



Amendment No. 4
of
Contract No. 5600 NS150000028
for
Piller Equipment Maintenance
between
Piller Power Systems Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 15, 2017 through June 14, 2018. One (12- Month) option will remain.
- 2.0 The total contract amount is increased by \$19,134.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 06/15/2015 – 06/14/2016	\$27,268.00	\$27,268.00
Amendment No. 1 : Add \$30,329.93 to Term 1 and amend Exhibit D	\$30,732.00	\$58,000.00
Amendment No.2 : Option 1 – Extension 06/15/2016 – 06/14/2017	\$18,577.00	\$76,577.00
Amendment No. 3: Change the vendor information as requested and documented by the vendor From Piller USA, Inc. dba Piller to Piller Power Systems Inc.	No Change	No Change
Amendment No.4 : Option 2 - Extension 06/15/2017 – 06/14/2018	\$19,134.00	\$95,711.00

- 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:

Tammy Robinson

Printed Name: Tammy Robinson
Authorized Representative 5/25/2017

Piller Equipment Maintenance
45 Wes Warren Drive
Middletown, NY 10941

Sign/Date:

Bartley Tyler 5/25/17

Printed Name: Bartley Tyler
Authorized Representative

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



Amendment No. 3
to
Contract No. NS150000028
for
Piller Equipment Maintenance
Between
Piller USA, Inc.
dba Piller, Inc.
and the
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
Vendor Name	Piller USA, Inc. dba Piller, Inc.	Power Power Systems, Inc.
Vendor Code	PIL7068910	PIL7068910
FEIN	52-1695869	52-1695869

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. 3 is hereby incorporated into and made a part of the Contract.

A handwritten signature in cursive script that reads "Linell Goodin-Brown".

Linell Goodin-Brown
Contract Compliance Supervisor
City of Austin, Purchasing Office

Date

2/13/17



Amendment No. 2
of
NS150000028
for
Piller Equipment Maintenance
between
Piller USA, Inc.
and the
City of Austin

- 1.0 The City hereby amends this Contract by adding an additional \$18,577.00 for Term 2. There are two additional 12 month terms remaining.
- 2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Term 1: 6/15/15 – 6/14/16	\$27,268.00	\$27,268.00
Amendment No. 1: Add \$30,329.93 to Term 1 and amend Exhibit D	\$30,732.00	\$58,000.00
Amendment No. 2: Term 2 6/15/16 – 6/14/17	\$18,577.00	\$76,577.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (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.

Signature: Tammy Robinson

Date: 6-9-2016

Printed Name: Tammy Robinson
Authorized Representative

Piller USA, Inc.
45 Turner Drive
Middletown, NY 10941

Signature: Elisa Folco

Date: 6-13-2016

Elisa Folco
Corporate Contract Administrator

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701



Amendment No. 1
to
~~DO-5600-15062215798~~
for
Piller Equipment Maintenance
between
Piller USA, Inc. (Contractor)
and the
City of Austin

NS150000028

TN
10/1/15

1.0 The above referenced contract is amended as follows:

Revise the Compensation Section to increase the total not to exceed to \$58,000.00. This is an increase of \$30,732.00; and

Revise Exhibit D to include the following:

- Recycling certificates must be submitted to the City for all batteries
- City requires any recycling activities to be conducted at a facility in the US or Canada
- City requires a report of the total weight of all batteries recycled.

2.0 The total Contract authorization is recapped below:

Term	Action Amount (Cost)	Total Contract Amount
Term 1: 6/15/15 – 6/14/16	\$27,268.00	\$27,268.00
Amendment No. 1: Add \$30,329.93 to Term 1 and amend Exhibit D	\$30,732.00	\$58,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (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 signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature: Tammy Robinson

Printed Name: Tammy Robinson

Date: 8-17-2015

Signature: [Signature]
City of Austin Purchasing Office

Date: 8-18-15

Piller USA, Inc.
45 Turner Drive
Middletown, NY 10941



PILLER
Power Systems
PILLER USA, INC.
45 Turner Drive
Middletown, NY 10541

Tel: 845-655-6672
Fax: 845-652-0285
(845) 655-5300, General
(800) 557-6937, Marketing
(800) 333-7761, Service

Quote # 072015-001r02b
Date: 7/24/2015
Terms: NET 30
F.O.B. Factory
Delivery: See Below

ATTN: City of Austin
225 East 10th Street
Austin, TX 78701
Attn: Joe Chavez
jo.chavez@austintexas.gov

We are pleased to submit the following Budgetary Price Estimate for your review and consideration.

