclose:
  1. The name and home or work address of the local public officer, whether the local public officer's spouse is a member of the local public officer's household, the number of minor children who are members of the local public officer's household and all names and addresses under which each does business. If disclosure of the identity of the local public officer's spouse or minor children otherwise be required, a local public officer may comply with the identification requirement by using the term "spouse" or "minor child," as applicable.
  2. The name and address of each employer and of each other source of compensation other than gifts amounting to more than one thousand dollars received during the preceding calendar year by the local public officer and members of his household in their own names, or by any other person for the use or benefit of the local public officer or members of his household, a description of the services for which the compensation was received and the nature of the employer's business. This paragraph shall not be construed to require the disclosure of individual items of compensation that constituted a portion of the gross income of the business from which the local public officer or members of his household derived compensation.
  3. For a controlled business, a description of the goods or services provided by the business, and if any single source of compensation to the business during the preceding calendar year amounts to more than ten thousand dollars and is more than twenty-five percent of the gross income of the business, the disclosure shall also include a description of the goods or services provided to the source of compensation. For a dependent business the statement shall disclose a description of the goods or

services provided by the business and a description of the goods or services provided to the source of compensation from which the dependent business derived the amount of gross income described in paragraph 4 of Sec. 2-31. If the source of compensation for a controlled or dependent business is a business, the statement shall disclose a description of the business activities engaged in by the source of compensation.

4. The names and addresses of all businesses and trusts in which the local public officer or members of his household, or any other person for the use or benefit of the local public officer or members of his household, had an ownership or beneficial interest of over one thousand dollars at any time during the preceding calendar year, and the name and addresses of all businesses and trusts in which the local public officer or any member of his household held any office or had a fiduciary relationship at any time during the preceding calendar year, together with the amount or value of the interest and a description of the interest, office or relationship.
5. All real property interests and real property improvements, including specific location and approximate size, located in the City of Glendale, in which the local public officer, any member of his household or a controlled or dependent business held legal title or a beneficial interest at any time during the preceding calendar year, and the value of any such interest, except that this paragraph does not apply to a real property interest and improvements thereon used as the primary personal residence or for the personal recreational use of the local public officer. If a local public officer, any member of his household or a controlled or dependent business acquired or divested any such interest during the preceding calendar year, he shall also disclose that the transaction was made and the date it occurred. If the controlled or dependent business is in the business of dealing in real property interests or improvements, disclosure need not include individual parcels or transactions as long as the aggregate value of all parcels of such property is reported.
6. The names and addresses of all creditors to whom the local public officer or members of his household, in their own names or in the name of any other person, owed a debt of more than one thousand dollars or to whom a controlled business or dependent business owed a debt of more than ten thousand dollars which was also more than thirty percent of the total business indebtedness at any time during the preceding calendar year, listing each such creditor. This paragraph shall not be construed to require the disclosure of debts owed by the local public officer or any member of his household resulting from the ordinary conduct of a business other than a controlled or dependent business. Nor shall disclosure be required of credit card transactions, retail installment contracts, debts on residences or recreational property exempt from disclosure under paragraph 5 of this subsection, debts on motor vehicles not used for commercial purposes, debts secured by cash values on life insurance or debts owed to relatives. It is sufficient disclosure of a creditor if the name and address or a person to whom payments are made is disclosed. If the local public officer, and any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding calendar year, the report shall disclose that the transaction was made and the date it occurred.

7. The identification and amount of each debt exceeding one thousand dollars owed at any time during the preceding calendar year to the local public officer and member of his household in their own names, or to any other person for the use or benefit of the local public officer or any member of his household. The disclosure shall include the identification and amount of each debt exceeding ten thousand dollars to a controlled business or dependent business which was also more than thirty percent of the total indebtedness to the business at any time during the preceding calendar year. This paragraph shall not be construed to require the disclosure of debts from the ordinary conduct of a business other than a controlled or dependent business. If the local public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding year, the report shall disclose that the transaction was made and the date it occurred.
8. The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars received by the local public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the local public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any intervivos or testamentary trust established by a spouse or by an ancestor, of gifts received from any other member of the household or relatives to the second degree of consanguinity. Travel-related expenses and political campaign contributions shall not be construed as gifts if otherwise publicly reported as required by law.
9. A list of all business licenses issued, by the City of Glendale, or by any other governmental agency which requires for its issuance the consideration of the application for such license by the city council of the City of Glendale, to, held by or in which the local public officer or any member of his household had an interest at any time during the preceding calendar year, including the name in which the license was issued, the type of business and its location.
10. A list of all bonds, together with their value, issued by the City of Glendale, any industrial development authority of the City of Glendale or any nonprofit corporation organized or authorized by the City of Glendale held at any time during the preceding calendar year by the local public officer or any member of his household, which bonds issued by a single entity had a value in excess of one thousand dollars. If the local public officer or any member of his household acquired or divested any bonds during the preceding calendar year which are reportable under this paragraph, the fact that the transaction occurred and the date shall also be shown.
11. The name of each meeting, conference or other event where the local public officer is participating in the public officer's official capacity if travel-related expenses of one thousand dollars or more were incurred on behalf of the local public officer and the travel-related expenses are not paid by the local public officer.



