



Amendment No. 4  
to  
Contract No. 8100 NA110000103  
for  
Maintenance on Liebert Equipment  
between  
Vertiv Services, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 27, 2018 through May 26, 2019. Two (2) options will remain.
- 2.0 The total contract amount is increased by \$25,356.45 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/27/2011 – 05/26/2016	\$113,239.60	\$113,239.60
Amendment No. 1: Option 1 – Extension 05/27/2016 – 05/26/2017	\$23,380.00	\$136,619.60
Amendment No. 2: Option 2 – Extension 05/27/2017 – 05/26/2018	\$24,149.00	\$160,768.60
Amendment No. 3: Vendor Name Change From: Emerson Network Power Liebert Services, Inc. Emerson Network Power To: Vertiv Services, Inc.	\$0.00	\$160,768.60
Amendment No. 4: Option 3 – Extension 05/27/2018 – 05/26/2019	\$25,356.45	\$186,125.05

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Lori  
Nugen

Digitally signed by: Lori Nugen  
DN: CN = Lori Nugen C = US O = Vertiv Services,  
Inc. OU = Law Department  
Date: 2018.05.11 09:19:40 -0400

Printed Name: Lori Nugen, Sr. Contracts Administrator  
Authorized Representative

Vertiv Services, Inc.  
610 Executive Campus Dr.  
Westerville, OH 43082

Sign/Date: Elisa Foley

Printed  
Name: Elisa Foley  
Authorized Representative

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

*5/11/18*  
*Batley*



**Amendment No. 3  
of  
Contract No. NA110000103  
for  
Maintenance on Liebert Equipment  
between  
NA110000103 Emerson Network Power Liebert Services, Inc.  
and the  
The City of Austin**

- 1.0 The Contract is hereby amended as follows: Change name to the Contractor as requested by the Contractor:

	From	To
<b>Vendor Name</b>	Emerson Network Power Liebert Services, Inc. Emerson Network Power	<b>Vertiv Services, Inc.</b>
<b>Vendor Code</b> (for City use only)	LIE8303559	<b>LIE8303559</b>
<b>Vendor Federal Tax ID (FEIN)</b>	██████████	██████████

- 2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

**BY THE SIGNATURE** affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Cindy Reyes  
Contract Management Specialist III  
City of Austin, Purchasing Office

3/1/18

Date



Amendment No. 2  
to  
Contract No. NA110000103  
for  
Maintenance on Liebert Equipment  
between  
Emerson Network Power, Liebert Services, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 27, 2017 through May 26, 2018. Three options will remain.
- 2.0 The total contract amount is increased by \$24,149.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/27/2011 – 05/26/2016	\$113,239.60	\$113,239.60
Amendment No. 1: Option 1 – Extension 05/27/2016 – 05/26/2017	\$23,380.00	\$136,619.60
Amendment No. 2: Option 2 – Extension 05/27/2017 – 05/26/2018	\$24,149.00	\$160,768.60

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Derek Bricker 2/21/17

Printed Name: Derek Bricker  
Authorized Representative

Emerson Network Power, Liebert Services, Inc.  
610 Executive Campus Drive  
Westerville, Ohio 43082  
(832) 255-2368  
[carly.halik@emerson.com](mailto:carly.halik@emerson.com)

Sign/Date: Mike Zambrano

~~Linell Goodin-Brown~~  
~~Contract Compliance Supervisor~~

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

MIKE ZAMBRANO  
CONTRACT MANAGEMENT  
SPECIALIST III



Amendment No. 1  
to  
Contract No. NA110000103  
for  
Maintenance on Liebert Equipment  
between  
Emerson Network Power, Liebert Services, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 27, 2016 through May 26, 2017. Four options will remain.
- 2.0 The total contract amount is increased by \$23,380.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/27/2011 – 05/26/2016	\$113,239.60	\$113,239.60
Amendment No. 1: Option 1 – Extension 05/27/2016 – 05/26/2017	\$23,380.00	\$136,619.60

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Gregory  
Sign/Date: Vargas 5/10/2016

Digitally signed by Gregory Vargas  
DN: cn=Gregory Vargas, ou=Liebert  
Services, ou=EMPS,  
email=gregory.vargas@emerson.com,  
ou=25  
Date: 2016.05.10 08:25:42 -0500

Printed Name: Gregory Vargas  
Authorized Representative

Emerson Network Power, Liebert Services, Inc.  
610 Executive Campus Drive  
Westerville, Ohio 43082  
(832) 255-2368

Sign/Date: Linell Goodin-Brown 5/11/16

Linell Goodin-Brown  
Contract Compliance Supervisor  
City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



# City of Austin

*Financial and Administrative Services Department*

*Purchasing Office*

P. O. Box 1088, Austin, TX 78767

(512) 974-2500

June 9, 2011

Ms. Lori Nugen

Emerson Network Power, Liebert Services, Inc.

