

RESOLUTION NO. 91-23
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Duke Lunsford ON THE 23rd
DAY OF October, 2023.

**RESOLUTION AUTHORIZING THE CITY MANAGER TO
ENTER INTO AN AGREEMENT FOR IT
TECHNOLOGICAL SERVICES, PROFESSIONAL
SERVICES, FOR IT TELECOMMUNICATIONS
EQUIPMENT PRODUCTS, AND SOFTWARE LICENSING
WITH CHI CORPORATION FOR NUTANIX HW AND SW
RENEWAL.**

WHEREAS, the City of Centerville has been improving and updating its information technology (IT) systems in the City; and

WHEREAS, the City had establish a business relationship using Nutanix hardware and software products covering: (i) the provision of a variety of information technology/IT and telecommunications services ("Technological Services") and related staff augmentation or other professional services ("Professional Services"), (ii) the purchase of IT or telecommunications equipment ("Products"), and/or (iii) the licensing of software ("Software"); and

WHEREAS, Nutanix expires and needs to be renewed; and

WHEREAS, the City previously renewed these products through CBTS Technology Solutions LLC, but due to poor support and upon recommendation desires to change vendors; and

WHEREAS, CHI Corporation provides such Technological Services, Professional Services, Products and Software; and

WHEREAS, the Ohio Revised Code recognizes exceptions to competitive bidding for professional services and for purchases related to IT that are proprietary or limited to a sole source; and

WHEREAS, the City desires to utilize CHI Corporation for assistance in the carrying out and renewal of the Nutanix HW and SW services, for the City with regards to the City's IT requirements; and

WHEREAS, CHI Corporation has unique knowledge of such Technological Services, Professional Services, Products and Software; and has a demonstrated ability to assist in accomplishing the objectives of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:

Section 1. The City hereby agrees to authorize the City Manager to enter into an Agreement with CHI Corporation, a copy of the Agreement attached hereto as Exhibit "A" and incorporated herein on behalf of the City of Centerville.

Section 2. That the City Manager is authorized to take all steps necessary to engage CHI Corporation and execute any additional documents for the services including, but not limited to, the Quote documents.


Section 3. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 23rd day of October, 2023.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 91-23, passed by the Council of the City of Centerville, Ohio on the 23rd day of October, 2023.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney



Quote

CHI CORPORATION

Jeff Turner
 5265 Naiman Parkway
 Cleveland, OH 44139
 614-595-2720
jturner@chicorporation.com

DATE October 16, 2023
 EXPIRATION DATE November 15, 2023
 Quote number:

TO City of Centerville
 Ryan Collins
 100 West Spring Valley Road
 Centerville, Ohio 45458
 937-433-7151
rcollins@centervilleohio.gov

Ship TO:

CONSULTANT	SHIPPING METHOD	DELIVERY	SHIPPING TERMS F.O.B ORIGIN	PO NUMBER	PAYMENT TERMS	TAXABLE
Jeff Turner	TBD	Best Way	<u>ASK FOR FREIGHT QUOTE.</u>		N30	

QTY	ITEM #	DESCRIPTION	UNIT PRICE	LINE TOTAL
<u>Nutanix HW Renewal</u>				
3-Year term				
Term date: 10/24/2023 through 10/23/2026				
5	R-SW-FILES-AOS-1TIB-PRD	Subscription Renewal, Files Software License for Acropolis AOS Clusters only Production Software Support Service for 1 TiB of File data stored (SN-20SW000162047, LIC-01081092)	\$1,815.00	\$9,075.00
1	RS-HW-PRD-MY	24/7 Production Level Multi Year HW Support Renewal for Nutanix HCI appliance (SN-20FM3F430080)	\$4,730.00	\$4,730.00
1	RS-HW-PRD-MY	24/7 Production Level Multi Year HW Support Renewal for Nutanix HCI appliance (SN-20FM3F430084)	\$4,730.00	\$4,730.00
<u>Nutanix SW Renewal</u>				
3-Year term				
1	SW-AOS-PRO-PRD	SUB ACROPOLIS PRO SW LICS LICS PRODUCTION SW SUP SVC	\$91,730.00	\$91,730.00
96	L-CORES-PRO-PRD	SUB ACROPOLIS PRO SW LICS LICS PRODUCTION SW SUP FOR 1 CPU	\$0.00	\$0.00
28	L-FLASHTIB-PRO-PRD	SUB ACROPOLIS PRO SW LICS LICS PRODUCTION SW SUP FOR 1 TIB	\$0.00	\$0.00
36	TERM-MONTHS	TERM IN MONTHS LICS	\$0.00	\$0.00
SUBTOTAL				\$110,265.00