- B. If an amount or value is required to be reported pursuant to this section, it is sufficient to report whether the amount or value of the equity interest falls within:
  - 1. Category 1, one thousand dollars to twenty-five thousand dollars.
  - 2. Category 2, more than twenty-five thousand dollars to one hundred thousand dollars.
  - 3. Category 3, more than one hundred thousand dollars.
- C. This section does not require the disclosure of any information that is privileged by law.
- D. The statement required to be filed pursuant to subsection A shall be filed by all persons who qualified as local public officers at any time during the preceding calendar year on or before January 31 of each year, with the exceptions that a local public officer appointed to fill a vacancy shall, within sixty days following his taking of such office, file a financial disclosure statement covering as his annual period the twelve month period ending with the last full month prior to the date of his taking office, and a local public officer whose final term expires less than thirty-one days into the immediately following calendar year may file the local public officer's final financial disclosure at the same time as the disclosure for the last immediately preceding year.
- E. The City Clerk shall prepare written guidelines, forms and samples for completing the financial disclosure statement required by this section. A copy of the guidelines, forms and samples shall be distributed to each local public officer and shall be made available to each candidate required to file a financial disclosure statement.
- F. Any statements that are required to be filed by a local public officer pursuant to this ordinance adopted pursuant to A.R.S. § 38-545 may be filed in an electronic format as prescribed by the secretary of state.

#### SEC. 2-33

#### DUTY TO FILE FINANCIAL DISCLOSURE STATEMENT BY CANDIDATE FOR LOCAL PUBLIC OFFICE.

A candidate for local public office, as specified in Sec. 2-31, shall file a financial disclosure statement covering the preceding twelve-month period and containing the information described in Sec. 2-32 on a form prescribed by the City Clerk at the time of filing nomination papers.

SECTION 2. That the standards of financial disclosure for elected officials are hereby adopted.

SECTION 3. Whereas the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety of the City of Glendale, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor and Council of the City of Glendale,

and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 20th day of December, 2016.

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager



## Legislation Description

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**File #: 16-650, Version: 1**

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**AUTHORIZATION TO UTILIZE A FORM LICENSE AGREEMENT AS NEEDED TO FACILITATE THE USE OF CITY PROPERTY FOR FIESTA BOWL AND NCAA MEN'S FINAL FOUR**

Staff Contact: Jean Moreno, Executive Officer Strategic Initiatives and Special Projects

### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to execute any number of Form License Agreements that may be necessary to allow the use of city property to support activities or opportunities associated with the 2016 Fiesta Bowl or the 2017 NCAA Men's Final Four. Authorization to use this form agreement is exclusively for the stated purpose and is for a limited duration to automatically expire April 15, 2017.

### **Background**

The City of Glendale will be hosting the Fiesta Bowl on December 31, 2016 and the NCAA Men's Final Four March 31<sup>st</sup> to April 3<sup>rd</sup> 2017, both of which will be taking place at the University of Phoenix Stadium. In addition to officially sanctioned events and activities taking place in association with the games, it is likely that there will be a other activities taking place in the Sports and Entertainment District as well. The city owns and controls a variety of properties in and near the Sports and Entertainment District including but not limited to the Glendale Media Center, parking lots, public right of way, roadways, conduit, and vacant land. In order to effectively facilitate activities and opportunities in a timely manner, the use of a Form License Agreement is recommended to allow the use of city property while protecting the city's assets. This Form License Agreement was utilized during the 2015 Super Bowl XLIX and most recently during the 2016 College Football Playoff to facilitate the limited duration use of city property in conjunction with those events.

### **Analysis**

The use of a Form License Agreement positions the City of Glendale to be responsive to the needs of the community, event producers, and our partners while providing the city with indemnification and insurance provisions to protect city assets.

