



SERVICES AGREEMENT

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **CDW GOVERNMENT LLC**, of 230 N. Milwaukee Ave., Vernon Hills IL 60061 hereinafter referred to as "**CONTRACTOR**."

WHEREAS, the **CONTRACTOR** has contracted with Sourcewell to provide technology products and services with related solutions pursuant to Contract No. 121923-CDW dated March 13, 2024 (the "Sourcewell Agreement") which those parties entered into upon Sourcewell's award of RFP 121923 to **CONTRACTOR** for technology products and services with related solutions;

THEREFORE, the **CITY** and the **CONTRACTOR** have determined that the Sourcewell Agreement is an acceptable agreement upon which the **CITY** and the **CONTRACTOR** may establish a participating agreement,

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **CONTRACTOR** as an independent contractor to perform the services of replacing of two existing Uninterrupted Power Supplies (UPS) described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.
2. **EFFECTIVE DATE:** This **AGREEMENT** is effective upon the date of its execution and will terminate on October 1, 2026. The parties may extend this **AGREEMENT**, by mutual concurrence, for sixty (60) days, in writing prior to its termination.
3. **SCOPE OF WORK:** The **CONTRACTOR** shall perform the services outlined in Exhibit "A". In performing these services, the **CONTRACTOR** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
4. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such



exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

5. **PAYMENT:** **CITY** agrees to pay **CONTRACTOR** Two hundred thirty-four thousand five hundred ninety-eight and 48/100 dollars (\$234,598.48) for the work described in the Scope of Work in Exhibit "A". Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** for all services rendered pursuant to this **AGREEMENT**. Except as otherwise set forth in a Statement of Work, all services will be deemed accepted if the **CITY** does not reject the services by providing written notice within five (5) days after delivery, specifically identifying the manner in which the services fail to materially comply with their applicable specifications. Such invoices shall specify the services provided to the **CITY** and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONTRACTOR** for said invoice within thirty (30) days after receipt.

6. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONTRACTOR** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONTRACTOR** is not subject to the terms and provisions of the **CITY**'s personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONTRACTOR** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONTRACTOR** and any third parties.

7. **INSURANCE:**

- A. The **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONTRACTOR** shall provide the following insurance:

1. Workers' compensation and employer's liability coverage as required by Montana law.



2. Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverage's -- \$1,500,000 per occurrence.
3. Automobile liability -- \$1,500,000 per accident.

The limits required by this **AGREEMENT** can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be included as an additional insured on all policies except Worker's Compensation Policies.

CONTRACTOR shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA.

CONTRACTOR shall maintain workers' compensation insurance coverage for all members and employees of **CONTRACTOR's** business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

CONTRACTOR shall furnish **CITY** with copies showing one of the following: **(1)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(2)** proof of exemption from workers' compensation granted by law for independent contractors.

8. REGISTRATION: CONTRACTOR shall furnish CITY with at least one of the following:

- (1) Proof of registration as a registered contractor under Title 39, Chapter 9, MCA; or,
- (2) Proof of independent contractor certification pursuant to Title 39, Chapter 71, MCA.

9. PERMITTING AND INSPECTIONS:

- A. **CONTRACTOR** to obtain all required permits before beginning construction. Cost of permits shall be billed to the **CITY** as a reimbursable expense with no mark-up.
- B. **CONTRACTOR** to obtain all required inspections during construction and at final completion.

10. EQUIPMENT AND MATERIALS INVENTORY:

- A. A detailed inventory list shall be provided by **CONTRACTOR** to **CITY** upon **CONTRACTOR** mobilization or project commencement.



- B. Inventory list to include material information (make, model, etc.), and quantity.
- C. When an item is installed and commissioned it shall be deducted from the inventory list.

11. **WARRANTY: CONTRACTOR** warrants that all services and work will be performed in a good workman-like manner. **CONTRACTOR** acknowledges that it will be liable for any breach of this warranty for the lesser period of from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

Except as set forth herein, and subject to applicable law, seller makes no other, and expressly disclaims all other, representations, warranties, conditions and covenants, either express or implied (including without limitation, any express or implied warranties or conditions of fitness for a particular purpose, merchantability, or satisfactory quality) arising out of, or related to, the purchased items or their performance or non-performance, including but not limited to any warranty relating to third party services

12. **COMPLIANCE WITH LAWS: CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules, and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license.

13. **PREVAILING WAGE RATES:** Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works



contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, The booklet is attached and may also be found at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

14. **CONTRACTORS' GROSS RECEIPTS TAX:** **CONTRACTOR** understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Eighty Thousand Dollars (\$80,000) or more.

15. NONDISCRIMINATION:

- A. **CONTRACTOR** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.



CONTRACTOR is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3- 207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**. **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- B. **CONTRACTOR** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status.

CONTRACTOR and subcontractor shall abide by the requirements of 41 CFR 60- 300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

CONTRACTOR and any subcontractor shall abide by the requirements of 41 CRF 60- 1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation



information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with **CONTRACTOR'S** legal duty to furnish information.