Quotation prepared by: J.Thome / J. Turner

Orders are subject to Chi Corporation terms and conditions

To accept this quotation and order sign here and return: _____

FAX NUMBER 440-498-2301

SALES TAX
TOTAL \$110,265.00

CHI CORPORATION

TERMS AND CONDITIONS OF SALE OF GOODS, LICENSES, OR SERVICES

1. **APPLICABILITY OF TERMS AND CONDITIONS.** These terms and conditions shall govern and control all sales of goods, including licenses, and/or services by Chi Corporation, an Ohio corporation ("Chi"), unless otherwise expressly agreed to in a writing which has been executed and delivered by an authorized agent of Chi. Terms and conditions contained in Buyer's purchase order, or any other writing which Buyer manifests its intent to purchase, that are different from, in addition to in conflict with or otherwise vary the terms herein are hereby objected to and shall not be binding on Chi. The terms of this agreement may only be amended, changed or modified by a written agreement which has been executed and delivered by Chi and Buyer and which expressly states that it is an amendment hereto. If, for any reason, Chi's quotation is deemed an acceptance of an offer made by Buyer, such acceptance is expressly conditioned on Buyer's assent to the terms herein, which assent shall be evidenced by the earlier of Buyer's acceptance of products purchased from Chi or any other performance by Buyer hereunder. Chi will proceed to sell goods, licenses and/or services only if Buyer assents to the terms and conditions contained herein.
2. **ORDERS AND PRICES.** Unless otherwise specifically agreed in writing by Chi, all prices are in U.S. Dollars. Chi reserves the right to correct errors in specifications or prices, due typographical, clerical, or engineering errors or because of incomplete or inaccurate information from Buyer. Chi may refuse to accept any purchase order for any reason.
3. **FINANCIAL RESPONSIBILITY.** Notwithstanding any provision herein to the contrary, Buyer's creditworthiness is at all times subject to approval of Chi, and should Chi, in its sole discretion, become insecure as to Buyer's ability to pay hereunder, Chi may require payment in advance or satisfactory security or guarantee that invoices will be paid promptly when due. If Buyer fails to comply with any terms of payment, Chi may withhold any future deliveries, for which it has not received payment, and/or terminate this Agreement, and any unpaid amount thereupon shall be due and owing hereunder shall be paid by Buyer immediately.
4. **TERMS.** All payments shall be made without any discounts, deductions or setoffs. Payment by check shall be deemed effected only after each check has been cleared and the amount of the check irrevocably credited to Chi's account.
5. **CANCELLATION.** If Buyer cancels any order or any portion thereof within 5 days prior to the ship date of such order, Buyer shall pay Chi upon cancellation of such order, a cancellation fee in an amount equal to 25% of the price of the order or portion of the order that was canceled.
6. **SHIPMENT FREIGHT AND DELIVERY.** All prices for products are, and all purchases by Buyer shall be delivered, F.O.B. any plant or warehouse of Chi or such other point of origin, as Chi shall designate. Possession of product shall be deemed to pass to Buyer upon delivery to the F.O.B. point. Buyer assumes all risk of damage or loss of product upon delivery to F.O.B. point. Transportation and insurance charges related to shipment of product shall be paid by Buyer. All expenses and charges caused by Buyer and which arise out of the reshipment or rerouting products purchased by Buyer, including, but not limited to, its failure to accept delivery of or pay for such products, shall be paid by Buyer to Chi on demand. All purchase orders with a ship-to-location outside the United States are required to be accompanied or preceded by all necessary documentation to enable Chi to obtain prior to the requested ship date, an export license and any other licenses, permits or approvals which may be necessary with respect to each product ordered. Any specified shipment date or dates are estimates only. **Time shall not be deemed of the essence unless specifically agreed in writing.**
