

ORD 21-058

AN ORDINANCE TO AUTHORIZE AND APPROVE A PRODUCT PURCHASING AGREEMENT BETWEEN THE CITY OF WILMINGTON AND CAMBRIDGE COMPUTER SERVICES, INC. FOR A STORAGE AREA NETWORK

#0115

Sponsor:

Council
Member
Johnson

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City desires to enter into a multi-year product purchasing agreement with Cambridge Computer Services, Inc., a reseller, for a storage area network (the "Agreement"), a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit "A"; and

WHEREAS, the City will purchase the storage area network from Cambridge and will receive related services, such as customer service and equipment updates, directly from the manufacturer of the storage area network; and

WHEREAS, the term of the Agreement is for a period of six (6) years from the commencement of the Agreement at an estimated total price of One Million Two Hundred Thousand Dollars (\$1,200,000.00); and

WHEREAS, it is the recommendation of the Department of Information Technologies that the City enter into the Agreement with Cambridge.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Agreement between the City and Cambridge Computer Services, Inc., a copy of which, in substantial form, is attached hereto as Exhibit "A", for the term of six (6) years from the date of its commencement at an estimated total price One Million Two

Hundred Thousand Dollars (\$1,200,000.00), is hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... November 18, 2021
Second Reading..... November 18, 2021
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of a product purchasing agreement between the City of Wilmington and Cambridge Computer Services, Inc. for a storage area network for the period of six (6) years from the date of its commencement.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is an agreement at an estimated total price of One Million Two Hundred Thousand Dollars (\$1,200,000.00).

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EXHIBIT A

PRODUCT PURCHASING AGREEMENT (“AGREEMENT”)

A. Client Information & Signature			
Full entity name and address:			
Authorized signature:			
Printed name:			
Title:		Date:	

Thank you for considering purchases through us. We want to make sure that you have a rewarding experience exploring and finding the right match among the wide range of Products we offer. "Product(s)" means all line items on quotation number 118609 that we provided to you. As with any purchase, certain terms and conditions apply. Those applying to your purchases from us are stated in this Agreement. We resell Products that we obtain from other companies, and therefore your purchases involve several entities: you, us, and the manufacturer(s) of the Product(s) you buy. In general, the manufacturers are solely responsible for the development, production, testing, warranty, and, if applicable, technical support and services they provide. This Agreement is, by the signatures herein, accepted and entered into by and between Cambridge Computer Services, Inc., a Massachusetts corporation with a principal place of business at 271 Waverley Oaks Road, Suite 301, Waltham, Massachusetts 02452 (known here as "CCS" or "we" or "us"), and the entity named in the table above as well as its affiliates, successors, and assigns (known here as "Client" or "you").

1. Ordering and Delivery. All orders require a written purchase order or signed CCS quotation. Our acceptance of your order occurs when tangible Products ship or services are performed. Acceptance of any order is subject to availability of the Products and the delivery to us or to you of Products ordered, and therefore any delay caused by a manufacturer, distributor, or shipper will create no liability for us. Shipping and insurance costs depend on a variety of factors that are usually undetermined at the time we provide quotes for Products. Consequently, our quotes generally omit shipping and insurance costs. You are, however, responsible for those costs, and they will be added to your invoice. In the absence of specific shipping instructions from you, we will select the carrier and method of shipment. Products shipped both from and to locations within the United States of America are delivered FOB origin. All other Products are delivered EXW origin (Incoterms 2020). Title to Products passes to you upon delivery. Acceptance of a Product is agreed to occur on the date of shipment, unless, within one week of your receipt of that Product, you give us detailed written notice of all discrepancies from your purchase order.

2. Warranty. Subject to section 7 (Force Majeure) below, we warrant that we will deliver the Products listed on the purchase orders we accept from you. This warranty covers only discrepancies between the items delivered and the items listed on your purchase order, and only discrepancies reported to us within seven days after the delivery to you. Our sole obligation and your exclusive remedy under this warranty is for us to make commercially reasonable efforts to supply the ordered Products. We do not warrant that the Products will operate uninterrupted or error-free. We will act in good faith to help you invoke the applicable warranties of the third-party suppliers and third-party manufacturers of the Products ("Manufacturer Warranties"). We are not responsible for the cost of freight incurred during the repair or exchange of Products under Manufacturer Warranties. Further information concerning Manufacturer Warranties and other notices may be available to you on our quotes. **We hereby disclaim all other warranties, express or implied, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, and non-infringement of intellectual property rights.**

3. Cancellations & Returns. Cancellations of orders before a shipment has been delivered; returns of Products for a refund, credit, or cancellation of the payment obligation; and any change you request to an order, including, without limitation, any change to a shipment date, are subject to the corresponding manufacturer's policy.