- C. **CONTRACTOR** shall comply with all reporting requirements that may apply to it that the **CITY** may establish by regulation. **CONTRACTOR** will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination. This includes complying with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. In the event of **CONTRACTOR'S** noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- F. **CONTRACTOR** shall include the provisions of Subsections A through F of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of **CONTRACTOR** under this **AGREEMENT**. **CONTRACTOR** will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



- G. **CONTRACTOR** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non- discrimination clause.
16. **CONTRACTOR PERSONNEL**: A list of personnel who will be onsite for project shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution, including:
- A. First and last name;
 - B. Duration onsite; and,
 - C. Personnel responsibilities.
17. **SAFETY PROGRAM**: **CONTRACTOR** to provide **CITY** with safety program within 10 business days of contract execution.
18. **MEETINGS**: **CONTRACTOR** shall attend a pre-construction meeting with **CITY** representatives, as well as progress meetings as reasonably requested by the **CITY**.
19. **PROJECT SCHEDULE TIMELINE**: A project schedule timeline shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution.

Accepted schedule formats are Gantt chart, network diagram, critical path diagram, or sequential flow chart.

A Phase-Based Work-Breakdown Structure (WBS) by resource shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution and shall include a decomposed project scope consisting of phases and deliverables, tasks, and component deadlines.

20. **REDUCTION OF FUNDING**: This **AGREEMENT** may be terminated if funds are not appropriated or otherwise made available to support the **CITY's** continuation of performance of this **AGREEMENT** in a subsequent fiscal period. If funds are not appropriated or otherwise made available through the **CITY's** budgeting process to support continued performance of this **AGREEMENT** (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the **CITY** shall terminate this **AGREEMENT** as required by law. The **CITY** shall provide **CONTRACTOR** the date the **CITY's** termination shall take effect.

The **CITY** shall not be liable to **CONTRACTOR** for any payment that would have been payable had the **AGREEMENT** not been terminated under this provision. As stated above, the **CITY** shall be liable to **CONTRACTOR** only for the payment, or prorated portion of that payment, owed to **CONTRACTOR** up to the date the **CITY's** termination takes effect. This is **CONTRACTOR's** sole remedy. The **CITY** shall not be liable to **CONTRACTOR** for any other payments or



damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

- 21. **LIAISON:** The **CITY's** designated liaison for this **AGREEMENT** is Tricia Mae and the **CONTRACTOR's** designated liaison for this **AGREEMENT** is Jon Watters.
- 22. **GOVERNING LAW AND VENUE:** This **AGREEMENT** shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this **AGREEMENT** shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.
- 23. **SEVERABILITY:** Any provision or part of the **AGREEMENT** held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the **CITY** and the **CONTRACTOR**, who agree that the **AGREEMENT** shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 24. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this **AGREEMENT** without the written consent of the other, which will not be unreasonably withheld.

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

CITY OF BILLINGS, MONTANA

CDW GOVERNMENT LLC

**MIKE NELSON,
MAYOR**

SIGNATURE

APPROVED AS TO FORM:

PRINT NAME

**TITLE
CITY ATTORNEY'S OFFICE**

PRINT

ATTEST:



DENISE BOHLMAN, CITY CLERK



EXHIBIT A

SCOPE OF WORK

All services to be rendered at

Site Name: 911 Call Center

Site Address: 911 N. 24th St, Billings MT 59101

Tax ID: A16423

SCOPE OF WORK

This quote includes a turn-key cost for removal and installation of two existing and two new UPSs at the City of Billings 911 Call Center. The labor includes Davis-Bacon wages during normal 5x8 working hours. Please see below for details regarding the services.

- Replacement of two existing 40kW 208V UPS with VRLA with two new 40kW 208V UPS with +20yr lithium-ion and BMS. All AC & DC connections and alterations to be conducted by a local, licensed electrician and managed by CFT.
- CFT shall have a representative on site for the duration of each change, along with factory personnel, to perform UPS assembly & Start-Up.
- Pre-Delivery & Site Coordination, including the following:
 - Pre-delivery planning and coordination
 - Power requirement consultation with EC & End user; review plans and consult with Subcontractor to ensure proper power requirements for the solution have been accounted for before installation.
 - Prepare an electronic copy of product submittals and technical documents for installers & engineers
 - Scheduling of all APC Engineers for assembly and startup of UPS
 - Coordination with the end-user for product delivery and warranty.
- Post-Delivery Review, including the following:
 - On-site inventory reconciliation with the customer upon receipt of product delivery
 - Provide technical assistance to EC for assembly and placement of power (UPS) equipment.
 - Prepare the Operation and Maintenance Manual in electronic format for the operations department.
 - Provide all Project Management tasks for a successful replacement.



INSURANCE CERTIFICATE(S)



PREVAILING WAGE RATE BOOKLET