



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/22/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
Purchase from an existing contract/agreement, authorizing expenditure for Cisco infrastructure backbone switches for the new data center at the EOC Server Room, in an estimated amount not to exceed \$100,000, from INX, Inc., through a State of Texas Department of Information Resources (DIR) contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-239).				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,200,000	0	1,200,000
Encumbered/Expended Amount	0	-351,569	0	-351,569
This Item	0	-100,000	0	-100,000
BALANCE	0	748,431	0	748,431
FUND(S): TECHNOLOGY FUND (62.62350)				
<p>COMMENTS: Funds are available in the 2009-10 Technology Fund budget for the purchase of Cisco Switches for the new data center at the EOC facility. The balance of the project funds will be used for other items required for project completion.</p> <p>STRATEGIC PLAN GOAL: Providing business continuity with a redundant virtual environment in case of the loss of a business center or command center relates to the City's Goal of "Financially Strong City with Service Excellence".</p>				
SUMMARY OF ITEM				
Technology Services recommends Council approve expenditure in the estimated amount not to exceed \$100,000, from INX, Inc., through a Department of Information Resources (DIR) Contract, for Cisco switches for the new data center at the emergency operations center. These switches will take us through the Disaster Recovery Phase I of our project. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (Contract No. DIR-SDD-890).				
List of Supporting Documents: Contract and Staff Memo			Other Departments, Boards, Commissions or Agencies	

Interoffice Memo

Date: 01/07/10
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: EOC Project – Network Switches

We are in the process of building the infrastructure backbone for the new EOC data center. The Cisco switches for this project will be a not to exceed the estimated amount of \$100,000.00. This will also provide services for the desktop environment for the EOC.

This new data center will provide disaster recovery for the City and will provide better business continuity for City services.

We are proposing purchasing this equipment from INX, Inc., through their State of Texas DIR contract number DIR-SDD-239. These switches will take us through the Disaster Recovery phase I of our project. INX, Inc., in addition to having their DIR contract with the State of Texas is also the vendor of record with Cisco for the City of Plano. While they also are on the TCPN cooperative purchasing agreement, they can provide the City with better pricing at this time using the State of Texas contract number DIR-SDD-239.

We are recommending purchasing the equipment for this project for an estimated amount of \$100,000.00 from INX, Inc., using their State of Texas contract referenced above.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND INX INC.
FOR INFRASTRUCTURE BACKBONE SWITCHES
FOR THE NEW DATA CENTER AT THE EOC SERVER ROOM**

THIS CONTRACT is made and entered into by and between **INX, INC.** whose address is 1955 Lakeway Drive, Suite 220, Lewisville, Texas hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**I.
SCOPE OF SERVICES**

Contractor shall provide Cisco infrastructure backbone switches as needed and ordered by the City for the new data center at the EOC Server Room. These switches shall be provided in accordance with this Contract and with The Department of Information Resources Contract No. DIR-SDD-890, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) The Department of Information Resources Contract No. DIR-SDD-890 on file with the City of Plano Technology Services Department;
- (b) This Contract;
- (c) Inx, Inc. Statement of Work (Exhibit "A"); and
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
TIME OF COMPLETION**

Contractor agrees to deliver the products within thirty (30) days of the City placing an order for those products. All installation shall be by the City.

**III.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the products and within thirty (30) days of receiving Contractor's invoice for the products delivered. Total compensation under this contract shall not exceed the sum of **ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00)**.

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the products described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Department of Information Resources Contract No. DIR-SDD-890, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

If requested by Contractor, the City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

**VI.
HOLD HARMLESS AND INDEMNIFICATION**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

**VII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work.

**VIII.
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**IX.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor entity. Contractor may subcontract any portion of its performance under this Agreement. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**X.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and

consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

XI.

HINDRANCES AND DELAYS

Neither party is liable for delays or lack of performance resulting from any causes or acts of God that are beyond that party's reasonable control.

XII.

AFFIDAVIT OF NO PROHIBITED INTEREST

To the extent copies are provided to Contractor, Contractor acknowledges and represents Contractor is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "B."

XIII.

DEFAULT/TERMINATION

If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If Contractor is the defaulting party, City's policy is to notify the City Council of such default, at which time Contractor will have the opportunity to provide a written plan to cure the default that is acceptable to the City. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by City to Contractor will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

XIV.

SEVERABILITY

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XV.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and City agrees to pay for such services on a time and materials basis at Contractor's then effective hourly rates.

**XVI.
PROPRIETARY INFORMATION; CONFIDENTIALITY;
INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Agreement will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

**XVII.
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

City agrees to reference this Agreement and The Department of Information Resources Contract No. DIR-SDD-890 on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XVIII.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XIX.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

INX, INC.

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____ by _____, _____ of **INX, INC.**, a _____ corporation on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 20____ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas



1955 Lakeway Drive
Suite 220
Lewisville, TX 75057
469.549.3811(o)
469.549.8991 (f)

January 27, 2010

Mark Hilz
President & COO

We understand the City of Plano ("City") wishes to purchase \$100,000.00 worth of Cisco switches ("Product") from INX Inc. ("INX"). INX is able to sell such Product to the City pursuant to the INX-State of Texas Department of Information Resources Contract ("DIR"). This will allow INX to sell such Product to the City at DIR pricing. INX may be able to secure further discounts.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Hilz", is written over the typed name and title.

Mark Hilz
President & COO
INX Inc.

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of _____ (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Notary Public, State of _____