610 Executive Campus Dr.

Westerville, OH 43082

Re: Maintenance on Liebert Equipment

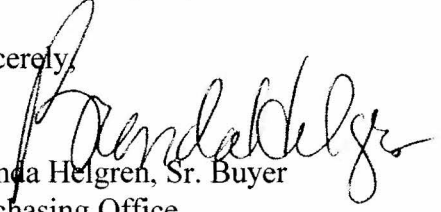
Dear Ms. Nugen:

The Purchasing Office has approved the execution of a contract with your company for the above-referenced item as follows:

Responsible Department:	Aviation
Department Contact Person:	Mike Robinson
Department Contact Email Address:	mike.robinson@ci.austin.tx.us
Department Contact Telephone:	(512) 530-7504
Project Name:	Maintenance on Liebert Equipment
Contractor Name:	Emerson Network Power, Liebert Services, Inc.
Contract Number:	MA 8100 NA110000103
Contract Period:	05/27/11 – 05/26/16
Dollar Amount	\$22,647.92 annually
Extension Options:	5 12-month extension options
Requisition Number:	RQM 8100 11041400301
Solicitation Number:	N/A
Agenda Item Number:	58
Council Approval Date:	05/26/11

Attached is a copy of all contract terms and conditions. Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-9141.

Sincerely,

  
Brenda Helgren, Sr. Buyer  
Purchasing Office

Finance and Administrative Services Department

Enclosure

*The City of Austin is committed to compliance with the Americans with Disabilities Act  
Reasonable modifications and equal access to communications will be provided upon request.*

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
EMERSON NETWORK POWER, LIEBERT SERVICES INC.  
FOR  
MAINTENANCE ON LIEBERT EQUIPMENT**

This Contract is dated to be effective as of May 27, 2011 ("Effective Date"), and is made by and between the City of Austin ("City" or "Buyer"), a home-rule municipality incorporated by the State of Texas, and Emerson Network Power, Liebert Services Inc. ("Contractor" or "Seller"), having offices at 610 Executive Campus Dr., Westerville, OH 43082.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Sheila Westbrook; Phone: 512-334-2380; Email: Sheila.westbrook@emerson.com. The City's Contract Manager for the engagement shall be Mike Robinson; Phone: 512-530-7504; Email: mike.robinson@ci.austin.tx.us.

**SECTION 2. SCOPE OF WORK.**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Quote ("Offer"), attached hereto as Exhibit A, in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Services.** In order to accomplish the work described here, the Contractor shall perform the services set forth on the Offer. The services shall be performed in accordance with the Services Terms and Conditions attached hereto as Exhibit B.

**SECTION 3. COMPENSATION.**

3.1 **Contract Amount.** The Contractor will be paid for the replacement parts and services to be performed. In consideration for the replacement parts and services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$232,091.63. Details of the maintenance and support fees are set forth on Exhibit A. The maintenance and support fees will be paid annually in advance as follows:

5/27/2011 – 5/26/2012	\$16,514.00
-----------------------	-------------



5/27/2012 – 5/26/2013	\$22,647.92
5/27/2013 – 5/26/2014	\$22,647.92
5/27/2014 – 5/26/2015	\$22,647.92
5/27/2015 – 5/26/2016	\$22,647.92
5/27/2016 – 5/27/2017	\$22,647.92 plus not to exceed 5% CPI (\$23,380.32)*
5/27/2017 – 5/27/2018	CPI not to exceed 5% of previous year's amount*
5/27/2018 – 5/27/2019	CPI not to exceed 5% of previous year's amount*
5/27/2019 – 5/27/2020	CPI not to exceed 5% of previous year's amount*
5/27/2020 – 5/27/2021	CPI not to exceed 5% of previous year's amount*

\*See Section 3.4 below for calculation of rate increase.

\$8,000 per year is allocated but not guaranteed for replacement parts and emergency repairs. However, the City shall pay for such parts or repairs as they are ordered; subject to the invoicing procedures set forth below.

