

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Eaton Corporation
For
Maintenance and Repair**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Eaton Corporation ("Contractor"), having offices at Eaton Center, 1000 Eaton Blvd., Cleveland, OH 44122.

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 Contractor's Service Agreement T-0, and the Terms and Conditions contained herein supplementing, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Taurean Pernicka, Phone: (512) 244-8050, Email Address: TaureanPernicka@eaton.com. The City's Contract Manager for the engagement shall be Arletha Guerrero, Phone: (512) 927-3262, Email Address: Arletha.Guerrero@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

SECTION 3. COMPENSATION

3.1 **Contract Amount.** 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 \$4,314.25 for the initial term, \$4,967.90 for the first extension, \$4,967.90 for the second extension, and \$4,967.90 for the third extension, for a total estimated contract amount not to exceed \$19,217.95 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
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

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

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

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

3.3 Payment.

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

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 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.

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

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

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

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

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

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

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

3.6.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 9 months and may be extended thereafter for up to 3 additional 12 month periods, subject to 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).

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period cure such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that Contractor has commenced to

cure the default or such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may purchase similar replacement goods or services. Contractor shall reimburse the City for the direct and reasonable costs of re-procuring such similar replacement goods or services over the original Purchase Order price.

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

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

SECTION 5. OTHER DELIVERABLES

5.1 **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 B. 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 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 **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. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate

the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

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

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

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

5.5.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the

termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

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

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

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

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

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

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

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

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

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the

City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of 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 might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract with the exception of Contractor proprietary cost or financial data or information. 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.

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

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

7.7 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt

of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Eaton Corporation

ATTN: Contract Manager

Eaton Center, 1000 Eaton Blvd.

Cleveland, OH 44122

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

7.10 **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.

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

7.12 **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.

7.13 **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.

7.14 **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.

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

7.16 **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.

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

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

7.19 **Dispute Resolution.**

7.19.1 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.

7.19.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.20 **Subcontractors.**

7.20.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.20.2 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 may not conflict with the terms of the Contract, and shall contain provisions that:

7.20.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.20.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.20.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.20.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.20.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.20.3 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.

7.20.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

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

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

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

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

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

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

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

7.26 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

- 7.26.1 any exceptions to the Offer accepted in writing by the City;
- 7.26.2 the Supplemental Purchase Terms and Conditions;
- 7.26.3 the Standard Purchase Terms and Conditions;
- 7.26.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

7.27 All other terms and conditions are in accordance with Contractor's Service Agreement T-0, attached hereto.

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

Eaton Corporation		CITY OF AUSTIN
By: _____ Signature	Digitally signed by Del Misenheimer DN: cn=Del Misenheimer, o=Eaton - Power Quality Division, ou=SVP/GM, email=Delmisenh eimer@eaton.com , c=US Date: 2016.08.04 13:35:05 -04'00'	By: _____ Signature
Name: _____ Printed Name		Name: <u>Gil Zilkha</u> Printed Name
Title: _____ <i>Del Misenheimer</i>		Title: <u>Contract Administrator</u>
Date: _____		Date: <u>8/23/16</u>

List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Service Agreement
Exhibit C	Non Discrimination Certification, Section 0800

**EXHIBIT A
Pricing Agreement**

Eaton UPS Service Cart: 178267
 Cart Date: 03/25/2016
 (Effective until 05/09/2016)

Taurean Pernicka, Service Sales Representative
 Eaton Corporation
 4616 West Howard Lane
 Austin, TX 78728
 512-695-7310
 Email: TaureanPernicka@Eaton.com

Prepared For:	For Covered Equipment at Site:
Billing Contact: David Farries, Billing Company: Regional Radio System (RSS) 5010 Old Manor Road Austin, TX 78723 512-294-6879 Email: David.Farries@austintexas.gov	Site Contact: David Farries, Site Company: Regional Radio System (RSS) 5010 Old Manor Road Austin, TX 78723 512-294-6879 Email: David.Farries@austintexas.gov

We are pleased to provide the following services proposal for your power quality equipment. Please refer to the Scopes of Work (SOW) for descriptions of service coverage and exclusions. Eaton Corporation terms and conditions (Eaton Corp. Service Agreement T-0 attachment) govern this proposal, and any purchase order submitted to Eaton pursuant thereto. Additional or different terms proposed by Buyer, whether in its purchase order or otherwise, shall not be binding upon Eaton Corporation and are hereby rejected unless expressly agreed to in writing by Eaton Corporation.

