



Amendment No. 3  
to  
Contract No. 5600 NS170000023  
for  
Software and Support  
Between  
Assurance Software (Contractor), formerly Sungard Availability Services LP  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective from April 1, 2019 through March 31, 2020. No additional options remain.
- 2.0 The total contract amount is increased by \$31,047.00 this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/01/2016 – 03/31/2018		
	\$26,820.00	\$26,820.00
Amendment No. 1: Option 1 – Extension 04/01/2017 – 03/31/2018	\$28,161.00	\$54,981.00
Amendment No. 2: Option 2 – Extension 04/01/2018 – 03/31/2019	\$29,569.00	\$84,550.00
Amendment No. 3: Option 3 – Extension 04/01/2019 – 03/31/2020	\$31,047.00	\$115,597.00

- 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.

DocuSigned by:  
 Sign/Date: Scott Barndt 2/1/2019  
 Printed Name: Scott Barndt  
 Authorized Representative

Sign/Date: [Signature] 2/1/19  
 Printed Name: JANE T. HOWARD  
 Authorized Representative

Assurance Software Inc.  
6800 Adams Road, Ste 300  
Audubon, PA 19403

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



Amendment No. 2  
to  
Contract No. 5600 NS170000023  
for  
Software and Support  
between  
Sungard Availability Services LP (Contractor)  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 01, 2018 through March 31, 2019. One (1) option will remain.
- 2.0 The total contract amount is increased by \$29,569.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/01/2016 – 03/31/2018	\$26,820.00	\$26,820.00
Amendment No. 1: Option 1 – Extension 04/01/2017 – 03/31/2018	\$28,161.00	\$54,981.00
Amendment No. 2: Option 2 – Extension 04/01/2018 – 03/31/2019	\$29,569.00	\$84,550.00

- 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: \_\_\_\_\_

Printed Name: Scott Barndt  
Authorized Representative

DocuSigned by:  
Scott Barndt  
75FED78A-AB31-42B4-AAD9-2FDDEA82C697  
Sungard Availability Services LP  
680 E. Swedesford Rd.  
Wayne, PA 19087

Sign/Date: \_\_\_\_\_

Printed Name: JAMES T. HOWARD  
Authorized Representative

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



Amendment No. 1  
to  
NS170000023  
for  
Software and Support  
between  
Sungard Availability Services LP (Contractor)  
and the  
City of Austin

1.0 The above referenced contract is amended as follows:

The City hereby exercises the first extension option.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract:	\$26,820.00	\$26,820.00
Amendment No. 1: Extension Option 4/1/17 – 3/31/18	\$28,161.00	\$54,981.00

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:**

DocuSigned by:  
Contractor Signature: Scott Barndt

75F6D8C498B0402...  
Printed Name: Scott Barndt

Date: March 31, 2017

Sungard Availability Services LP  
680 E. Swedesford Rd.  
Wayne, PA 19087

Signature: 

City of Austin Purchasing Office  
Printed Name: Gil Bilka

Date: 3/31/17

City of Austin  
124 W. 8<sup>th</sup> St., Ste. 310  
Austin, TX 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Sungard Availability Services LP  
For  
Software and Support**

This Contract is made by and between the City of Austin (“City” or “Customer”), a home-rule municipality incorporated by the State of Texas, and Sungard Availability Services, LP (“Contractor” or “Sungard AS”), having offices at 680 E. Swedesford Rd., Wayne, PA 19087.

**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 the services 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 **Contact Personnel.** The Contractor’s Contract Manager for this engagement shall be Ryan Roesler, Phone: (484) 582-1399, Email Address: ryan.roesler@sungardas.com. The City’s Contract Manager for the engagement shall be Linda Kennedy, Phone: (512) 972-0135, Email Address: Linda.Kennedy@austintexas.gov.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor’s Obligations.** The Contractor shall fully and timely provide the services described in the Contractor’s Offer in strict accordance with the terms, covenants, and conditions of Exhibit B and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$26,820.00 for the initial term, \$28,161.00 for the first extension, \$29,569.00 for the second extension, and \$31,047.50 for the third extension, for a total estimated contract amount not to exceed \$115,597.00 comprising the software maintenance and support fees.

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 and, if applicable, the tax identification number 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
Email Address	CTMAPIInvoices@austintexas.gov

Mailing 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 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.

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 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

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

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, except that Contractor shall not be responsible for any costs (third party or otherwise) in submitting invoices via a third party invoicing system if required by the City.

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.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 3 additional 12 month periods, subject to the agreement between the parties and the approval of the Contractor and the City Purchasing Officer or his designee.

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); provided Contractor receives payment for any such continued services during this time.

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 a Party, the non-defaulting Party shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting Party, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the other Party's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the Party not in default shall be entitled to recover all actual damages, costs, losses and expenses, incurred by such Party as a result of the other Party'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 **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 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 C. 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.

5.3 **Delays.**

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.

**Ownership And Use Of Deliverables. Refer to the Subscription Services Agreement.**

## **SECTION 6. WARRANTIES**

6.1 **Warranty – Price.**

6.1.1 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.

6.2 **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 at least one year from the Contract 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 to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

## **SECTION 7. MISCELLANEOUS**

7.1 **Workforce.**

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



7.1.2 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:

7.1.2.1 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.

7.1.3 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.

7.2 **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.

**Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which is reasonably expected to have a material effect upon the Contractor's ability to meet its contractual obligations.

7.3 **Right To Audit.**

7.3.1 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, any and all 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.

7.3.2 The Contractor shall include this provision in all subcontractor agreements entered into specifically in support of this Contract.

7.4 **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 services hereunder 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.