### 3.2 **Invoices.**

3.2.1 Invoices shall contain a non duplicated invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Department of Aviation
Attn:	Mike Robinson
Address:	3600 Presidential Blvd.
City, State, Zip Code	Austin, TX 78719

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the invoice. If any payment is not made when due, Contractor reserves the right to refuse to provide any further Service until such payment has been received. In the event of early termination: i) The City will be liable for any Service rendered to the reasonable satisfaction of the City prior to the effective date of termination; and ii) Contractor, at its discretion, will provide a credit against any advance payments

received as follows: a) a pro-rated amount based on the terminated portion of the fixed-price fee due Contractor; or b) an amount based on the difference between the amount paid by the City prior to the effective date of early termination and the actual cost of Service completed (including emergency repair calls) by Contractor prior to the effective date of early termination.

**3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

**3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;**

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

**3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.**

**3.3.5 Payment will be made by bank draft unless the parties mutually agree to payment by electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by electronic transfer.**

#### **3.4 Economic Price Adjustment.**

**3.4.1 Prices shown in this Contract shall remain firm for the first sixty (60) months of the Contract at the prices shown in Section 3.1. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor subject to the following considerations:**

##### **3.4.2 Price Increases**

**3.4.2.1 Requests for price increases must be made in writing and submitted to the City's Contract Manager. The letter must be signed by a person with the authority to bind the Contractor contractually, shall reference the Contract number, and include the following documentation:**

3.4.2.1.1 An itemized, revised price list with the effective date of the proposed increase

3.4.2.1.2 Copies of the documentation provided by the manufacturer regarding the proposed price increase if the Contractor is not the manufacturer of the products. If the Contractor is the manufacturer of the products, a letter so stating must be provided.



3.4.2.1.3 Contractor shall submit, as a part of the request for increase, the version of the U.S Department of Labor Consumer Price Index for U.S. City Average CUUR0000SAO (the "Index") current as of the date of the Contractor's Offer; and a copy of the index for the most current period.

3.4.2.1.4 Proposed price increases must be solely for the purpose of accommodating increases in the Contractor's costs for the products or services provided. Prices for products or services unaffected by verifiable cost trends shall not be subject to change.

3.4.2.2 Requests for price increases must be made in writing and submitted to the City's Contract Manager not less than sixty (60) calendar days prior to each yearly anniversary date, beginning in year six, of the Contract. Prices will only be considered for an increase at that time except for pass through price increases from the Original Equipment Manufacturer (OEM) as indicated in Section 3.7.2.4 below. Once received, the City will have thirty (30) calendar days to review and approve/disapprove the requested increase. Should the City not agree with the requested increase, the Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the Contract.

3.4.2.3 The proposed percentage change between the current Contract price and the requested price shall not exceed the percentage change between the Index in effect at the beginning of the current review period and the one in effect at the time the price increase is requested. Except in the case of emergency situations, the requested index related or non-index related price increase shall not exceed twenty-five percent (25%) for any single line item, and in no event shall the total amount of the Contract be automatically increased as a result of the increase in any one or more line items made pursuant to this provision.

3.4.2.4 Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully-documented increase requests which, in the Contractor's opinion, justify price increases for one or more line items in the Contract. Contractor may request a pass through increase from the OEM due to an increase in the cost of a particular component caused by outside influences such as transportation costs. Such requests must be fully documented. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

#### 3.4.3 Price Decreases

3.4.3.1 Proposed price decreases may be offered to the City at any time, and become effective upon acceptance by the City unless a different effective date is specified by the Contractor. Price decrease offers may also be subject to negotiation.

3.4.3.2 Price decreases based on relevant factors may be requested by the City at any time. Such requests shall be accompanied by a complete statement of the City's justification for the request. The Contractor shall have thirty (30) calendar days to respond to the City's request. Following receipt of the Contractor's agreement with the requested decrease, the City may implement the decrease at any time. Should the Contractor not agree with the requested decrease, the City may either maintain the prices currently in effect, negotiate with the Contractor, or terminate the Contract.

3.5 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation

to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 **Travel Expenses.** No travel expenses are authorized for this Contract.

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall be in effect from May 27, 2011 through May 26, 2016 with five (5) twelve (12) month extension options.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing). Invoicing will be at Contractor's then current price.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (d) makes a material misrepresentation in Contractor's Offer or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance.** The following insurance requirements apply.

5.1.1 **General Requirements**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address upon contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

5.1.1.7 All Certificates naming the City as additional insured, to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others, and notices of cancellation shall contain the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

Attn: Brenda Helgren

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at its own expense and at the Contractor's World Headquarters in Cleveland, to review certified copies of policies and endorsements thereto.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory

law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. In the event Contractor disagrees with any adjustments requested by the City, Contractor shall have the right to terminate this Contract upon thirty (30) days written notice to the City.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies.