Serial Number	New/Renewal	Model Description	Battery Type, Quantity	Coverage Type
EV481ZBA03	N	9315-30-50	VRLA Sealed, 40	Flexible

Quantity 1, Eaton 9315-30-50, VRLA Sealed, 40

Coverage Start Date: 4/1/2016 Coverage End Date: 12/31/2019 Term: 3 Years 9 Months

	Unit List Price	Unit Net Price	Extended Net Price
Flex: 4 Hr Rsp, 7x24 Cvg, PredictPulse (FL47NEXX-0050)	\$14,214.22	\$9,949.95	\$9,949.95
• After Hours (7x24) w/ Parts&Labor			
• 4 HR Response Time			
• eNotify Remote Monitoring			
• 4x per term: UPS Preventive Maintenance, After Hours (7x24) (0005NXXX-0050)	\$5,880.00	\$4,116.00	\$4,116.00
• 8x per term: Sealed Battery Preventive Maintenance, Any Time (0005NSXX040)	\$7,360.00	\$5,152.00	\$5,152.00
• EOSL Status Active			

Supporting Documents: T-0, X-1, R-2, R-5, R-30, R-32, R-10

9315-30-50 Total Price: \$27,454.22 \$19,217.95 \$19,217.95

Site Location	Model	Serial Number	Quantity	
Regional Radio System (RSS)	9315-30-50	EV481ZBA03	1	\$19,217.95
Subtotal:			1	\$19,217.95

	List Price	Net Price

Grand Total Price:	\$27,454.22	\$19,217.95
Dollars Saved¹:	\$8,236.27	

Annual Payment Breakdown

Year 1 (4/1/16-12/31/16) = \$4,314.25

Year 2 (1/1/17-12/31/17) = \$4,967.90

Year 3 (1/1/18-12/31/18) = \$4,967.90

Year 4 (1/1/19-12/31/19) = \$4,967.90

- Contract Payment Terms: Net 30 days, Billing Cycle: Annual
- Important Tax Notice: Tax is not included in the above purchase price. All orders will be subject to all applicable sales tax unless a current tax exemption certificate is on file covering the state shown in the ship-to address or service equipment location.
- To purchase (renew) your service contract, please sign and date below. Return all attachments with purchase order to: Eaton Corporation, 8609 Six Forks Road, Raleigh, NC 27615, Tel 800/843-9433, Fax 800/228-1899.
- Make Payments to: Eaton Corporation, PO Box 93531, Chicago, IL 60673-3531

IMPORTANT

- We do **NOT** require a PO. If you issue a PURCHASE ORDER IT MUST BE MADE OUT TO EATON CORPORATION and YOU MUST REFERENCE PROPOSAL # 178267.
- YOU MAY ALSO JUST SIGN THE CONTRACT. We DO NOT require a PO.

Accepted By:	Name	Title	Date	Purchase Order Number
Print Name:				

**PLEASE PROVIDE MONTH(S) DURING WHICH YOU WOULD PREFER TO HAVE PM(S) PERFORMED:
 Otherwise they will be scheduled 120 days from the start date of the contract.**

UPS PM: _____ - _____ - _____

BATTERY PM: _____ - _____ - _____

Please note (above) the month that you would prefer to have PM(s) performed. If you do not have a preference it will be scheduled out to approximately 120 days after the contract start date. If you do not receive a call to schedule the PM please call the 24 Hour Eaton Customer Response Center at 1-800-843-9433, Press Option #1 and then Option #2. Please allow 2 – 3 week notice when scheduling PM, 3 – 4 weeks if PM must be performed on a weekend.

In the event of an emergency or technical support assistance is required please contact the 24 Hour Eaton Customer Response Center at 1-800-843-9433, Press Option #1 and then Option #1 again.

EXHIBIT B
Service Agreement

EATON CORPORATION
SERVICE AGREEMENT – TERMS AND CONDITIONS (T-0)

~~**TERMS AND CONDITIONS:** The terms and conditions set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the contract for the sale of UPS services by Eaton Corporation, and supersede all prior quotations, purchase orders, correspondence or communications whether written or oral between Eaton Corporation and the customer. Notwithstanding any contrary language in the customer's purchase order, correspondence or other form of acknowledgment, customer shall be bound by these terms and conditions when it sends a purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Eaton Corporation of the products or services. THE CONTRACT FOR SALE OF SERVICES IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS STATED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CUSTOMER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY CONTRACTOR. No contract shall exist except as herein provided.~~