7.5 **Indemnity.**

7.5.1 Definitions:

7.5.1.1 "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:

7.5.1.1.1 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;

7.5.1.1.2 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),

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

**7.5.2 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.**

7.6 **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:

<p>To the City:</p> <p>City of Austin, Purchasing Office</p> <p>ATTN: Gil Zilkha, Contract Administrator</p> <p>P O Box 1088</p> <p>Austin, TX 78767</p>	<p>To the Contractor:</p> <p>Sungard Availability Services, LP</p> <p>ATTN: Contract Administration, Legal</p> <p>680 E. Swedesford Rd.</p> <p>Wayne, PA 19087</p>
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7.7 **Confidentiality.** In providing or receiving the Services, the City and Contractor may require access to certain of the other Party's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which a Party (the "Disclosing Party") or its licensors consider confidential) (collectively, "Confidential Information"). The Party receiving such information (the "Receiving Party") acknowledges and agrees that the Confidential Information is the valuable property of the Disclosing Party and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information may substantially injure the Disclosing Party and/or its licensors. The Receiving Party (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 Disclosing Party 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 – to the extent permitted - the Receiving Party promptly notifies the Disclosing Party before disclosing such information so as to permit the Disclosing Party reasonable time to seek an appropriate protective order. The Receiving Party agrees to use protective measures no less stringent than the Receiving Party 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.

7.8 **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.

7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

7.13 **Assignment-Delegation.** The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns. 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.

7.14 **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.

7.15 **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, City purchase order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.16 **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.

7.17 **Dispute Resolution.**

7.17.1 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.

7.17.2 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. 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.

7.18 **Subcontractors.**

7.18.1 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract shall be materially consistent the terms of the Contract.

7.18.2 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.19 **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.

7.20 **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.

7.21 **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.

7.22 **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.

7.23 **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.

7.24 **Order of Precedence.** The Contract includes, without limitation, Exhibits A, B and C hereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1. **Exhibit A: Pricing Agreement and SOW**
2. **Exhibit B: Subscription Services Agreement**
3. **This Contract**

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

**Sungard Availability Services, LP**


DocuSigned by:  
By: Scott Barndt  
Signature

Name: Scott Barndt  
Printed Name

Title: VP, Customer Success

Date: January 30, 2017

**CITY OF AUSTIN**

By:   
Signature

Name: Gil Zilkha  
Printed Name

Title: Contract Administrator

Date: 2/2/17

## List of Exhibits

- |           |  |
|-----------|--|
| Exhibit A | Pricing Agreement and Statement of Work        |
| Exhibit B | Support Agreement                              |
| Exhibit C | Non Discrimination Certification, Section 0800 |

**EXHIBIT A**  
**Pricing Agreement and Statement of Work**

**Keeping People and Information Connected  
through a Comprehensive Availability Strategy**

Prepared for: City of Austin Water Utility

Date: 01/01/16





November 10, 2016

Linda Kennedy  
 City of Austin Water Utility  
 2006 East 4<sup>th</sup> Street  
 Austin, TX 78702  
[Linda.kennedy@austintexas.gov](mailto:Linda.kennedy@austintexas.gov)

Dear Ms. Kennedy

It is my pleasure to submit the following proposal for City of Austin Water Utility for the license period April 1, 2016 – March 31, 2017.

With over 30 years of experience and BCMP best practices expertise, Sungard Availability Services maintains its market leading position by providing clients superior software and services to successfully address all aspects of Disaster Recovery and Business Continuity Planning, to help you reduce risk and improve compliance.

Why choose Sungard for your resiliency program?

- Most widely used BC/DR planning software in the industry.
- A pioneer in BC/DR planning software with over 28 years of experience.
- Sungard will provide your team the knowledge transfers and product training so that moving forward you will have the ability to grow a manageable, effective business continuity program on a single platform.
- Sungard software combined with SunGard ISO-20000 certified SSAE-16 compliant data centers.

## PROPOSAL OVERVIEW

The following details our recommended software solution in monthly subscription fees.

Software Product	Scope	Monthly Fee
<b><u>SunGard Assurance Continuity Management Solution</u></b>	<b>Base software maintenance subscription and Web Hosting services</b>	<b>\$2,235 p/m</b>
<b>Users</b>	<b>50 Named Users</b>	<b>Included</b>
<b>Customer Support</b>	<b>24x7x365</b>	<b>Included</b>
<b>Training at Sungard AS Wayne with access to 70 + self-tutorial training videos on Sungard AS Software Portal</b>	<b>Classroom Training, Self-Paced Tutorials,</b>	<b>Included</b> <small>(Travel expenses not included)</small>
<b>Dedicated Customer Success Manager</b>	<b>Increase adoption and program value</b>	<b>Included</b>
<b>Continued LDRPS Support</b>	<b>Co-Use of LDRPS</b>	<b>Included</b>
<b>Term Agreement</b>	<b>1 Year Initial Term with the option of extending the term for (3) 1-year terms (for Assurance Continuity Management only – LDRPS Support NOT included for any time period beyond July 31, 2017)</b>	<b>Included</b>

## SUNGARD AS HOSTING SERVICES

Sungard AS' hosted environment provides an alternative solution to the issues of installation, maintenance, and data backups in-house. The server hardware is purchased, housed, and maintained by Sungard AS at its Data Center, as well as at its remote backup facility. In addition, users and internal IT are relieved of all software installation and maintenance issues – saving valuable time in the set-up and testing process. LDRPS, housed in Sungard AS' hosted environment, offers the following benefits:

- Users always have access to their plans;
- There is no need to purchase hardware, operating systems, or other software required to run the server;
- No installation or maintenance of hardware or software is required;
- Backup and redundant systems are included;
- Operating system upgrades and patches are installed immediately and automatically;
- An organization's important data is completely secure;
- SunGard can troubleshoot database issues quicker and more effectively

## SUNGARD AS SOFTWARE SUPPORT SERVICES

Sungard provides comprehensive support services for our customers that are included with maintenance. They include:

- Unlimited Toll-Free Technical Support during normal business hours Monday – Friday.
- Emergency On-Call is provided during the non-business hours
- FREE Training for an unlimited number of your personnel at our facilities
- Software Updates and Enhancements
- Regional Users Group Meetings
- Sungard AS Customer only Web site (<https://software.mysungardas.com/>) for information exchange, case studies, and Online training

## Training

Sungard AS Software as a Service training is free in Wayne, PA, Scottsdale, AZ and London, England to all clients. Classes are held at least once a month.