5.1.2 **Specific Coverage Requirements.** The Contractor shall carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The bodily injury and property damage per occurrence are \$2,000,000 for (Bodily Injury and Property Damage) (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Independent Contractor's Coverage.

5.1.2.1.3 Waiver of Subrogation, to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others, Endorsement

5.1.2.1.4 Thirty (30) calendar days Notice of Cancellation

5.1.2.1.5 The City of Austin listed as an additional insured, to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others,

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others,

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation.

**5.2 Delays.**

5.2.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein.

5.2.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.3 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.4 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**SECTION 6. WARRANTIES**

6.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

**SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to applicable Airport security laws, rules and regulations. The City shall, at all times during the provision of Service hereunder, have a representative present at the Service site at no cost to, and solely for, the safety of Contractor. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract.

7.1.2 To the extent applicable Contractor shall comply with, and cause its subcontractors, employees, and agents to comply with, all present and future laws, rules, regulations, or ordinances promulgated by the City, or the Federal Aviation Administration, Transportation Security Administration, or other governmental agencies related to the security of the Airport, including, without limitation, the Transportation Security Regulations set forth in 49 CFR Chapter XII and the Airport Security Plan. **CONTRACTOR SHALL BE SOLELY AND FULLY RESPONSIBLE FOR, AND SHALL INDEMNIFY AND HOLD THE CITY**

HARMLESS FROM AND AGAINST ANY FINES OR PENALTIES IMPOSED ON THE CITY AS A RESULT OF, ANY BREACH OF AIRPORT SECURITY BY CONTRACTOR, OR ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, ASSIGNS AND SUPPLIERS TO THE EXTENT OF THE CONTRACTOR'S NEGLIGENT ACTS OR OMISSIONS FURTHER REDUCED BY THE NEGLIGENCE OF OTHERS.

## **7.2 Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

7.2.2.1.1 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph to the extent of the Contractor's negligent acts or omissions further reduced by the negligence of others.

7.4 **Significant Event.** The Contractor shall immediately notify the Contract Manager of the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings that might have a material effect upon the Contractor's ability to meet its contractual obligations.

## **7.5 Right To Audit.**

7.5.1 With the exception of fixed-fee services, the Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. Contractor shall cooperate fully with the City's auditor or other representative in the conduct of such examination or audit. The Contractor shall produce such records in Austin, Texas within twenty (20) business days of receipt of written request from the City. When electronic files do not exist, legible printed copies of books and records must be provided. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit with interest at the lesser of rate of 1% per month or the maximum lawful rate from the date paid by the City until the date refunded. The City's rights

and Contractor's obligations under this section shall survive the expiration or earlier termination of this Agreement.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all third party claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.2 THE CONTRACTOR SHALL DEFEND (USING COUNSEL SELECTED AND COMPENSATED BY THE CONTRACTOR), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS RESULTING DIRECTLY FROM OR OUT OF THE NEGLIGENT ACTS, ERRORS, OMISSIONS OR WILLFUL MISCONDUCT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.7.3 NOTWITHSTANDING ANYTHING IN THIS CONTRACT OR OTHERWISE TO THE CONTRARY, IN NO EVENT SHALL THE CITY OR THE CONTRACTOR, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, DELAY DAMAGES, LOST PROFITS OR REVENUE, LOST DATA OR LOST OPPORTUNITY DAMAGES, RESULTING FROM OR IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION, WHETHER BROUGHT IN CONTRACT OR IN TORT, EVEN IF THE CITY OR THE CONTRACTOR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL THE AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE PRICE PAID HEREUNDER FOR THE GOODS AND SERVICES PROVIDED.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.



7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Anne Forsey, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Emerson Network Power, Liebert Services Inc.

ATTN: President

610 Executive Campus Drive

Westerville, OH 43082

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee

guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**7.15 Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**7.16 Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

**7.17 Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**7.18 Modifications.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**7.19 Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**7.20 Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected

by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of the mediator's fees equally.

**7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract.

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall provide the City with a copy of its then current Subcontractor Report.

**7.22 Living Wages and Benefits.**

7.22.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain contracts in order to assure quality and continuity of service.