QUAN.	DESCRIPTION	PRICE	EXTENSION
	PILLER SERVICES Remove, palletize, shrink wrap, & dispose of existing batteries and install new ones by Piller technicians or a third party install company with a Piller technician on stand by.		
120	C&D UPS12-450MR VRLA Batteries	156.53	\$18,783.60
1	3rd Party Labor, travel, & mileage for removal and approved disposal of existing batteries; inside delivery and installation of replacement batteries. Piller Technician Labor, travel, & mileage to isolate the UPS system, on site support for 3rd party, and return system to online status. (Weekend evening work) Note: Does not include battery rundown testing. This includes the 3rd Party providing two (2) technicians and the customer providing two (2) people to assist in the placement or new batteries and removal of the old batteries. Masonite floor protection and the associated with installing and removing masonite is by others and not included in this price.	10,983.83	\$10,983.83
1	Freight Upon acceptance of this estimate Piller, USA, Inc. requires a hard copy PO to accompany this signed estimate. If you are tax exempt, please include tax exempt certificate. Battery orders will not be placed until we receive all of the above. Please contact Kevin Soeler @ (845) 655-6672 or kevin.soeler@piller.com if you have any questions	\$62.50	\$62.50
Terms of Budgetary Price Estimate 1. The estimate is valid for 30 days from the date of the estimate unless previously withdrawn. 2. This offer is valid for 30 days from the date of the estimate unless previously withdrawn. 3. Any parts, services or expenses required for which are not included or not described above will be charged to the customer in accordance with current PILLER USA Time and Material Rates. 4. Unless otherwise stated, the work will be completed in one day. Additional days or part days will be charged per Technician in accordance with the current PILLER USA Time and Material Rates. 5. Payment terms are 30 days net from the final invoice date. No other payment terms will be accepted. 6. This quotation is subject to PILLER USA standard terms and conditions US91.9.455.0023-05, Piller USA Warranty US91.9.455.0027-05 and PILLER USA Time and Material Rates copies of which are available on request. 7. An official purchase order number is required before any work related to this estimate begins. This includes the ordering of parts included in this estimate. 8. Work cancelled at short notice will be subject to a cancellation charge in accordance with PILLER USA standard terms and conditions US91.9.455.0023-05 NOTE: A Piller technician must be on site for standby technical support for the battery changeover regardless of the battery and installation provider. The cost for a Piller technician for standby support for this battery replacement is \$5,000.00 which is included in this total.			
			\$30,329.93

Kevin Soeler
Quoted By:
24-Jul-15
Date:

Sign here to accept the above terms and charges.

Date:

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
PILLER, INC.
FOR
PILLER EQUIPMENT MAINTENANCE**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Piller USA, Inc. ("Contractor"), having offices at 45 Turner Drive, Middletown, NY 10941.

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 Tammy Robinson, Phone: 845-695-6604, Email Address: tammy.robinson@piller.com. The City's Contract Manager for the engagement shall be Darrell Rochte, Phone: (512) 512-974-2103, Email Address: Darrell.Rochte@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

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 Offer, attached hereto as Exhibit A – Piller Offer, in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 Contract Amount. In consideration for the services to be performed under this Contract, the Contractor shall be paid on an annual basis as follows:

Year	Term	Annual Payment Amount
1	6/15/15 - 6/14/16	\$ 27,268.00
2	6/15/16 - 6/14/17	\$ 18,577.00
3	6/15/17 - 6/14/18	\$ 19,134.00
4	6/15/18 - 6/14/19	\$ 19,708.00
Total \$		84,687.00

3.2 Invoices.

3.2.1 Invoices shall contain a unique 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. The Contractor's name on the invoice must exactly match the information in the Contractor's registration with the City. 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	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

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 invoice goes unpaid for sixty (60) days after its issue date, then in addition to its rights at law to recover the debt, the Contractor shall have the right to suspend or terminate this Contract.

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 off set 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 check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **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.

3.5 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on June 15, 2015 ("Effective Date") and shall remain in effect until June 14, 2019 or the City terminates the Contract.

4.1.1 Upon expiration of the contract, 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).

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 or in any report or deliverable required to be submitted by the Contractor to the City 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 prior to 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.

5.1.1.5 The City may request that the Contractor 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.

5.1.1.7 All endorsements or certificates naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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 in Paragraph 5.1.2, Specific Coverage Requirements, 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 Headquarters in Middletown, NY, 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. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum 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..

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (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 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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 minimum 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, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1 **Equal Opportunity.**

5.2.1 **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 E. 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.

5.1.2 **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.

5.2 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so.. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.3 **Delays.**

5.4.1 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. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.3.2 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.