### **Previous Related Council Action**

On January 27, 2015, the Glendale City Council approved the use of this Form License Agreement for a limited duration that expired February 15, 2015 in association with Super Bowl XLIX.

On December 8, 2015, the Glendale City Council approved the use of this Form License Agreement for a limited duration that expired January 15, 2016 in association with the College Football Playoff.

**Community Benefit/Public Involvement**

Supporting regional efforts to attract and host successful national events in our community and being positioned to be responsive and proactive to the needs of event producers and partners supports local, regional, and state objectives which are all aligned to enhance the economy, attract visitors, and increase commerce in an effort to improve the quality of life for all Arizonans.

**Budget and Financial Impacts**

There is no cost to the city associated with the execution of any Form License Agreement for the use of city property.

## LICENSE AGREEMENT

This LICENSE AGREEMENT (“**Agreement**”) is made and entered into by and between the City of Glendale, an Arizona Municipal Corporation (“**City**”) and \_\_\_\_\_ (“**Licensee**”) (collectively “**Parties**”) to be effective on the date it is fully executed by all Parties.

### RECITALS

A. The City is the owner of certain real property located at \_\_\_\_\_, Glendale, Arizona, (“**License Area**”) more fully described in Exhibit A attached hereto and will be licensed for use pursuant to this Agreement.

B. Licensee and City desire for Licensee to use the License Area to provide \_\_\_\_\_ in accordance with the terms set forth below.

C. Licensee and City desire to memorialize their agreement with this document.

### AGREEMENT

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **INCORPORATION OF RECITALS.** The above recitals are true and correct and are incorporated into and shall constitute a part of this Agreement.
2. **LICENSE.** The City hereby grants to Licensee the right to use the License Area only for \_\_\_\_\_ and as otherwise described in § 2.3.d, below (“**Permitted Use**”) and no other use; and, subject to the provisions and conditions of this Agreement:
  - 2.1. **Use.** During the Term of this Agreement, Licensee will have non-exclusive access to the License Area only as described in § 5, “Licensee’s Operations” for the Permitted Use.
  - 2.2. **Project Manager.** Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties’ performance under this Agreement. Each project manager will devote such time and effort to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City’s project manager will not be exclusively assigned to this Agreement or to work related to the Licensee’s use.
  - 2.3. **Rights, Use Requirements, and Restrictions.**
    - a. Licensee’s rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the License Area.
    - b. Licensee’s rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee’s use of the License Area.
    - c. Licensee may use the License Area only for the Permitted Use and no other use.

d. Licensee's Permitted Use includes the following:

1. \_\_\_\_\_.
2. \_\_\_\_\_.
3. \_\_\_\_\_.
4. \_\_\_\_\_.
5. All other uses directly related to \_\_\_\_\_.

e. Except for enforcement authority vested in the Glendale Police Department or other governmental authority, Licensee shall have the right to set and enforce appropriate rules and guidelines for use of the License Area during the Term.

2.4. "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 12, including any warranties or representations by the City as to its condition or fitness for any use. Licensee's acceptance of the License Area "as is" shall not include the acceptance of any latent dangerous or hazardous condition that is not discoverable upon inspection.

2.5. Limitation on Grant. The Parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.

2.6. Rights Reserved.

- a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area, including use of the License Area for \_\_\_\_\_.
- b. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.

3. **TERM.**

3.1. License Period. This Agreement shall commence on \_\_\_\_\_, 20\_\_\_\_ ("Commencement Date") and end on \_\_\_\_\_, 20\_\_\_\_ ("Term"), unless terminated earlier as provided in this Agreement. The Effective Date of the License Agreement shall be the date it is fully executed by all Parties.

3.2. Surrender of Possession.

- a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in as good condition as it was provided to Licensee, including removal of personal property from the License Area, and removal of any paper, litter or trash.