7.22.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

7.22.3 The City requires Contractors to provide a signed certification within five (5) calendar days of contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan (see Exhibit C, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.22.4 The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.22.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.22.4.2 time and date of week when employee's workweek begins;

7.22.4.3 hours worked each day and total hours worked each workweek;

7.22.4.4 basis on which employee's wages are paid;

7.22.4.5 regular hourly pay rate;

- 7.22.4.6 total daily or weekly straight-time earnings;
- 7.22.4.7 total overtime earnings for the workweek;
- 7.22.4.8 all additions to or deductions from the employee's wages;
- 7.22.4.9 total wages paid each pay period; and
- 7.22.4.10 date of payment and the pay period covered by the payment.

**7.23 Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**7.24 Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**7.25 Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**7.26 Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**7.27 Equal Opportunity.**

**7.27.1 Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit D. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

**7.27.2 Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

7.28 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

<http://www.ci.austin.tx.us/purchase/standard.htm> .

7.28 **Order of Precedence.** In the event of a conflict in the terms and conditions of the Contract and any of the Exhibits, the terms and conditions of the Contract shall prevail.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Emerson Network Power, Liebert Services Inc.

By: Lori Helgen  
Signature

Name: Lori Helgen  
Printed Name

Title: Contracts Administrator

Date: 5-18-11

City of Austin

By: Brenda Helgen  
Signature

Name: Brenda Helgen  
Printed Name

Title: Sr Buyer

Date: 6/9/11

#### List of Exhibits

- Exhibit A – Offer
- Exhibit B – Services Terms and Conditions
- Exhibit C - Living Wages and Benefits Contractor Certification
- Exhibit D – Non-Discrimination Certification

**EXHIBIT A**  
**Quote No. Q01572601**

**Essential Service**

- Guaranteed 4-hour response 24 hours/day, 7 days/week
- Emergency service labor and travel coverage
- Parts coverage
- Preventive Maintenance visits scheduled Monday-Friday, 8 am – 5 pm

Site ID: 98398 AUSTIN BERGSTROM, 3600 PRESIDENTIAL BLVD, AUSTIN, TX 78719

Tag #	Description Coverage	Part #  Amount	Annual  PM Qty.	Coverage Type	
1341109	NX 10-15 INTBAT	38SA015C0CFJ	2	Essential 5-27-2011 5-26-2016	\$ 21,285.00
1341112	NX 10-15 INTBAT	38SA015C0CFJ	2	Essential 5-27-2011 5-26-2016	\$ 21,285.00
<b>Price NOT including tax for Installed Equipment:</b>					<b>\$ 42,570.00</b>
NX 10-30 INTBAT		38SB020C0CHR	2	Essential 5-27-2012 5-26-2016	\$24,535.68
<b>Total Price NOT including tax for ALL Equipment:</b>					<b>\$67,105.68</b>

Purchase Order must be assigned to:  
Emerson Network Power, Liebert Services Inc.  
Inc.  
610 Executive Campus Dr  
Westerville OH 43082

Payment remittance address:  
Emerson Network Power, Liebert Services  
PO Box 70474  
Chicago, IL 60673

FID# [REDACTED]

PO should be mailed to:  
Liebert Products & Services, Austin Sales Office  
1421 Wells Branch Pkwy, Ste 105

Pflugerville, TX 78660  
Attn: Sheila Westbrook

**EXHIBIT B**  
**SERVICES TERMS AND CONDITIONS**

Note: For purposes of this Exhibit B, the Buyer is the City of Austin, TX.

Emerson Network Power Liebert Services, Inc. (f/k/a Liebert Global Services, Inc.) is herein referred to as the "Seller" and the customer or person or entity purchasing services ("Services") and parts required for Services ("Parts") from Seller is referred to as the "Buyer." These Services Terms and Conditions and the Contract, constitute the complete and exclusive statement of the terms of this agreement ("Agreement") governing the sale of Services and Parts by Seller to Buyer.

1. **PRICES:** All prices are exclusive of taxes, which are to be borne by Buyer. Buyer is a tax-exempt Governmental entity. Unless otherwise specified by Seller, Parts will be furnished at Seller's then prevailing prices.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of Services or costs of production, sale, delivery or shipment of Parts, or which Seller is otherwise required to pay or collect in connection with the provision of Services and Parts, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election. Buyer is a tax-exempt governmental entity, and will provide evidence of its tax exempt status upon written request.