5.4 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.4.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With

respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.4.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.5 **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.

5.6 **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 – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to 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.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within

thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay the City upon demand the increased cost, if any, incurred by the City to procure such services from another source. The costs for such procured services shall not exceed the annual contract value.

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 the applicable security laws, rules, and regulations. 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.

7.2 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; and

7.2.2.2 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.

7.4 **Significant Event.** The Contractor shall immediately notify the City's 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. :

7.4.1 ;

7.5 Right To Audit.

7.5.1 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, records of the Contractor related to the performance under this Contract. 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.

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 claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

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),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. 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.

7.8 **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 within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand,

suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. 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 2nd Street, 4th 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: Elisa Folco, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Piller USA, Inc.

ATTN: Tammy Robinson, Contract Manager

45 Turner Drive

Middletown, NY 10941

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 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 in writing signed by both parties. No pre-printed or similar terms on any 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 mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 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.

7.22 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.

7.23 Holidays. The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.24 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.

7.25 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.

7.26 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.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

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

PILLER USA, INC.

By: Tammy Robinson
Signature

Name: Tammy Robinson
Printed Name

Title: National Service Commercial

Date: 6-18-2015

CITY OF AUSTIN

By: [Signature]
Signature

Name: Jonathan Harris
Printed Name

Title: Senior Buyer Specialist

Date: 6-18-15

List of Exhibits

Exhibit A	Piller Offer
Exhibit B	Maintenance Agreement
Exhibit C	Equipment Covered by the Contract
Exhibit D	Scope of Work
Exhibit E	Non Discrimination Certification

**Exhibit A
Piller Offer**

The City of Austin will make annual payments.

Year 1

Term: 6/15/15 – 6/14/16
Annual Payment Amount: \$27,268.00

EXHIBIT B-OFFER STATEMENT OF CHARGES			
CITY OF AUSTIN DATA CENTER 625 EAST 10TH STREET, 10TH FLOOR AUSTIN, TX 78701			
Term: 1 YEAR		6/15/15-6/14/16	
Equipment	Serial Number		
<u>COMPREHENSIVE-PARTS & LABOR:</u>			
500KVA UNIBLOCK II	1435414	\$	27,268.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
<u>STANDARD:</u>			
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included
<u>SEMI-ANNUAL BATTERY MAINTENANCE:</u>			
(120) UPS6-600 SEALED BATTERIES	N/A		Included
OVERTIME PM: ONE OFFLINE PM	N/A		Included
Annual Amount:		\$	27,268.00

<u>PILLER OPTIONAL PAYMENT PLANS:</u>		Please initial payment preference	
A. Annual Payment		\$	27,268.00
B. Semi-annual Payments		\$	13,634.00
C. Quarterly Payments		\$	6,817.00
D. Monthly Payments		\$	2,272.33

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
System# 17026

Year 2

Term: 6/15/16 – 6/14/17
 Annual Payment Amount: \$18,577.00

**EXHIBIT B-OFFER
 STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
 625 EAST 10TH STREET, 10TH FLOOR
 AUSTIN, TX 78701**

Term: 1 YEAR 6/15/16-6/14/17

Equipment	Serial Number		
<u>STANDARD:</u>			
500KVA UNIBLOCK II	1435414	\$	18,577.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included
<u>SEMI-ANNUAL BATTERY MAINTENANCE:</u>			
(120) UPS6-600 SEALED BATTERIES	N/A		Included
<u>MISC:</u>			
OVERTIME PM: ONE OFFLINE PM	N/A		Included
Annual Amount:		\$	18,577.00

PILLER OPTIONAL PAYMENT PLANS:

	Please initial payment preference	
A. Annual Payment	\$	18,577.00
B. Semi-annual Payments	\$	9,288.50
C. Quarterly Payments	\$	4,644.25
D. Monthly Payments	\$	1,548.08

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
 System# 17026

Year 3

Term: 6/15/17 – 6/14/18
 Annual Payment Amount: \$19,134.00

**EXHIBIT B-OFFER
 STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
 625 EAST 10TH STREET, 10TH FLOOR
 AUSTIN, TX 78701**

Term: 1 YEAR 6/15/17-6/14/18

Equipment	Serial Number		
<u>STANDARD:</u>			
500KVA UNIBLOCK II	1435414	\$	19,134.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included
<u>SEMI-ANNUAL BATTERY MAINTENANCE:</u>			
(120) UPS6-600 SEALED BATTERIES	N/A		Included
<u>MISC:</u>			
OVERTIME PM: ONE OFFLINE PM	N/A		Included
Annual Amount:		\$	19,134.00