## Online Training

Sungard AS offers unlimited use of the self-paced tutorials through our software portal for any customers. These are brief “YouTube” like videos that cover different portions of the product

## User Group Community and Industry Events

Sungard AS offers opportunities for current and future customers to learn about our solutions and the latest industry trends. These opportunities include:

Regional User Groups (RUGs) providing an opportunity to share ideas with other customers and offer feedback for product enhancements  
Trade shows and industry events — go to <https://software.mysungardas.com/> to discover where Sungard AS and its customers will be represented.

Thanks again for the opportunity to present this proposal to you for your consideration. We are available to answer any questions that you may have.

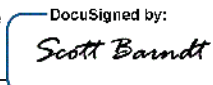
Sincerely,

Ryan Roesler  
Customer Success Manager  
484-582-1399  
[Ryan.roesler@sungardas.com](mailto:Ryan.roesler@sungardas.com)

**EXHIBIT B  
SUBSCRIPTION SERVICES AGREEMENT**

**SUBSCRIPTION SERVICES AGREEMENT**

This Subscription Services Agreement (“**Agreement**”) between City of Austin Water Utility Department (the “**Customer**”) and Sungard Availability Services, LP (“**Sungard AS**”), as signed below by the duly authorized representatives of both Parties intending to be legally bound, is effective as of April 1, 2016 (“**Effective Date**”).

<b>Sungard AS</b>	<b>Customer</b>
<b>Sungard Availability Services, LP</b>	<b>City of Austin Water Utility Department</b>
680 E. Swedesford Road	2006 East 4 <sup>th</sup> Street
Wayne, PA USA	Austin, TX 78702
Name of Signatory Scott Barndt	Name of Signatory
Title   VP, Customer Success	Title
Signature  75F8D8C498B0402...	Signature
Date    January 30, 2017	Date

## GENERAL TERMS AND CONDITIONS

### INTRODUCTION

This Agreement is comprised of the general terms and conditions set forth below and the terms and conditions of a particular service purchased and set forth in an applicable order, schedule and/or exhibit (collectively referred to herein as an "Order"). The services described in an Order are referred to collectively as the "Services". Each Order represents a separate contract and may be signed by Sungard AS and Customer or one or both of their Affiliates, in which case such Affiliate(s) shall be deemed to be "Sungard AS" or "Customer", as applicable, for purposes of the Agreement.

Capitalized terms not otherwise defined will have the meaning given them in the "Definitions" section.

### FEES

- 1.1 As consideration for the Services, Customer will:
- Pay Sungard AS the fees specified in the Order;
  - Reimburse Sungard AS for travel and out-of-pocket expenses that it incurs in performing this Agreement that have been pre-approved in writing or otherwise authorized in an Order by Customer; and
  - Unless Customer provides a valid exemption certificate, be responsible for any tax, tariff, customs duty, surcharge, or other fee imposed by law or regulation from time to time in connection with the Services, which Sungard AS is required to pay to any taxing or other regulatory or municipal authority.
- 1.2 All recurring fees specified in an Order will be invoiced by Sungard AS in advance at the billing address defined in the Order. Payment, whether for Services or reimbursement, which Customer is required to make under this Agreement will be made not later than thirty (30) days after Customer has received Sungard AS' invoice. Past due balances will accrue interest per month at 1.5% or at the maximum applicable statutory rate, whichever is lower.

### CONFIDENTIALITY

- 2.1 Each Party will use the other's Confidential Information solely to perform its obligations under this Agreement. Accordingly, each Party will disclose the other's Confidential Information only to those of its agents, contractors, and employees who need to know the information for purposes of performing this Agreement, *provided that* they are legally bound, in writing, not to disclose the other Party's Confidential Information except as permitted by this Agreement.
- 2.2 Each Party will hold the other Party's Confidential Information in confidence and will take all reasonable security measures to protect the other's Confidential Information against unauthorized disclosure. All Confidential Information transmitted, or made available by Customer to Sungard AS which contains personal information or other sensitive Customer data will be encrypted by Customer so that it is unintelligible before Customer transmits, or makes available, such Confidential Information to Sungard AS.
- 2.3 Each Party will give the other prompt written notice if it learns of any unauthorized use, disclosure, theft, or other loss of the other's Confidential Information; or, to the extent legally permitted, if disclosure of the other's Confidential Information is being sought by legal process.
- 2.4 Customer agrees that as the data controller, it is entitled to transfer its Confidential Information, including relevant personal data to Sungard AS, the data processor, so that it, its Affiliates and third party contractors may process the Confidential Information for purposes of providing the Services under the Agreement.
- 2.5 Customer shall be responsible for maintaining secure and complete back-up of its data, except with respect to any Services provided by Sungard AS that specifically include data back-up.