7. **SECURITY INTEREST.** Chi shall have, and Buyer hereby grants to Chi, a purchase money security interest in all products purchased by Buyer and any proceeds there from to secure the purchase price thereof. In the event Buyer fails to pay all or any portion of the purchase price when due, then Buyer shall be in default under this agreement and Chi shall have, in addition to any other rights or remedies provided by law, all of the rights or remedies of a secured party under the Uniform Commercial Code as adopted in the State of Ohio and/or the state(s) where any goods sold hereunder or the Buyer are located. Upon the request of Chi, Buyer shall take such action as Chi may deem necessary appropriate to perfect, maintain, record or otherwise assure to Chi the foregoing security interest including, without limitation, the execution and delivery to Chi of such financing statements or additional security agreements as Chi may request. In countries where other security arrangements are common like retention of title, Chi shall have, and Buyer hereby grants to Chi such other purchase money security interests or prolonged retention of title all goods furnished hereunder.
8. **ACCEPTANCE.** Buyer's acceptance of products shall be deemed to have occurred 10 days after delivery of products to Buyer and any claim by Buyer with respect to any shortages, defects or nonconformities is deemed waived by Buyer unless made in writing to Chi within 10 days after such delivery.
9. **TAXES.** Chi's prices do not include, and Buyer shall be responsible for, the payment of all local, state, federal and foreign, excise, sales, use, property, personal property and other taxes, fees assessment, duties, tariffs or charges applicable to the performance of this agreement other than taxes imposed upon or measured by Chi's income. Such taxes and other assessments, fees and charges as Chi is obligated to collect will be added by Chi to the purchase price of products and invoiced to and paid on demand by Buyer. Buyer shall defend, indemnify and hold Chi harmless from and against any and all such taxes, fees, and other such amounts including without limitations, any cost, expense, attorneys fees, interest or penalty assessed against or incurred by Chi as a result of Buyers failure to pay any such taxes, fees or other such amounts.
10. **WARRANTY AND DISCLAIMERS OF WARRANTY.** Chi makes no warranties with regard to goods or licenses manufactured or crated by others furnished hereunder other than that it has the right to enter into this agreement and furnish the goods, license and/or services hereunder. Chi only agrees to assign to Buyer the warranties provided by the manufacturer of goods or the licensor. There are no warranties with goods or software that have been subject to abuse, misuse, misapplication, neglect, alteration, modification or accident: to improper or incorrect installation or maintenance, or to abnormal conditions of use, temperature, moisture, dirt, or corrosive matter. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, TRADE USAGE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OF PURPOSE OR NONINFRINGEMENT. BUYER AGREES TO LOOK SOLELY TO THE MANUFACTURER OF THE GOODS AND/OR THE LICENSOR OF SOFTWARE PROVIDED HEREUNDER AND NOT TO JOIN CHI IN ANY CLAIM, ACTION, OR PROCEEDING RELATED THERETO. IT IS SPECIFICALLY AGREED THAT THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY.**
11. **LIMITATION OF REMEDY.** BUYER'S REMEDY HEREUNDER SHALL BE LIMITED TO EITHER REPAIR OR REPLACEMENT OF ANY DEFECTIVE GOODS OR SOFTWARE OR A REFUND OF THE AMOUNTS PAID TO CHI FOR ANY ALLEGEDLY DEFECTIVE PRODUCT, LICENSED SOFTWARE, OR SERVICES. BUYER MAY NOT ASSERT ANY CLAIMS ACTIONS OR PROCEEDINGS MORE THAN ONE (1) YEAR AFTER DELIVERY.
12. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL CHI BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOSS OF DATA, BUSINESS INTERRUPTION, DELAY DAMAGES, OR FOR LOST PROFITS, EVEN IF CHI HAS BEEN MADE AWARE OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL CHI BE LIABLE FOR DAMAGES IN EXCESS OF THE AMOUNTS ACTUALLY PAID BY BUYER HEREUNDER FOR ANY ALLEGEDLY DEFECTIVE OR NON COMPLYING GOODS, SOFTWARE OR SERVICES.
13. **NOTICES.** Any notice to Chi required or permitted hereunder shall be deemed delivered if in writing and served by personal delivery or received by registered or certified mail with return receipt requested to Chi at the following address: Chi Corporation, 5265 Naiman Pkwy, Cleveland Ohio 44139, Attn: Secretary.
14. **FORCE MAJEURE.** CHI SHALL NOT BE LIABLE FOR ANY DEFAULT OR DELAY IN PERFORMANCE WHEN SUCH DEFAULT OR DELAY RESULTS, DIRECTLY OR INDIRECTLY FROM FIRE, FLOOD, WAR EMBARGO, STRIKE RIOT OR THE INTERVENTION OF ANY GOVERNMENTAL AUTHORITY, OR ANY OTHER SIMILAR OR DISSIMILAR CAUSE BEYOND CHI'S CONTROL OR FOR ANY CLAIMED BASED ON ANY ACT OR OMISSION OF, OR DEFECT IN ANY GOODS OR SOFTWARE MANUFACTURED, CREATED OR PROVIDED BY A THIRD PARTY.
15. **GOVERNING LAWS.** This Agreement and all other contracts between the parties relating to any products, whether now existing or hereafter arising, shall be governed by and interpreted in accordance with the laws of the State of Ohio, USA, exclusive of the laws relating to conflicts of law. Any action, suit or proceeding brought by Buyer and permitted under this agreement shall be venued in the United States District Court for the Northern District of Ohio or any of the courts of Cuyahoga County, in the State of Ohio.
16. **SEVERABILITY.** If any provision of this agreement, or any portion of any such provision, is held to be unenforceable or invalid then such provision shall be reformed so that it is enforceable to the maximum extent permitted by law. If such provision cannot be reformed such provision shall be deemed severed from this Agreement and the remaining provisions and portions shall nevertheless continue to be enforceable and valid and shall be carried into effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.
17. **NO RETURN, NO CANCELLATION POLICY.** The offer stated in this Quote is expressly conditioned on your agreement that any purchase orders placed are non-cancellable and, except as specified under the terms of the Limited Warranty (defined below) non-returnable (the "NCNR Terms"). The NCNR Terms expressly supersede the terms of any agreement between you and Chi Corporation and/or a Chi Corporation affiliate or any other party related to your purchase of the products, services and support covered by the Quote (the "Products"). Your purchase of the Products is subject to the NCNR Terms and, unless you have executed a separate written agreement with Chi Corporation with respect to the specific Product(s) covered by this Quote, the terms set forth below. If you have executed such a separate written agreement, the terms of that written agreement shall apply but shall be superseded to the extent contrary or inconsistent by the NCNR terms stated in this Quote, and to the greatest extent permissible, any order hereunder shall be subject to the NCNR Terms, notwithstanding anything to the contrary in any ordering document or accompanying communication you may submit with your order.
18. **ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter covered by this Agreement. This agreement supersedes and cancels all previous representations, arrangements, agreements and understandings, written or oral, express or implied, if any, by and between the parties with respect to the subject matter covered by this Agreement.