PILLER OPTIONAL PAYMENT PLANS:

Please initial payment preference

A. Annual Payment	\$	19,134.00	<input type="checkbox"/>
B. Semi-annual Payments	\$	9,567.00	<input type="checkbox"/>
C. Quarterly Payments	\$	4,783.50	<input type="checkbox"/>
D. Monthly Payments	\$	1,594.50	<input type="checkbox"/>

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
 System# 17026

Year 4

Term: 6/15/18 – 6/14/19
 Annual Payment Amount: \$19,708.00

**EXHIBIT B-OFFER
 STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
 625 EAST 10TH STREET, 10TH FLOOR
 AUSTIN, TX 78701**

Term: 1 YEAR 6/15/18-6/14/19

Equipment	Serial Number		
STANDARD:			
500KVA UNIBLOCK II	1435414	\$	19,708.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included
SEMI-ANNUAL BATTERY MAINTENANCE:			
(120) UPS6-600 SEALED BATTERIES	N/A		Included
MISC:			
OVERTIME PM: ONE OFFLINE PM	N/A		Included
Annual Amount:		\$	19,708.00

PILLER OPTIONAL PAYMENT PLANS:

	Please initial payment preference	
A. Annual Payment	\$	19,708.00
B. Semi-annual Payments	\$	9,854.00
C. Quarterly Payments	\$	4,927.00
D. Monthly Payments	\$	1,642.33

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
 System# 17026

Exhibit B

Maintenance Agreement

Note: With respect to this Exhibit B, "Customer" means the City of Austin, TX and "Company" means Piller USA, Inc.

This Exhibit B Maintenance Agreement form an integral part of the Contract and are intended by the parties to the Contract, and shall be construed to, (any contrary term or provision contained anywhere else in the Contract, notwithstanding), take priority over and amend where inconsistent, and to the degree of any such inconsistency, any and all such other documents which form the Contract. For the avoidance of doubt, the parties to the Contract hereby agree, that where any inconsistency exists between this Exhibit B and any provision of the Contract, the Contract shall be interpreted and construed subject to and giving priority to this Exhibit B.

1. The Company agrees to perform preventive maintenance (hereinafter referred to as "Services") on the designated items of equipment listed in Exhibit C" (hereinafter referred to as "Equipment") located at the Customer's site.

2. The Company, during the term of this Agreement, will perform the Services as described in Exhibit D1 and Exhibit D2.

3. **Term.** The term will be as set forth in the Contract.

4. **Payment Terms.** The payment terms will be as set forth in the Contract.

5. **Taxes.** The City is a tax exempt entity and will provide a certificate evidencing such.

6. **Site Requirements.** The Company shall at its option inspect the site and environment of the Equipment prior to executing this Contract. The Customer is responsible for and agrees to maintain the site and environment so that it is suitable for operation of the Equipment. If the site and/or environment does not conform to the conditions specified for the proper functioning of the Equipment, or those reasonably to be expected for the proper functioning of the Equipment, (including, but not limited to, the physical installation and/or location of the Equipment, ambient temperature of operating environment, humidity, and/or the presence of dirt, construction debris or other contaminants in the operating environment) which adversely affects the Equipment or the Company's ability to perform under this Contract, then the Company at its sole discretion and making every effort to inform the Customer in advance of the work being undertaken, may elect to perform any additional work necessary to enable the Company to perform the Services required under this Contract at the Customer's expense at the Company's then-current time and materials rate, including any applicable surcharges for emergency service, or the Company may elect to terminate this Contract without any liability whatsoever to the Customer. In the event the Equipment is situated, placed or installed by the Customer in such a location as to require the furnishing of additional materials, or the performance of additional labor or services in order to properly perform the Services on the Equipment, if the Customer decides, in its sole discretion, to have additional work done, the Customer shall be liable and responsible for payment to the Company at the Company's published contract rates or to any subcontractor or other contractor for such additional materials, service or labor furnished including, but not limited to, rigging services, electrical interconnections or reconnections, and material and labor reasonably required for alterations to buildings, structures, or components thereof, including heating and air conditioning systems. A writing signed by both parties will evidence any additional work. Furthermore, it is the responsibility of the Customer to provide and pay for any rigging and drayage necessary to: (1) move replacement parts or units from Customer's receiving area to the site of installation, (2) install the replacement parts or units, and/or (3) move replaced parts or units from the installation location to the Customer's receiving area.