1. **DEFINITIONS:** As used in this Service Agreement, the terms listed below shall have the following meanings:
 - "Agreement" shall mean Eaton Corporation's Service Agreement Terms and Conditions, the quote, and the applicable Scope(s) of Work."
 - "Battery" shall mean the electric storage portion of a UPS.
 - "Contractor" shall mean Eaton Corporation.
 - "Covered Equipment" shall mean the equipment as listed on the quote.
 - "CPM" shall mean the Contracted Period of Maintenance or Hours of Service.
 - "Customer" shall mean the purchaser of this Agreement.
 - "Drop Ship Items" shall mean batteries, battery monitoring systems, battery containment, battery materials, racks and cabinets.
 - "Emergency Service" shall mean all services provided on an as needed basis that is not scheduled in advance
 - "PCS" shall mean Pre-Contract Survey.
 - "On-Site" shall mean Service performed at Customer's physical location as listed on the quote.
 - "Power Module" shall mean the electronic portion of a UPS or other power quality device.
 - "Scope of Work" shall mean the services, procedures, methods, exclusions and coverage as purchased by the Customer
 - "Service" shall mean installation, maintenance (including Preventive Maintenance as defined in Scope of Work Attachment R-2), repair, inspection, adjustment, and remote monitoring services (including the PredictPulse Service as defined in Scope of Work, Attachment R-32) performed on the Covered Equipment by Contractor or otherwise provided by Contractor in connection with the Covered Equipment.
 - "UPS" shall mean Uninterruptible Power Supply which is comprised of the Power Module and Batteries.

2. **ELIGIBILITY:** All Covered Equipment that has experienced a lapse in Service coverage with the Contractor (or factory warranty coverage) or has had no service history with Contractor within the previous ninety (90) days, is subject to a PCS inspection by Contractor prior to eligibility for any Service under this Agreement. Customer is subject to charges for a PCS inspection at Contractor's then current Time and Material Service Rate Schedule (refer to Exhibit 1-PCS and Attachment X-1). If a PCS inspection is required for eligibility, a list of the equipment requiring a PCS inspection will be provided to Customer and will be incorporated into this Agreement.

3. **HOURS OF SERVICE:** Contractor will provide scheduled and emergency services portal-to-portal 8:00AM to 5:00 PM Monday-Friday (alternatively described as "5X8 Service") excluding all holidays observed by Contractor. The Customer may optionally purchase extended hours of scheduled and Emergency Service coverage (alternately described as "7x24 Service") which will include Emergency Service being provided on all holidays observed by Contractor. Notwithstanding anything herein or otherwise to the contrary, scheduled services are not available on Contractor's observed holidays. Contractor's observed holidays shall be the same as public holidays for Federal employees as established by U.S. Federal law (5 U.S.C. 6103).

4. **ON-SITE RESPONSE TIME:** Following Customer's request for Service, Contractor will arrive at the location of the Covered Equipment the next business day or if optionally purchased by Customer, Contractor will arrive at the

location of the Covered Equipment within eight (8), four (4) or two (2) CPM hours, provided the Covered Equipment is located within one hundred (100) miles of a Contractor service location. Response time does not include battery replacement service.

5. **LABOR AND MATERIAL RATES:** For any additional Service outside the Scope(s) of Work purchased for Covered Equipment under this Agreement, Customer shall be billed at Contractor's then current Time and Material Rate Schedule (refer to Attachment X-1). This excludes any flat-rate quoted by Contractor representative.

6. **ENGINEERING CHANGES:** All engineering changes deemed necessary by Contractor will be installed during scheduled Service visits during the CPM. Any engineering changes deemed optional by Contractor will be offered to Customer on an as-available, per charge basis.

7. **CUSTOMER'S RESPONSIBILITY:**

A. Communication and Scheduling - Customer shall contact Contractor's Customer Reliability Center (1-800-843-9433) regarding all Service and Preventive Maintenance requests and all other matters arising out of or relating to this Agreement. With respect to Preventive Maintenance purchased by Customer, it shall be Customer's responsibility to contact Contractor to schedule the Preventive Maintenance. In the event that Customer fails to schedule and/or does not permit, for any reason, Preventive Maintenance to be completed within ninety (90) days of the scheduled service date, Contractor's obligation for that Preventive Maintenance shall be considered fulfilled.

B. Movement - If Covered Equipment is moved to another location within the United States, Service coverage will continue only upon the following conditions: (i) Customer shall notify Contractor in writing at least thirty (30) days in advance of power-down of Covered Equipment; (ii) Contractor reserves the right to supervise the power-down, disconnection, rigging, packing, movement, unpacking, reinstallation and re-start of the Covered Equipment for which Customer will be charged according to Contractor's then current Time and Material Service Rate Schedule; and (iii) resumption of Service coverage under this Agreement is subject to acceptance by Contractor of Covered Equipment at the new location.