### WARRANTIES

- 3.1 Sungard AS warrants that it will use qualified personnel, and will perform the Services in accordance with the Agreement and Orders.
- 3.2 OTHER THAN THE EXPLICIT WARRANTIES AND THOSE WHICH CANNOT BE EXCLUDED BY APPLICABLE LAW, AND ANY WARRANTIES SPECIFICALLY PROVIDED IN AN ORDER, SUNGARD AVAILABILITY SERVICES AS PROVIDES THE SERVICES "AS IS," AND DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESSED, IMPLIED AND STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

### TERM & TERMINATION

- 4.1 This Agreement shall continue as long as there is an Order in effect. The term of an Order shall be set forth on the Order (the "Term"), after which it will terminate automatically unless otherwise agreed to in writing between the Parties.
- 4.2 A Party may terminate an Order on no less than five (5) business days' notice if: (a) the other materially breaches it and fails to remedy the breach within thirty (30) days after receiving written notice of it, provided that, if a longer period is reasonably required to remedy the breach and the remedy is promptly begun, such remedy period shall be extended for as long as the remedy is being diligently carried out to completion; or (b) the material breach is of a type which cannot be remedied.

- 4.3 The sections entitled "Warranties", "Indemnities", "Limits of Liability", "Confidentiality" and "General Provisions" will survive expiration or termination of this Agreement or any applicable Order.

### INDEMNITIES

#### 5.1 Sungard AS Indemnity

- Scope.** Sungard AS will defend and indemnify Customer and its Affiliates, employees and agents, and hold them harmless against third-party claims that the Services, as delivered, infringe any Intellectual Property recognized under the applicable law in the jurisdiction in which the Services are being provided, and will pay costs, expenses (including reasonable attorneys' fees), and damages finally awarded against Customer, or settlements agreed, on account of such claims.
- Remedies.** If Customer's use of the Services will be enjoined—or in Sungard AS' opinion is either likely to be enjoined or that a claim, action, proceeding or suit is likely to occur due to the alleged infringing Services—Customer's sole and exclusive remedy will be for Sungard AS to: (i) replace the affected portion of the Services with a substitute that is functionally equivalent in all material aspects and free of any infringement or violation, at no additional fee; (ii) modify the Services so that they will be free of the infringement or violation; or (iii) procure for Customer a license or other right to use the Services, provided that if none of these options is commercially practical, then upon written notice to Customer, Sungard AS may terminate the affected portion of the Services in the applicable Order and Sungard AS will refund to Customer any prepaid fees for such Services that were not yet rendered.
- Exclusions.** No Sungard AS indemnity obligation will extend to an alleged infringement arising out of or relating to (i) Sungard AS' adherence to a design modification, specification of hardware or software, drawing, or written instruction (including, but not limited to Sungard AS' provision of the specific components listed on any Order), which Sungard AS is directed by Customer to follow; (ii) Sungard AS' adherence to instructions to apply Customer's trademark, trade name, or other Customer identification; (iii) software, hardware or data furnished or specifically requested by Customer to Sungard AS for use under this Agreement; (iv) Customer's use of the Services in combination with other products or services, which combination was not installed, recommended, or approved by Sungard AS; or (v) any claim specified as a Customer indemnity obligation.

#### 5.2 Customer Indemnity

- Scope.** To the extent permitted by applicable law, Customer will defend and indemnify Sungard AS and its Affiliates, employees and agents, and hold them harmless, against third-party claims arising out of or relating to: (i) Content; (ii) Customer's improper use of the Services; and (iii) Customer's infringement of Intellectual Property. Customer will pay costs, expenses (including reasonable attorneys' fees), and damages finally awarded against Sungard AS, or settlements agreed, on account of such claims.
- Exclusions.** No Customer indemnity obligation will extend to any claim specified as a Sungard AS indemnity obligation.

- 5.3 **Conditions.** Each Party's indemnity obligations are conditional on the other Party (a) giving prompt written notice after learning of a claim; and (b) providing the indemnifying Party sole control of the defense and settlement of the claim. The indemnified party shall provide all assistance reasonably requested by the other Party and may participate in the defense or settlement at its own expense, but will have no authority to settle a claim or admit liability without the indemnifying party's prior written consent.

### LIMITS OF LIABILITY

- 6.1 **Scope.** Each Party's total liability for all claims arising out of or related to an Order (whether in contract, tort or under any other form of liability as applicable) shall be limited in the aggregate to the total fees paid or payable during the twelve (12) months preceding the incident which gave rise to the claim. If the claim arises within the first twelve (12) months of that Order, the limit will be the aggregate of the total fees scheduled to be paid in that first year of the Order.
- 6.2 AS PART OF THE CONSIDERATION FOR SERVICES PROVIDED BY SUNGARD AVAILABILITY SERVICES AND FOR THE FEES PAID BY CUSTOMER UNDER THE AGREEMENT OR ANY ORDER, EXCEPT FOR THE EXCLUSIONS SET FORTH BELOW IN SECTION 6.3 OR OTHERWISE PROHIBITED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER (WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER FORM OF LIABILITY, AND WHETHER OR NOT THE OTHER PARTY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) FOR: (a) CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES; OR (b) LOST PROFITS, LOSS OF REVENUE, LOSS OR CORRUPTION OF CONTENT, OR BUSINESS INTERRUPTION. THIS DISCLAIMER AND LIMITATION OF LIABILITY ARE MATERIAL INDUCEMENTS FOR THE PARTIES TO ENTER INTO THIS AGREEMENT AND ARE INTENDED TO SURVIVE A FINDING BY A COURT OR ARBITER THAT THE EXCLUSIVE REMEDIES UNDER THIS AGREEMENT OR ANY ORDER FAIL OF THEIR ESSENTIAL PURPOSE.
- 6.3 **Exclusions.** The limitations of liability in Sections 6.1 and 6.2 will not apply to damages claims for:
- Breach of an obligation with respect to confidentiality or publicity, in which case the aggregate direct or consequential liability for all such claims under an Order will not exceed one million United States dollars (\$1 million) or the foreign exchange equivalency;