7. **Equipment Not Previously Covered.** If the Equipment was not previously covered by or serviced pursuant to a maintenance agreement with the Company, or a maintenance agreement between the Customer and the Company for the Equipment has lapsed, the Equipment shall be subject to pre-certification by the Company at the Customer's expense. Pre-certification shall consist of (1) an inspection of the Equipment by the Company to determine if it is mechanically sound and operating according to manufacturer's specifications and (2) an

inspection of the site and environment to determine if it is suitable for operation of the Equipment. If the Equipment is, in the sole discretion of the Company, not mechanically sound and operating properly and/or the site or environment is not suitable for operation of the Equipment, the Company may terminate this Contract immediately without any liability whatsoever to the Customer. Notwithstanding the foregoing, the Customer may request that the Company attempt to make the site and/or environment suitable for operation of the Equipment ("Remediation Services"); however, the final decision on whether to undertake such Remediation Services shall rest solely with the Company. If, in the Company's sole discretion, it is not able to make the site and/or environment suitable for operation of the Equipment (whether or not the Company has actually attempted to do so), the Company may immediately terminate this Contract without any liability whatsoever to the Customer. The Customer shall pay the Company at the Company's then-current time and materials rate for pre-certification of the Equipment, and/or any Remediation Services provided to the Customer, even if this Contract is subsequently terminated by the Company pursuant to this paragraph 7.

8. **Unauthorized Repairs; Misuse of Equipment.** In the event that repairs and/or service is performed other than by the Company or persons authorized by the Company and service/repair inspection does not meet with the Company's specifications, or repairs and/or service is necessitated by misuse or abuse of the Equipment or by tampering with the Equipment, then the Company, in its sole discretion, may elect to perform such service and make such repairs at the Customer's expense at the Company's then-current time and materials rate, including any applicable surcharges for emergency service, or the Company may elect to terminate this Contract without any liability whatsoever to the Customer.

9. **Warranty.** All Services performed by the Company are warranted to be free from defects in material and workmanship for a period of 180 days from the performance of the Services (the "Warranty Period"). If any defect in material and/or workmanship appears or occurs within the Warranty Period, then the Company shall, at its option, either repair or replace the defective portion or part or re-perform the Services, as applicable, within a reasonable time. The provisions of this clause shall apply to all repairs or replacements carried out by the Company to remedy any defects. The warranty shall immediately become invalid if Customer breaches any provision of this Contract, and/or this Contract has been suspended or terminated.

10. **Limitation of Damages.**

10.1 The Company shall not, in so far and to the fullest extent that it is permitted to exclude its liability under the applicable law, be responsible whether in contract or in tort (including negligence or otherwise) for incidental, special, economic, indirect or consequential damages (whether or not claimed or suffered by the Customer and/or any person, business or entity not a party to this Contract) including, but not limited to, loss of or loss of use of Equipment and/or other equipment and/or systems, loss of data, loss of profits (including overheads and fixed costs), or loss of revenue arising out of or in connection with the performance of the Company's obligations under this Contract and/or the performance, adequacy or suitability of the Equipment and/or the Services supplied, including any such damages as may be reasonably foreseeable at the date hereof.

10.2 Subject to the provisions of clause 10.3 below the remedies expressly set forth in this Contract shall be the sole and exclusive remedies available to the Customer for or in relation to any indemnity offered by the Company in this Contract.

10.3 Except in the case of bodily injury (including death), to the extent that it is possible to limit liability under the applicable laws the total cumulative liability of the Company to the Customer pursuant to this Contract for any act or omission whether in contract or in tort (including negligence and strict liabilities), or by way of indemnity, or howsoever arising shall in all cases be limited to and in no case exceed either the sums recovered from the insurance maintained by the Company under Section 7 Insurance or \$100,000 (one hundred thousand dollars), whichever is the higher. Except in the case of bodily injury (including death), to the extent that it is possible to limit liability under the applicable laws the total cumulative liability of the Customer to the Company pursuant to this Contract for any act or omission whether in contract or in tort (including negligence and strict liabilities), or by way of indemnity, or howsoever arising shall in all cases be limited to and in no case exceed either the sums recovered from the insurance maintained by the Customer or \$100,000 (one hundred thousand dollars), whichever is the higher.

10.4 The limit of liability specified under clause 10.3 is not intended, nor will it be used by the Company, to restrict the work required of the Company to provide the Services under this Contract.