- b. If Licensee fails to remove any of its property upon expiration or termination of this Agreement, it will have a grace period of \_\_\_\_\_ days in order to cause such removal, after which such property will become a part of the License Area and ownership will vest in the City. Alternatively, the City may, at the Licensee's expense, have the property removed after such \_\_\_\_\_-day period.
- 3.3. Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement and in no case may the hold-over exceed ten (10) business days.
4. **LICENSE FEES.** For its right to use the License Area, the City accepts the following consideration as full remuneration for the Licensee's use in accordance with the License Agreement to be paid on or before the Commencement Date of this agreement:
- 4.1. Licensee shall pay a sum of \_\_\_\_\_ (\$\_\_\_\_\_.00) for use of the License Area.
  - 4.2. The City reserves the right to waive any fees described in this License Agreement when appropriate and in accordance with applicable law. The decision to waive any such fees is in the City's sole and absolute discretion.
5. **LICENSEE'S OPERATIONS.**
- 5.1. Generally.
- a. Licensee must at all times have on-call and at the City's access an active, qualified and experienced representative to supervise the Permitted Use and who is authorized to act for the Licensee in matters pertaining to all emergencies and the operation of the Permitted Use. Licensee will provide the City with the name and 24-hour telephone number for the Licensee Project Manager.
  - b. Licensee, at all times during the Term of this Agreement, must operate and maintain the License Area in a clean and orderly condition and use commercially reasonable care in the use of the License Area so as not to constitute a nuisance, jeopardize the public safety, sell or distribute alcohol or illegal drugs, permit nudity, or allow any other unlawful activity.
  - c. The Licensee is responsible for obtaining and paying for all utilities necessary to support the Permitted Use of the License Area.
  - d. Licensee will procure, at its sole cost, any license, permit or approval of any governmental agency having jurisdiction over the License Area necessary for the Permitted Use of the License Area ("**Governmental Approvals**"). Licensee's obligations under this Agreement shall be subject to receipt of all Governmental Approvals. Each Party will cooperate with the other in good faith to obtain the Government Approvals, and City will promptly execute all applications and other documentation necessary for Licensee to obtain the Governmental Approvals. Licensee shall reimburse City within ten (10) days for any penalties or fines resulting from Licensee's failure to comply with any Governmental Approvals.
- 5.2. Improvements and Services.
- a. \_\_\_\_\_.
  - b. \_\_\_\_\_.
  - c. \_\_\_\_\_.

d. Licensee's Contractors

Licensee may use contractors and suppliers in its reasonable discretion in the performance of Improvements and Services. Licensee shall ensure that the Licensee's contractor/s performing work at the License Area maintain the minimum insurance requirements identified in this License Agreement. The insurance policies shall be endorsed to contain the City of Glendale, its officers, officials, employees, and volunteers as an additional insured in connection with its Permitted Use and Improvements and any other work or operations.

1. Licensee's Improvements must be designed and materials and labor purchased at the Licensee's sole expense. In the event Licensee or its Contractors cause damage to City owned property, the Licensee is responsible for reporting the claim to the applicable insurance company.
2. In no event is the City obligated to compensate Licensee or any contractor or supplier in any manner for any of the Licensee's Improvements or other work performed by Licensee or any contractor in connection with the Permitted Use or during or related to this Agreement.
3. Licensee must timely pay for all labor, materials, and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused, in whole or in part, by Licensee and no liens against the License Area shall be permitted.
4. All work performed on the License Area by Licensee or any sub-contractors must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.

5.3. Insurance.

- a. Licensee and any and all Contractors shall procure and maintain until all obligations have been discharged the minimum insurance requirements as outlined below in connection with its Permitted Use and Improvements and any other work or operations in the License Area. The insurance requirements contained herein are minimum requirements and in no way limit the indemnity covenants contained in the License. The City in no way warrants that the minimums are sufficient to protect Licensee or its Contractors as they are free to purchase additional insurance as they deem necessary.

Minimum Insurance Requirements

1. Workers' Compensation Insurance as required by the State of Arizona with Statutory Limits. This policy shall include Employer's Liability insurance with limits no less than \$1,000,000 per accident for bodily injury or disease.
2. Commercial General Liability Insurance on an occurrence basis that includes property damage, fire damage legal liability, bodily injury, personal and advertising injury, products and completed operations and contractual liability with limits not less than \$2,000,000 per occurrence, \$4,000,000 aggregate and \$100,000 fire damage liability.
3. Automobile Liability Insurance that includes bodily injury and property damage for any owned, hired and non-owned vehicles with a combined single limit not less than \$1,000,000.