- (b) Each Party's respective indemnity obligations set forth above in Sections 5.1 (a) and 5.2 (a), in which case the aggregate direct or consequential liability for all such claims under an Order will be unlimited;
- (c) Breach of the other Party's Intellectual Property, in which case the aggregate direct or consequential liability for all such claims under an Order will be unlimited;
- (d) Fees for Services under an Order;
- (e) Bodily injury, death, or damage to real or tangible property caused by a Party's negligence, in which case the aggregate direct liability will be unlimited; or
- (f) Any other damages claims that cannot be limited or excluded under applicable Law.

#### SOFTWARE SERVICES AND SUPPORT

**7.1 Services.** Sungard AS will provide the following in connection with granting Customer access to the software as identified in Part 1 of the Applicable Order ("the System"):

- Remote use of and access to the System and the related standard user documentation (the "Documentation") to perform Customer's continuity planning and critical incident response work via the public Internet;
- Server-based processing services, server-based data storage, and data backup, as further detailed in the applicable Order and in the Services Hosting Guide in the Customer Portal; and
- Upgrades and updates to the System as created and made generally available at no charge to all customers of the Service by Sungard AS.

**7.2 Support.** Sungard AS will provide Support to Customer as follows:

- During the term of an Order, Sungard AS agrees to provide telephone and email technical support 24 x 7, including all Sungard AS-recognized holidays, and a maximum response of one hour in accordance with the support procedures provided at software.mysungardas.com (the "Customer Portal").
- Support includes access to the Services-related Customer Portal following Customer onboarding to the Service.
- Additional Support Services documentation is available on the Customer Portal.

**7.3 Security.** Sungard AS will provide the following security and compliance support:

- Implementation and maintenance of internal audit controls;
- Commercially reasonable safeguards against unauthorized disclosure of Customer Data, including the use of firewalls, user identification and authentication, event logging and reporting, vulnerability scanning, real-time scanning for viruses, data destruction, and prompt application of security patches and virus signature updates;
- Response to and containment of security incidents, including prompt notification of the impact and the action taken where the security incident directly impacts the System
- Enforcement of physical security controls over the System location, including alarm systems, access controls, visitor access procedures, fire suppression, power monitoring, and video surveillance;
- Automatic updating of virus signatures and engine files daily, with on-access scanning of all servers, and all fixed drives scanned for viruses at least once per week during off hours;
- Restriction of administrative access to a minimum per industry standard best practices, prohibiting shared accounts, restrictions on service accounts, and access to the hosted infrastructure by Sungard AS personnel secured through encryption and two-factor authentication;
- Maintenance and results of annual testing of business continuity plans for the data centers where the System resides available to Customer upon request;
- Annual audit reports of the hosting infrastructure using a SSAE 16 Type II audit (or other similar third party audit report) available to Customer; and
- Deletion of Customer Data not otherwise removed by Customer following termination or expiration of the Service upon the earlier of i) Customer request or ii) 60 days following the termination or expiration of the Service.

Additional Detailed Security and Compliance documentation, including Sungard AS' latest documents and certifications, is available via the Customer Portal.

**7.4 Customer Responsibilities:**

- (a) **Customer will:**
  - Provide its own personal computers and access to the Internet;
  - Ensure that any Customer Data which it enters into the System is accurate and complete;
  - Protect its passwords and immediately notify Sungard AS if Customer suspects unauthorized use of a password;
  - Implement internal technical and procedural security measures with respect to the remote access to the System and use of the Service;
  - Provide a service administrator (e.g., a business continuity manager) and a 24-hour technical support contact.
  - With respect to the Assurance<sup>CM</sup> Connect, maintain its IT systems and processes, including the following:
    - Maintaining any run time engine in online status when installed on Customer servers;
    - Maintaining Customer's local environment (e.g., operating system, hardware, network, etc.);
    - Maintaining network connectivity;
    - Performing any necessary endpoint application administration; and
    - Maintaining Customer Data integrity.
- (b) **Customer will not:**
  - Attempt to disable, deactivate, or render ineffective the password protection of the System or access any portion of the System not explicitly authorized herein;
  - Use, copy, or retain any Proprietary Item, as defined below, for any purpose not specifically authorized by this Order;

- Re-engineer, reverse engineer, decompile, disassemble or in any other manner attempt to obtain the proprietary database structure, indices, computer programs, and programming techniques or attempt to disable any security devices or codes incorporated in the Service, translate, modify, adapt, merge or create derivative works of the System or Documentation, except as permitted by Law;
- Remove, erase, tamper with, or fail to preserve any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item;
- Use the Service to compete with Sungard AS or conduct any type of service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any person, whether on a fee basis or otherwise;
- Sell, market, license, sublicense, distribute or otherwise grant to any person other than a Named User any right to use any Proprietary Item, whether on Customer's behalf or otherwise;
- Perform any technical security integrity review, penetration test, load test, denial of service simulation or vulnerability scan of the System;
- Use any software tool designed to automatically emulate the actions of a human user (such tools are commonly referred to as "Robots") in conjunction with the System (provided that, using the System in conjunction with an API or with an application such as Salesforce.com shall not be considered a violation of this obligation); and
- Use the Service to upload, process, or store any sensitive, personal information including personal financial information (such as account numbers, debit or credit card numbers), Social Security Numbers or medical records/information.