11. **Force Majeure.** Provided that the parties hereto are making reasonable efforts in good faith to comply with the terms of this Contract, each party hereby agrees to excuse the other's performance hereunder upon the occurrence of an act of God, accident, fire, labor controversy, riot or civil commotion, act of public enemy, law, enactment, rule, order, act of government or governmental instrumentality, adverse weather condition, failure of technical facilities, failure or delay of transportation facilities or other cause of a similar or dis-similar nature not within such party's control or which such party cannot by reasonable diligence avoid (a "Force Majeure"). Upon the occurrence of a Force Majeure, the party so affected shall continue to make all reasonable efforts in good faith to comply with the terms of this Contract and shall be in full compliance hereof as soon as is reasonably practicable. This Contract does not cover any repair work undertaken by the Company and caused by any Force Majeure. Those repairs shall be invoiced to the Customer and are payable by the Customer in accordance with the Company's time and materials charges then in effect.

Exhibit C
Equipment Covered by the Contract

Equipment Covered by the Agreement

"Equipment" as used herein shall mean the equipment listed below by model number, description, serial number and location of equipment.

Equipment	Serial #
<u>TERM: 6/15/15-6/14/16</u>	
<u>COMPREHENSIVE-PARTS & LABOR:</u>	
500KVA UNIBLOCK II	1435414
DCDS	3699DCDS
ANNUNCIATOR PANEL	1265AP684
MOTS	3700MOTS
<u>STANDARD:</u>	
125KVA PDU	0330PDU
125KVA PDU	0331PDU
150KVA PDU	0437PDU
PDU	21742-01
<u>SEMI-ANNUAL BATTERY MAINTENANCE:</u>	
(120) UPS6-600 SEALED BATTERIES	N/A
<u>MISC:</u>	
OVERTIME PM: ONE OFFLINE PM	N/A
<u>TERM: 6/15/16-6/14/19</u>	
<u>STANDARD:</u>	
500KVA UNIBLOCK II	1435414
DCDS	3699DCDS
ANNUNCIATOR PANEL	1265AP684
MOTS	3700MOTS
125KVA PDU	0330PDU
125KVA PDU	0331PDU
150KVA PDU	0437PDU
PDU	21742-01
<u>SEMI-ANNUAL BATTERY MAINTENANCE:</u>	
(120) UPS6-600 SEALED BATTERIES	N/A

MISC:

OVERTIME PM: ONE OFFLINE PM

N/A

Equipment Located at: 625 East 10th Street, 10th Floor, Austin, TX 78701

Exhibit D-1
Scope of Work

6/15/15-6/14/16
Scope of Work

STANDARD MAINTENANCE SCHEDULES

<u>Schedule #</u>	<u>Description of the Standard Maintenance Guidelines</u>
73023-02	Uniblock II
73000.00	General Guidelines & Electrical Safety Precautions
73014.01	Battery Systems
73022.01	Cleaning & Testing

SCOPE OF WORK: Company shall perform maintenance and repairs on Customer's Equipment in accordance with the scope of work set forth herein:

Planned maintenance on the UPS module(s) and associated equipment as identified on Exhibit "C". Service of batteries consists of planned maintenance only, and does not cover repairs to, or replacement of, batteries. Batteries, removal/replacement and any components thereto, rigging or drayage, are available outside this Agreement at Company's then-current, discounted "Time and Materials" price.

STANDARD (PDU's)

Included: Semi-annual planned maintenance visits on the UPS Equipment & Batteries, (One Offline PM pre-scheduled at no additional cost: 24 hours a day, 7 days a week EXCLUDING HOLIDAYS and One Online PM pre-scheduled Monday-Friday 8AM-5PM EXCLUDING HOLIDAYS) by a certified Company technician.

- Factory support on technical issues.
- Discounted labor rate for emergency service** and 25% discount on parts (based on Company published contract rates). Travel/ living expenses are not included in the labor rate and are chargeable to the Customer as an extra cost.
- Access to 7X24 Customer Service

COMPREHENSIVE-PARTS & LABOR

Included:

Semi-annual planned maintenance visits on the UPS Equipment & Batteries, (One Offline PM pre-scheduled at no additional cost: 24 hours a day, 7 days a week EXCLUDING HOLIDAYS and One Online PM pre-scheduled Monday-Friday 8AM-5PM EXCLUDING HOLIDAYS) by a certified Company technician.

- Factory support on technical issues.
- Emergency service** 7x24 within one business day and all parts, labor and travel/ living expenses are included.
- Work performed outside the specified Services will be billed at contract rates, with a 50% discount on any spare parts requested.
- Equipment and parts will either be repaired or replaced, as the Company shall at its sole discretion determine.
- Consumable items (i.e. air filters) are included for one change per year. Additional filter changes are chargeable.

The above packages EXCLUDE Bearing Change, Clutch (on diesel coupled units) and rigging and drayage of Equipment.