- b. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona with an AM Best rating not less than A-, VII by AM Best.
  - c. The General and Automobile liability policies shall contain or be endorsed to contain the City of Glendale, its officers, officials, and employees as additional insureds with respect to liability arising out of Licensee's Permitted Use and Improvements and any other work or operations in the License Area. To the extent that City volunteers are utilized to perform work or operations in the License Area, with the prior consent and agreement of Licensee, then Licensee will name such volunteers as additional insured with respect to the General and Automobile liability policies.
  - d. Licensee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, or employees shall be excess of the Licensee's insurance and shall not contribute with it.
  - e. As commercially reasonable and at any time, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.
  - f. Notice of Cancellation. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.
  - g. Licensee and any and all Contractors shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the required insurance coverage. All certificates and endorsements are to be received by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.
  - h. Waiver of Subrogation. Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to make reasonable efforts to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
  - i. Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations.
6. **DAMAGE OR DESTRUCTION.** The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of Licensee, except for such loss or damage as is caused by the sole negligence or fault of the City or its officers, employees or agents.
7. **INDEMNIFICATION AND LIMITATION OF LIABILITY.**
- 7.1. Licensee will defend, indemnify and hold harmless the City, its officers, officials, and employees, and agents (collectively, the "City") from and against any and all losses, damages, claims, actions, liabilities for bodily injury or personal injury (including death) or loss or damage to tangible or intangible property (collectively, "Claims") of whatever nature, including reasonable attorney's fees, court costs, expert witness fees, costs of litigation or expenses, cost of claim processing and

investigation, caused in whole or in part that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's, or related to Licensee's owners, officers, directors, agents or contractors, Permitted Use and operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or loss of any property, or that arise out of Licensee's use, activities or operations, including the failure of the Licensee to comply with any provision of this Agreement (collectively "Licensee's Conduct").

- a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault or gross negligence of City, be defended and indemnified by Licensee against any and all Claims arising out of Licensee's Conduct. Licensee will be responsible for primary loss investigation, defense and judgment costs where the indemnification is applicable. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to defend and indemnify unless such timing actually prejudices Licensee's ability to defend or Licensee's legal rights and remedies thereunder, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.
- b. City shall cooperate with Licensee and its counsel in such defense.
- c. City may, but does not have the duty to, participate in the defense of any Claim with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.
- d. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's use or activities in the License Area.
- e. In consideration for the use of the premises, the Licensee agrees to waive all rights of subrogation against the City, its officers, officials, employees, and agents arising from Licensee's use, activities, operations or occupancy of the premises.

7.2. Limitation of Liability. In no event is either party liable or obligated to the other party or any third party for any special, incidental, exemplary, consequential, punitive or indirect damages regardless of the form of action, whether under theory of contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of any such damages in advance. The foregoing limitation on liability shall not apply to claims for which a party is obligated to provide indemnity under this Agreement, claims arising from fraud, gross negligence or willful misconduct of a party, claims for breach of confidentiality, or claims of infringement of intellectual property rights.

7.3. The indemnity obligations in this section shall survive expiration or termination of this Agreement.

## 8. TAXES AND LICENSES.

8.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.

8.2. Licensee must, at its own cost, obtain and maintain in full force and effect during the Term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

9. RULES AND REGULATIONS. Licensee must at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its use and construction activity or operations on the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee must display to the City, upon request, any permits, licenses or other evidence of compliance with all laws.

10. **TERMINATION.**

10.1. **For Cause.**

- a. Either party may terminate this Agreement in the event that the other party breaches this Agreement and fails to promptly remedy such breach within forty-eight (48) hours after receipt of notice from the other party. Notice must be made to either party's Project Manager, which notice may be verbal if provided on-site at the License Area to the other party's representative but must be followed up with an email to the other party's Project Manager documenting the deficiency.
- b. In the event either party fails to perform any of its obligations under this Agreement and such failure continues for forty-eight (48) hours and will impair the Permitted Use of the License Area, either party shall, in addition to all other rights and remedies available, have the right, but not the obligation, to perform the obligations of the offending party and collect from such, or set-off against amounts otherwise due, all sums actually expended to effect such cure.
- c. Licensee may terminate this Agreement in the event of any of the following and, if such an event occurs, the City will process a refund for the amount of the License Fee paid, but will not be liable for any other damages:
  1. Prior to the use of the License Area Licensee reasonably determines that the License Area is no longer technically compatible for its use or that it does not intend to use the License Area for its intended purposes.
  2. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area.
  3. The License Area becomes unusable as a result of inclement weather or other Act of God.
  4. Licensee cannot obtain the required licenses or permits or it becomes, in Licensee's sole and reasonable discretion, unduly burdensome or cost prohibitive to obtain such licenses or permits.
  5. \_\_\_\_\_.
- d. The City may terminate this Agreement and seek damages in the event of any of the following:
  1. The failure of Licensee to perform any of its obligations under this Agreement, provided that Licensee fails to remedy this failure within forty-eight hours of receiving written notice from the City of said failure.;
  2. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.
  3. If the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, alternatively, and at its sole discretion, the City may secure the required insurance at the Licensee's expense which will be immediately due and payable.