In the event that Sungard AS reasonably believes that Customer is in violation of the above use restrictions, Sungard AS will notify Customer and, if such violation is not remedied within 10 business days from the date of Sungard AS's notice to Customer, Sungard AS may suspend Customer's access to the Service. If either party makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, or is subject to appointment of a receiver in any judicial proceeding, the other party may terminate this Agreement if such event is not cured within thirty (30) days after delivery of written notice thereof.

#### OWNERSHIP

- 8.1** This is not an agreement of sale, and title to the System and Documentation, the object code and the source code for the System, the visual expressions, screen formats, report formats and other design features of the System, all ideas, methods, algorithms, business processes, formulae and concepts used in developing and/or incorporated into the System or Documentation, all future modifications, revisions, updates, releases, refinements, improvements and enhancements of the System or Documentation, all adaptations or derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing, and all copies of the foregoing ("Proprietary Items") and any related patent, copyright, trademark, service mark, trade secret, intellectual property, or other ownership rights shall remain exclusively with Sungard AS and its third party licensors. Proprietary Items shall be deemed included in the definition of Intellectual Property.
- 8.2** Customer retains ownership of all its Intellectual Property rights in Customer Data and information provided to Sungard AS during Customer's use of the Service. Customer grants Sungard AS and its communication carriers, colocation providers and software providers ("Service Providers") the right to use the Customer Data solely in connection with its and their provision of the Services.
- 8.3** If the Customer or an end user of Customer is part of the U.S. Government, the Services (and the software underlying the Services) are made available to the U.S. Government as "commercial items" and "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Service as such terms are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

#### GENERAL PROVISIONS

- 9.1 Assignment.** Either Party may assign this Agreement or any part thereof with the other Party's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party not currently under notice of breach may assign this Agreement, in whole or in part, without the other Party's consent, to its affiliate or in connection with a merger, acquisition, divestiture, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 9.2 Choice of Law and Jurisdiction.** This Agreement and each Order shall be governed by the substantive law of the State of Texas without regard to choice or conflict of law rules unless otherwise stated in the Order.
- 9.3 Construction.** The construction and interpretation of this Agreement will be in accordance with its explicit language and excluding the Parties' course of dealing or to usage of trade. The Parties acknowledge that the Agreement and any Order are the result of negotiation between the Parties which are represented by sophisticated counsel and therefore none of the Agreement's or Order's provisions will be construed against the drafter.
- 9.4 Waiver of Jury Trial.** Each Party waives any right to a jury trial in connection with any action arising out of or related to this Agreement or any Order.
- 9.5 Force Majeure.** Neither Party will be liable for a delay or failure in its performance caused by an occurrence beyond its reasonable control.
- 9.6 Entire Agreement.** With respect to the terms and conditions for the Services, this Agreement and the attached Order contains the full understanding between the Parties and supersedes all prior representations or agreements (oral or written) between them.

- 9.7 Modification.** For a modification of this Agreement to be legally binding, it must be specified in writing and signed (either by actual or electronic signature) by both Parties.
- 9.8 Notices.** Notices will be in writing, and shall be deemed to have been given upon: **(a)** personal delivery; **(b)** the second business day after first class mailing; **(c)** the first business day after sending via a reputable overnight carrier; or **(d)** the first business day after sending via email (provided email shall not be sufficient for notices of termination, breach, or an indemnity claim). Notices to Customer will be addressed to the address on the applicable Order. Notices to Sungard AS will be addressed to: 680 E. Swedesford Road, Wayne, PA 19087, USA, Fax: 1-610-225-1125, Email: contract.admin@sungardas.com
- 9.9 Publicity.** Either Party may publicly refer to the other by name as a provider or customer, as applicable, and may disclose the general nature and existence of the Agreement, but not any of its specific terms or performance information. Neither Party will issue a press release regarding the Agreement or the relationship without the other Party's review and written consent.
- 9.10 Regulatory Compliance.** Each Party will comply with all Laws applicable to it under this Agreement and any Order, including, but not limited to Laws related to data privacy, data protection, anti-corruption and export control.
- 9.11 Relationship of the Parties.** Customer and Sungard AS are independent contractors. Nothing in this Agreement creates, or is intended to create, an agency, employment, franchise, joint venture, or partnership relationship between the Parties. Each Party represents that it, its employees or agents have not received nor offered any illegal or improper bribe, kickback, payment, gift, or thing of material value from the other Party, its employees or agent in connection with the execution of the Agreement or any Order. If either Party learns of any violation of the above restriction, it will provide prompt notice to the other Party.
- 9.12 Enforcement.** Each Party acknowledges that the provisions of this Agreement regarding confidentiality and access to and use of the other Party's resources are reasonable and necessary to protect the other party's legitimate business interests and that any breach of such provisions shall result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach of such provisions, then the injured Party shall be entitled, in addition to all other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. The existence of any claim or cause of action that a Party (or any other person involved in the breach) may have against the other Party shall not constitute a defense or bar to the enforcement of such provisions.
- 9.13 Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.
- 9.14 Subcontractors.** Sungard AS will have the right to use subcontractors to perform any part of the Services, provided that **(a)** each subcontractor is legally bound by terms and conditions on Confidential Information substantially similar to those specified in this Agreement; and **(b)** Sungard AS remains primarily liable to Customer for all work performed by subcontractors.
- 9.15 Third-Party Beneficiary.** There are no third party beneficiaries to this Agreement, except Affiliates where expressly stated.
- 9.16 Waiver.** No waiver will be effective unless made explicit and in writing. Waiver of one breach will not constitute waiver of any other breach.
- 9.17 Counterparts and Originals.** This Agreement and Orders hereto may be executed and delivered in two or more counterparts, each of which when so executed and delivered will be deemed an original, but all of which together will constitute one and the same instrument. Once signed by an authorized signatory of a party, any reproduction of the original signature (i.e. facsimile, electronic scan, photocopy) or application of a digital signature made by a reliable means will be considered an original.