***** Emergency service is the service provided to restore the ability of the Equipment to deliver usable power.***

Exhibit D-2
6/15/16-6/14/19

Scope of Work

STANDARD MAINTENANCE SCHEDULES

<u>Schedule #</u>	<u>Description of the Standard Maintenance Guidelines</u>
73023-02	Uniblock II
73000.00	General Guidelines & Electrical Safety Precautions
73014.01	Battery Systems
73022.01	Cleaning & Testing

SCOPE OF WORK: Company shall perform maintenance on Customer's Equipment in accordance with the scope of work set forth herein:

Planned maintenance on the UPS module(s) and associated equipment as identified on Exhibit "C". Service of batteries consists of planned maintenance only, and does not cover repairs to, or replacement of, batteries. Batteries, removal/replacement and any components thereto, rigging or drayage, are available outside this Agreement at Company's then-current, discounted "Time and Materials" price.

STANDARD

- Included:** Semi-annual planned maintenance visits on the UPS Equipment & Batteries, (One Offline PM pre-scheduled at no additional cost: 24 hours a day, 7 days a week EXCLUDING HOLIDAYS and One Online PM pre-scheduled Monday-Friday 8AM-5PM EXCLUDING HOLIDAYS) by a certified Company technician.
- Factory support on technical issues.
 - Discounted labor rate for emergency service** and 25% discount on parts (based on Company published contract rates). Travel/ living expenses are not included in the labor rate and are chargeable to the Customer as an extra cost.
 - Access to 7X24 Customer Service

The above packages EXCLUDE Bearing Change, Clutch (on diesel coupled units) and rigging and drayage of Equipment.

***** Emergency service is the service provided to restore the ability of the Equipment to deliver usable power.***

EXHIBIT E
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 June, 2015

CONTRACTOR

Authorized
Signature

Title

Piller USA, Inc

Johnny Robinson

National Service Commercial Mgr.

**EXHIBIT B-OFFER
STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
625 EAST 10TH STREET, 10TH FLOOR
AUSTIN, TX 78701**

Term: 1 YEAR	6/15/15-6/14/16
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Equipment	Serial Number		
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COMPREHENSIVE-PARTS & LABOR:

500KVA UNIBLOCK II	1435414	\$	27,268.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included

STANDARD:

125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included

SEMI-ANNUAL BATTERY MAINTENANCE:

(120) UPS6-600 SEALED BATTERIES	N/A		Included
OVERTIME PM: ONE OFFLINE PM	N/A		Included

Annual Amount:		\$	27,268.00
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PILLER OPTIONAL PAYMENT PLANS:

Please initial payment preference

A. Annual Payment	\$	27,268.00	<input type="checkbox"/>
B. Semi-annual Payments	\$	13,634.00	<input type="checkbox"/>
C. Quarterly Payments	\$	6,817.00	<input type="checkbox"/>
D. Monthly Payments	\$	2,272.33	<input type="checkbox"/>

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911

System# 17026



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 02/01/2015

DEPT: CTM

TO: Purchasing Officer or Designee

FROM: Darrell Rochte

BUYER: REBA BACON

PHONE: 974-2103

~~Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.~~

~~Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.~~

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="radio"/> a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212 <input type="radio"/> personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for | <ul style="list-style-type: none"> cooperative purchasing administered by a regional planning commission established under Chapter 391 <input type="radio"/> services performed by blind or severely disabled persons <input type="radio"/> goods purchased by a municipality for subsequent retail sale by the municipality <input type="radio"/> electricity <input type="radio"/> advertising, other than legal notices <input type="radio"/> Critical Business Need (Austin Energy Only) |
|--|--|

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

Piller corp. is manufactures and services a proprietary form of Uninterrupted Power Supplies (UPS) which utilize a rotary operation. The 10th floor CTM data center is supported by one of these stems and due to the proprietary nature, age, and availability of service/parts, only Piller corp. ~~is capable of maintaining this critical system in the years to come. Given the paramount~~ importance of this back up power system (protects the entire CTM data center), a sole source service/support contact with Piller corp. is requested as a continuation of this support contract from the last 20+ years.