4. Limitation of Liability. Notwithstanding anything to the contrary in this Agreement or elsewhere, you agree that to the maximum extent permitted by applicable law CCS will not be liable under any legal or equitable theory, whether in contract, tort, indemnity, or otherwise, for (a) any indirect, special, punitive, exemplary, incidental, or consequential damages, including but not limited to loss of revenues and loss of profits, (b) any amount in the aggregate in excess of the greater of the amount paid to CCS for the particular Product giving rise to the claim or five thousand dollars, (c) the loss or inaccuracy of data or cost of procurement of substitute goods, technology, or services, (d) any matter beyond CCS's reasonable control, whether or not CCS has been advised of the possibility of such damages, or (e) any Products used for aviation, medical, lifesaving, life-sustaining, or nuclear applications. The provisions and limitations of this section 4 shall (i) apply regardless of whether CCS has been advised of the possibility of such damages and regardless of whether any remedy fails of its essential purpose and (ii) survive termination or expiration of this Agreement.

5. Payments. All payments must be in United States dollars. For purchases made on credit, which is subject to our prior approval, payments are due within 30 days of the date of the invoice, regardless of the status of any related services not appearing on such invoice. Outstanding balances will be subject to a late-payment charge of 1.5% per month or the legal maximum, whichever is less, and you shall be liable for all expenses, including reasonable attorneys' fees, relating to the collection of past due amounts. We may determine the application of payments among outstanding invoices, provided such application does not create or increase any late-payment charge. You will be responsible for all applicable federal, state, municipal, and other government taxes (including sales, excise, gross receipts, value-added, use, and similar taxes, but excluding taxes based on our net income, net worth, or payroll costs), customs duties, tariffs, or similar or related fees arising out of the purchase of Products.

6. Notices. Notices must be both (i) in writing and addressed to the signatory of this Agreement at the address given or to whatever substitute address either party to this agreement provides the other party in writing or has on its website as its main address and (ii) personally delivered or sent by certified United States mail, return receipt requested, or sent by overnight carrier requiring a signature upon delivery. Any notice will be deemed received and effective on the date of delivery or, if the addressee refuses delivery, when delivery is first attempted.

7. Force Majeure. Neither party will be liable for any delay in the performance of its obligations that is caused by strikes, shortages, riots, fires, floods, storms, earthquakes, acts of God, pandemics or epidemics (including without limit, SARS-CoV-2 or another coronavirus) regardless of whether such events are officially declared as such by the relevant authorities, inability to obtain or unavailability of labor, scheduling conflicts, power outages, governmental intervention, hostilities, terrorism, or any causes beyond its reasonable control.

8. Relationship. You, CCS and suppliers of Products (each an "Entity") are each independent contractors and nothing in this Agreement or otherwise shall be deemed or interpreted to constitute any Entity as a partner, agent, subcontractor, or employee of any of the others or give any Entity the authority to bind any of the others.

9. General. This Agreement will (a) constitute the entire agreement between the parties concerning the subject matter hereof; (b) supersede any prior or contemporaneous written or oral agreement concerning the subject matter hereof; (c) supersede any conflicting provisions in any purchase order, and any preprinted terms on any order shall be given no force or effect; (d) be governed by the laws of the State of Delaware, excluding conflicts of law principles; and (e) not be modified, except in a writing duly executed by both parties. If any provision of this Agreement becomes unenforceable, this Agreement will continue in full force and effect without that provision. If, however, such omission materially changes the economic benefit of this Agreement to either party, then the unenforceable provision will be deemed amended to conform to applicable law to best achieve the parties' original intent. No failure or delay by either party in exercising any right hereunder will act as a waiver of such right or any other rights hereunder. Waivers of any right must be express, in writing, and signed by the waiving party.

Accepted and agreed for Cambridge Computer Services, Inc.

by: _____
Stephen A. Odio, Chief Operating Officer