## DEFINITIONS

- "Affiliate"** of a party means any entity that controls, is controlled by or is under common control with such party and is providing or receiving the Services.
- "Confidential Information"** means a disclosing Party's proprietary or non-public information, including, but not limited to a Party's Intellectual Property, the terms of this Agreement or any Order, and the Services. It does not include information **(a)** lawfully received from third parties without confidentiality obligations to the disclosing Party; **(b)** in the public domain; or **(c)** developed without reliance on the non-disclosing Party's Confidential Information.
- "Customer Data"** employee, asset, vendor and similar data, files, designs, specifications, or other materials that Customer enters into the Service.
- "Content"** means Customer or third party data and other information provided by or through Customer to Sungard AS.
- "Intellectual Property"** means the copyrights, trademarks, patents, trade secrets and other intangible assets pertaining to the creative works, inventions and ideas of a Party or a third party.
- "Law"** means the applicable law, treaty or regulation applicable to the Services or subject matter at issue.
- "Party"** may refer to Sungard AS or Customer or their Affiliates, as applicable, and collectively they may be referred to as the **"Parties"**.

**Order Number 1-A**  
**For Services Governed by the Subscription Services Agreement**  
**between Sungard Availability Services, LP ("Sungard AS") and City of Austin Water Utility Department Dated April 1, 2016**  
**(the "Agreement")**

**Part 1**  
**SUMMARY OF SERVICES AND FEES**

This is a new Order having a Term of 12 months with a commencement date of April 1, 2016.

Subscription Service <sup>1</sup>	Assurance <sup>CM</sup> Platform
Scope of Use	
Number of Users	50 Assurance <sup>CM</sup> Named Users <sup>2</sup> Additional Named Users may be added at \$10 per Named User/month
Additional Options:	
User Acceptance testing – Database Instance	No

<sup>1</sup> One production database instance is included with the Service

<sup>2</sup> "Named User" means an individual who is authorized by Customer, by being given a unique login identification and password, to access/use the Service for the purpose of performing Customer's continuity planning and critical incident response work. A Named User may be transferred to another individual with a different unique log on identification and/or password.

**Requested Company Identifier: austinwater**

Access to the service is provided with a custom URL, in the format 'https://assurance.sungardas.com/XYZCompany' where 'XYZCompany' is the customer selected company identifier.

(Identifier must be fewer than 20 characters and contain only A-Z, a-z, 0-9, -, \_) Should Customer choice be unavailable, Sungard AS will contact Customer for alternatives.

**BILLING SCHEDULE**

Invoice From:	Fee Schedule:
04/01/2016      Annual Subscription Fee	USD \$26,820 (to be invoiced annually)

**Note: The Annual Subscription Fee for each Service is invoiced in advance and due pursuant to the terms of the SUBSCRIPTION SERVICES AGREEMENT. Following the initial Term, Sungard AS reserves the right to increase the Annual Subscription Fee upon written notice to Customer; provided any such increase will not exceed 5% per annum.**

**CUSTOMER INFORMATION**

<b>CUSTOMER ADMINISTRATOR ADDRESS (USED TO SETUP CUSTOMER'S ADMINISTRATOR USER ID)</b> :	2006 East 4th Street Austin, TX 78702 Linda Kennedy <a href="mailto:linda.kennedy@austintexas.gov">linda.kennedy@austintexas.gov</a>
<b>CUSTOMER NOTIFICATION ADDRESS</b> :	2006 East 4th Street Austin, TX 78702 Linda Kennedy <a href="mailto:linda.kennedy@austintexas.gov">linda.kennedy@austintexas.gov</a>
<b>CUSTOMER BILLING ADDRESS</b>	City of Austin Department Communication Technology Management or (CTM) Attn: Accounts Payable Email Address <a href="mailto:CTMAPInvoices@austintexas.gov">CTMAPInvoices@austintexas.gov</a> Mailing Address PO Box 1088 City, State, Zip Code Austin, TX 78767

By the signatures of their duly authorized representatives below, Sungard AS and Customer, intending to be legally bound, agree to all of the provisions of this Order and ratify the terms of the Agreement.

**SUNGARD AVAILABILITY SERVICES, LP**

DocuSigned by:  
 BY: Scott Barndt  
 PRINT NAME: Scott Barndt  
 PRINT TITLE: VP, Customer Success  
 DATE SIGNED: January 31, 2017

**CITY OF AUSTIN WATER UTILITY DEPARTMENT**

BY: \_\_\_\_\_  
 PRINT NAME: \_\_\_\_\_  
 PRINT TITLE: \_\_\_\_\_  
 DATE SIGNED: \_\_\_\_\_

**PART 2  
SERVICE DESCRIPTIONS**

**A. Software Services – Additional Options**

If identified on the first page of the Order, Sungard AS will provide a separate User Acceptance Testing database instance which Customer may use for internal training or functionality testing purposes.