Contract is for 1 year with 3 additional yearly renewal options for a total contact cost of \$84,687 over 4 years.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Piller Corp.
which will cost approximately \$84,687.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification


Originator

2/18/15
Date

Approved
Certification


Department Director or designee

2/19/2015
Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)


Buyer

2/19/15
Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

**EXHIBIT B-OFFER
STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
625 EAST 10TH STREET, 10TH FLOOR
AUSTIN, TX 78701**

Term: 1 YEAR

6/15/15-6/14/16

Equipment	Serial Number		
<u>COMPREHENSIVE-PARTS & LABOR:</u>			
500KVA UNIBLOCK II	1435414	\$	27,268.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
<u>STANDARD:</u>			
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included
<u>SEMI-ANNUAL BATTERY MAINTENANCE:</u>			
(120) UPS6-600 SEALED BATTERIES	N/A		Included
OVERTIME PM: ONE OFFLINE PM	N/A		Included
Annual Amount:		\$	27,268.00

PILLER OPTIONAL PAYMENT PLANS:

	Please initial payment preference		
A. Annual Payment	\$	27,268.00	<input type="checkbox"/>
B. Semi-annual Payments	\$	13,634.00	<input type="checkbox"/>
C. Quarterly Payments	\$	6,817.00	<input type="checkbox"/>
D. Monthly Payments	\$	2,272.33	<input type="checkbox"/>

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
System# 17026

**EXHIBIT B-OFFER
STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
625 EAST 10TH STREET, 10TH FLOOR
AUSTIN, TX 78701**

Term: 1 YEAR

6/15/16-6/14/17

Equipment	Serial Number		
<u>STANDARD:</u>			
500KVA UNIBLOCK II	1435414	\$	18,577.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included

SEMI-ANNUAL BATTERY MAINTENANCE:

(120) UPS6-600 SEALED BATTERIES	N/A	Included
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MISC:

OVERTIME PM: ONE OFFLINE PM	N/A	Included
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Annual Amount:		\$	18,577.00
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PILLER OPTIONAL PAYMENT PLANS:

			Please initial payment preference
A. Annual Payment	\$	18,577.00	<input type="checkbox"/>
B. Semi-annual Payments	\$	9,288.50	<input type="checkbox"/>
C. Quarterly Payments	\$	4,644.25	<input type="checkbox"/>
D. Monthly Payments	\$	1,548.08	<input type="checkbox"/>

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
System# 17026

**EXHIBIT B-OFFER
STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
625 EAST 10TH STREET, 10TH FLOOR
AUSTIN, TX 78701**

Term: 1 YEAR

6/15/17-6/14/18

Equipment	Serial Number		
<u>STANDARD:</u>			
500KVA UNIBLOCK II	1435414	\$	19,134.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included

SEMI-ANNUAL BATTERY MAINTENANCE:

(120) UPS6-600 SEALED BATTERIES	N/A	Included
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MISC:

OVERTIME PM: ONE OFFLINE PM	N/A	Included
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Annual Amount:		\$	19,134.00
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PILLER OPTIONAL PAYMENT PLANS:

	Please initial payment preference		
A. Annual Payment	\$	19,134.00	<input type="checkbox"/>
B. Semi-annual Payments	\$	9,567.00	<input type="checkbox"/>
C. Quarterly Payments	\$	4,783.50	<input type="checkbox"/>
D. Monthly Payments	\$	1,594.50	<input type="checkbox"/>

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911

System# 17026

**EXHIBIT B-OFFER
STATEMENT OF CHARGES**

**CITY OF AUSTIN DATA CENTER
625 EAST 10TH STREET, 10TH FLOOR
AUSTIN, TX 78701**

Term: 1 YEAR

6/15/18-6/14/19

Equipment	Serial Number
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STANDARD:

500KVA UNIBLOCK II	1435414	\$	19,708.00
DCDS	3699DCDS		Included
ANNUNCIATOR PANEL	1265AP684		Included
MOTS	3700MOTS		Included
125KVA PDU	0330PDU		Included
125KVA PDU	0331PDU		Included
150KVA PDU	0437PDU		Included
PDU	21742-01		Included

SEMI-ANNUAL BATTERY MAINTENANCE:

(120) UPS6-600 SEALED BATTERIES	N/A	Included
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MISC:

OVERTIME PM: ONE OFFLINE PM	N/A	Included
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Annual Amount:		\$	19,708.00
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PILLER OPTIONAL PAYMENT PLANS:

Please initial payment preference

A. Annual Payment	\$	19,708.00	<input type="checkbox"/>
B. Semi-annual Payments	\$	9,854.00	<input type="checkbox"/>
C. Quarterly Payments	\$	4,927.00	<input type="checkbox"/>
D. Monthly Payments	\$	1,642.33	<input type="checkbox"/>

Maintenance Agreement price quotes are valid for thirty days from quoted date.

NOTE: In addition to the sums stated above, the Customer shall pay at the time of payment of the charges hereinabove set forth, all applicable State, Local, and Municipal taxes levied upon the said charges by any taxing authority having jurisdiction thereof, exclusive of any taxes based upon the Company's net income, or supply to the Company in form satisfactory to the Company proof of exemption therefrom, or proof of payment of the same.

Contract# 1911
System# 17026