3. **TERMS OF PAYMENT:** Payment is pursuant to the Contract.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the performance dates acknowledged or quoted by Seller, all performance dates are approximate and not guaranteed. Seller, at its option, shall not be bound to tender delivery of any Parts for which Buyer has not provided shipping instructions and other required information. Unless otherwise specified by Seller, for sales of Parts in which the end destination of the Parts is outside of the United States, risk of loss and legal title to the Parts shall transfer to Buyer immediately after the Parts have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title shall pass from Seller to Buyer upon delivery to and receipt by carrier at Seller's shipping point. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer when delivered by the individual providing the Services. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6; Seller warrants that it will perform the Services as described in the Contract and will exercise all reasonable skill, care and due diligence in the performance of the Services and shall perform the Services in accordance with professional practice. Seller warrants that all Services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of Services. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of Parts. EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 7 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE SERVICES AND PARTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller that is used in (i) the selection of the Services and/or Parts and (ii) the preparation of Seller's quotation and/or scope of work, and in the



event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Services or Parts, either alone or in combination with other parts.

**6. LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, EITHER CORRECT PERFORMANCE FOR THAT PORTION OF THE SERVICES FOUND BY SELLER TO BE DEFECTIVE OR REFUND OF THE PRICE PAID FOR SERVICES.

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC SERVICES OR PARTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

**BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Parts and/or Services is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

**7. PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6, Seller warrants that the Services sold, except as are performed specifically for Buyer according to Buyer's specifications, do not infringe any valid United States patent or copyright in existence as of the date of performance. This warranty is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperates fully with Seller and permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Services. In the event (i) such Services are held to infringe such United States patent or copyright in such suit, and the use of such Services is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Services or modify same to become non-infringing. In the event of the foregoing, Seller may also, at its option, cancel this Agreement as to future performance of such Services, without liability.

**8. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances; acts or omissions of Buyer, including, without limitation, those specified in Section 19; or any events or causes beyond Seller's reasonable control. Performance of Services and deliveries of Parts may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing.

If Seller determines that its ability to supply the total demand for the Services or Parts or to obtain material used directly or indirectly in the manufacture of the Parts is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance of Services or allocate its available supply of the Parts among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

9. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred and to cover commitments made by the Seller, and a reasonable profit thereon; not to exceed ten percent (10%) of the total cost of the order.

10. **CHANGES:** Buyer may request changes or additions to the Services. In the event such changes or additions are accepted by Seller, Seller may revise the price and performance dates. Seller reserves the right to change designs and specifications for the Parts without prior notice to Buyer, except with respect to Parts being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Parts manufactured prior to the date of such change.

11. **ASSIGNMENT:** Assignment is pursuant to the Contract.

12. **INSPECTION:** Buyer shall have ten (10) business days from the date of completion of each portion of the Services to inspect the Services, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Services are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Services.

13. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates for any of the following: a) any Services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any Services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller Service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; or (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein. Any such billable services must be pre-approved in writing by Buyer.

14. **DRAWINGS:** Seller's documentation, prints, and drawings ("Documents") (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Buyer may use the Documents in connection with the Services and Parts.

15. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States, and the jurisdictions in which the Seller and Buyer are established or from which Services and Parts may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, or export Parts in violation of such applicable laws, regulations, orders or requirements.

16. **NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Services are being provided to Buyer and for a period of one (1) year after the last provision of Services.

**17. GENERAL PROVISIONS:** The Contract and these Services Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Services Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Services Terms and Conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Texas without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in the state of Texas, and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

**18. ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Services are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Services. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Seller removed Parts become the property of Seller. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller performance of Services. Buyer shall appoint a representative familiar with the site and the nature of the Services to be performed by Seller to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

**Exhibit D**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 18th day of May.

CONTRACTOR

Authorized  
Signature

Title

Emerson Network Power, Liebert  
Services Inc.  
Peri Hager  
Contracts Administrator

**EXHIBIT C**  
**CITY OF AUSTIN, TEXAS**  
**Living Wages and Benefits Contractor Certification**  
*(Please duplicate as needed)*

Pursuant to the Living Wages and Benefits the Contractor is required to pay to all employees directly assigned to providing Services pursuant to this Contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this Contract:

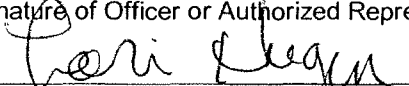
are compensated at wage rates equal to or greater than \$11.00 per hour; and  
are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title

all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.

Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

If Contractor violates this Living Wage provision Contractor shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the Contractor to possible suspension or debarment.

Company Name		
Emerson Network Power, Liebert Services Inc.		
Signature of Officer or Authorized Representative	Title	Date
	Contracts Administrator	5/10/11
Type or Print Name		
Lori Nugen		