**PART 3  
SERVICE LEVEL AGREEMENT (“SLA”)**

<b>System Availability</b>
<u>Agreement.</u> The System will allow Named Users to login to the System and access data over the public Internet 100% of the time each month. The System is deemed available if it is responsive to standard ICMP or SNMP requests.
<u>Remedy.</u> If Sungard AS fails to meet the System Availability SLA for 2 months in any 3 consecutive month period, Sungard AS will credit Customer 10% of 1/12 <sup>th</sup> of the Annual Fee for each month in which the failure occurred.
<b>Latency</b>
<u>Agreement.</u> The average round trip latency between any 2 agents within Sungard AS' Internet protocol network will not exceed an average of 75 milliseconds during any calendar month. Latency is measured by averaging sample measurements taken during the prior calendar month between agents on Sungard AS' Internet protocol network. Sungard AS records the packet measurement based on the time in milliseconds that it takes to send a data packet and to receive the acknowledgement of that data packet.
<u>Remedy.</u> If Sungard AS fails to meet the Latency SLA, then Customer is entitled to a credit of 3% of the 1/12 <sup>th</sup> of the Annual Fee for each month in which the failure occurred.
<b>Packet Delivery</b>
<u>Agreement.</u> Packets will be successfully delivered through Sungard AS' Internet Protocol network 99.99%. Unsuccessful "Packet Delivery" is packets dropped due to transmission errors or router overload before exiting the Sungard AS Internet protocol network, as measured by the number of re-transmitted data packet requests.
<u>Remedy.</u> If Sungard AS fails to meet the Packet Delivery SLA, then Customer is entitled to a credit of 3% of the 1/12 <sup>th</sup> of the Annual Fee for each month in the failure occurred.
<b>Business Continuity - Time to Recover System (RTO)</b>
<u>Agreement.</u> The System will be recovered and available for Customer use within 1 hour of activation of the Sungard AS Business Continuity Plan.
<u>Remedy.</u> If Sungard AS fails to meet the Business Continuity – Time to Recover System SLA, then Customer is entitled to a credit of 10% of the 1/12 <sup>th</sup> of the Annual Fee for the month in which the failure occurred.
<b>Business Continuity - Recovery Point Objective (RPO)</b>
<u>Agreement.</u> The data recovered to the System will be the version of data existing no more than 15 minutes prior to the time of the System failure.
<u>Remedy.</u> If Sungard AS fails to meet the Business Continuity – Recovery Point Objective SLA, then Customer is entitled to a credit of 3% of the 1/12 <sup>th</sup> of the Annual Fee for each month in which the failure occurred.
<b>SLA's General</b>
Customer must provide Sungard AS with notice of entitlement to an SLA credit within 30 days after the end of the month in which the SLA violation occurred.
If Sungard AS fails to meet the same SLA 3 times within any 12 month period, Customer may terminate the Order by providing Sungard AS advance written notice no later than 60 days following the third SLA failure.
If Sungard AS fails to meet an SLA, Customer is entitled to receive the applicable credit as Customer's sole monetary remedy.
In no event will the total credits for any occurrence exceed 1/12 <sup>th</sup> of the Order's Annual Fee for the month in which the SLA was not met.
Credits and termination rights accrue solely with respect to the root or primary SLA failure and not for SLA failures that occur as a result of a root or primary SLA failure.
Sungard AS will not be responsible for the failure to meet an SLA if the failure is caused by: <ul style="list-style-type: none"> <li>• A breach of the Subscription Services Agreement by Customer, its employees, subcontractors or agents ("Customer Representatives");</li> <li>• The negligence or intentional acts or omissions of Customer or Customer Representatives (including Customer retention of root or admin access and changes to data or configurations); or</li> <li>• Scheduled maintenance (including upgrades patches, repair or component replacement or scheduled backups) or other mutually agreed-to downtime.</li> </ul>



**EXHIBIT C**  
**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 \_\_\_\_\_ day of January 31, 2017, \_\_\_\_\_

CONTRACTOR  
Authorized  
Signature  
  
Title

Scott Barndt  
\_\_\_\_\_  
DocuSigned by:  
*Scott Barndt*  
\_\_\_\_\_  
75F8D8C498B0402...  
VP, Customer Success  
\_\_\_\_\_



# City of Austin FSD Purchasing Office

## Certificate of Exemption

DATE: 10/11/2016 DEPT: Austin Water  
TO: Purchasing Officer or Designee FROM: Greg Meszaros  
BUYER: Jim Howard PHONE: (512) 972-0108

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

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- 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 cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- 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.

SunGard Availability Services business continuity planning software is used to inform and protect Austin Water during emergencies or disasters. This software has been used since April 2012 at Austin Water to store crucial information to help the utility perform during a disaster. This is a renewal of that software. Interruption in this software solution would mean starting the Continuation of Operations Planning COOP process from start and put the utility in serious risk if an emergency happened in the meantime.

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).

Austin Water tried to use Dept of Information Resource contract but Sungard dissolved that relationship

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with SunGard Availability Services which will cost approximately \$ 26,820.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

[Signature] 11/15/16  
Originator Date

Approved  
Certification

[Signature] 11/16/2016  
Department Director or designee Date

[Signature] 12/1  
Assistant City Manager / General Manager Date  
or designee (if applicable)

Purchasing Review  
(if applicable)

\_\_\_\_\_  
Buyer Date Manager Initials

Exemption Authorized  
(if applicable)

\_\_\_\_\_  
Purchasing Officer or designee Date

02/26/2013



October 17, 2016

Linda Kennedy  
City of Austin Water Utility  
2006 East 4<sup>th</sup> Street  
Austin, TX 78702

Dear Ms. Kennedy:

This is to certify that Sungard Availability Services, LP (Sungard AS) is the sole producer of Assurance Continuity Management & LDRPS business continuity planning software and their attendant support and maintenance services.

Both products were designed and developed by Sungard AS and are sold and supported by Sungard AS.

Sungard AS is the sole source for maintenance and support services in the United States.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Cerciello', written in a cursive style.

John Cerciello  
Executive Vice President, NA Sales  
Sungard Availability Services  
680 E Swedesford Rd  
Wayne, PA 19381