11. **DEFAULT.** Failure by a Party to take any authorized action upon default by the other party of any of the other party's breach of a term, covenant, condition or obligation of this Agreement, or the failure to declare any default or breach immediately upon occurrence thereof or delay in taking any action in

connection therewith, shall not waive such default or breach or such covenant, term, or condition or any subsequent default or breach thereof.

12. **REPRESENTATIONS AND WARRANTIES.**

The City represents and warrants to the Licensee that:

- 12.1. It has the full right, power, and authority to execute this Agreement;
- 12.2. The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.
- 12.3. The City shall deliver the License Area to Licensee on the Commencement Date free and clear of any equipment, personal property, trash, plant material and debris.
- 12.4. The City will not take any action inconsistent with Licensee's use of the License Area during the Term of this Agreement.
- 12.5. The City has not and will not contract with, authorize or permit any vendors, merchants, lessees or other third parties to have access to or make any use of the License Area during the Term of this Agreement.

Licensee represents and warrants to the City that:

- 12.6 Licensee is authorized to do business and is in good standing in Arizona.

13. **HAZARDOUS WASTE.**

- 13.1. Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.
- 13.2. Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.
- 13.3. Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.
- 13.4. Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

14. **PARTIES' PERSONNEL.** Each party's personnel are, and shall at all times remain, employees or contractors of such party, and each party shall exercise control over the conduct of their personnel and shall pay all wages, employee benefits and related expenses to the full extent required by law including, without limitation, all governmental employment taxes and unemployment insurance.

15. **INDEPENDENT CONTRACTOR.** Nothing herein shall be deemed or construed to create a partnership, joint venture or agency relationship between the parties. Licensee is strictly an independent contractor subject to no control by City other than as expressly provided herein.

16. **NOTICES.** Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

To City: City of Glendale  
Attn: Kevin R. Phelps, City Manager  
5850 W Glendale Avenue  
Glendale, AZ 85301  
Email: [Citymanager@glendaleaz.com](mailto:Citymanager@glendaleaz.com)

with copy to: City of Glendale  
Attn: Michael D. Bailey, City Attorney  
5850 West Glendale Avenue  
Glendale, AZ 85301  
Email: [mbailey@glendaleaz.com](mailto:mbailey@glendaleaz.com)

To Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16.1. Either party may designate in writing a different address for notice purposes pursuant to this section.

16.2. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) delivery to the address of the party, addressed to the party; or (c) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

17. **ASSIGNMENT.** Neither Party may assign or sublease any of its interest, rights, or obligations of this Agreement hereunder without the prior written consent of the other Party. Any attempted assignment, delegation, or transfer without the necessary consent will be void.

18. **SEVERABILITY.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

19. **IMMIGRATION LAW COMPLIANCE.**

19.1. Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

19.2. Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

- 19.3. City retains the legal right to inspect the papers of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.
- 19.4. City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 19.5. Licensee agrees to require any subcontractor to warrant their compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 19.6. Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 19.7. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
20. **CONFLICTS.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
21. **GOVERNING LAW; CHOICE OF FORUM.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.
22. **MISCELLANEOUS.**
- 22.1. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties, and supersedes all representations, statements or prior agreements and understandings both written and oral with respect to the matters contained in this Agreement and exhibits hereto. No person has been authorized to give any information or make any representation not contained in this Agreement.
- 22.2. The parties have participated jointly in the drafting of this Agreement, and agree that it shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor or against either party, regardless of which party may have drafted any of its provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.
- 22.3. No provision of this Agreement may be waived or modified except by a written agreement signed

by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of each party, and its successors and assigns.

23. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile (or other commonly-used electronic means (e.g., PDF) shall be effective as delivery of a manually executed counterpart of this Agreement.
24. **NON-DISCRIMINATION.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.
25. **NO BOYCOTT OF ISRAEL.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

[Signatures on the following page.]

EXECUTED to be effective on the date the agreement is fully executed by all Parties.

CITY OF GLENDALE, an Arizona municipal corporation

\_\_\_\_\_  
Kevin R. Phelps, City Manager

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

ATTEST:

\_\_\_\_\_  
Julie Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

\_\_\_\_\_, a \_\_\_\_\_ corporation

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

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

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

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ in his/her capacity as authorized representative of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_