C. Safety - Customer shall, at all times during the provision of Service hereunder, have a representative present at the Service site at no cost to, and solely for, the safety of Contractor.

D. Access - Customer shall grant ready access to the Covered Equipment, subject to reasonable security requirements, so that Contractor may perform Service under this Agreement.

~~8. **TERM AND TERMINATION:** This Agreement and all that is stated herein shall automatically be renewed for successive twelve (12) month periods at the prices in effect at the time of each renewal. Customer will be provided written notice of renewal of the Agreement sixty (60) days prior to its expiration, stating the prices for the applicable renewal term. In the event Customer elects not to renew this Agreement, Customer shall provide thirty (30) days written notice prior to the expiration of this Agreement. Notwithstanding the foregoing, Customer or Contractor may terminate this Agreement at any time upon thirty (30) days written notice to the other, subject to Section 16 herein.~~

BATTERY REPLACEMENT SERVICES AND TERMINATION: Prices stated in a quote do not include installation, freight, and handling charges unless these items are specifically listed and priced in the quote. Prices stated in a quote are F.O.B. factory (unless otherwise stated) and title and risk of loss to each article sold by Contractor to Customer shall pass to Customer upon delivery at the F.O.B. point.

Shipment estimates are after receipt of Customer's purchase order at the factory. If drawings are required for approval before Contractor is authorized to proceed with manufacture, then shipment estimates are after receipt of written approval to proceed. If the Customer cannot accept delivery of equipment, Customer will arrange for storage. Contractor shall not be liable or responsible for any damages or loss for delay or default in delivery due to any cause beyond Contractor's reasonable control, nor shall Customer cancel or have the right to cancel its purchase order because of delays or default in delivery due to such causes.

~~Customer may not cancel or terminate its purchase order without prior written notice to the Contractor and upon payment of cancellation charges which shall take into account, among other things, expenses already incurred and commitments made by the Contractor. Cancellation charges are as follows: for batteries and Drop Ship Items, cancellation 31 days or more prior to shipment, 50% of the total invoice; between 0-30 days prior to shipment, 100% of the total invoice. Changes made to an order may be subject to increase or decrease in purchase order amount, change order charges, and changes in schedule date. Customer is responsible for return freight charges related to cancellation.~~

9. **END OF SERVICE LIFE ("EOSL")/BEST EFFORTS:** Contractor may designate a Power Module as "End of Service Life/Best Efforts" which shall mean that limited parts are available or Service will be provided on a best efforts basis. This designation will be indicated on the quote provided to Customer for Service renewal. In the event that Contractor cannot perform or complete a covered repair, Contractor may terminate coverage subject to Section 8 herein. Customer may request a pro-rated refund for the terminated portion of this Agreement, subject to Section 16 herein. Customer acknowledges EOSL/Best Efforts designation on the quote will serve as Contractor's notice of limited service support and its recommendation to replace or decommission the Power Module.

10. **INSURANCE:** During the term of this Agreement, Contractor, at its own cost and expense, shall maintain in full force and effect the following insurance with sound and reputable insurers: (1) worker's compensation insurance in accordance with the statutory requirements of the state where the Service is to be performed; (2) automobile liability insurance on all motor vehicles licensed for highway use, both owned and non-owned; and (3) commercial general liability insurance for bodily injury and property damage.

11. **WARRANTY:** Contractor shall perform all Service in a professional and workmanlike manner. Contractor warrants repairing or replacing defective parts or materials and correcting defective workmanship reported to Contractor and/or diagnosed by Contractor's personnel during the term of this Agreement. Contractor warrants its corrective maintenance and replacement parts to be free from defects in material and workmanship for the term of this Agreement or for a period of ninety (90) days from the completion date of the repair or replacement of parts or materials, whichever is longer. In the event the parts or materials fail to meet published specifications due to a defect in parts or materials or workmanship covered by this Warranty, Contractor, at its discretion, will repair or replace the warranted parts or materials at no cost to Customer. This Warranty shall not apply to any Power Module and/or Battery that has been: (i) subject to damage caused by accident, fire, flood, lightning, vandalism, acts of God, Customer's neglect, misuse, misapplication, incorrect connection or external damage; (ii) subject to repair or alteration by Customer (or a third party) not authorized by Contractor in writing; or (iii) moved without thirty (30) days' notice to Contractor. Contractor reserves the right to supervise the move. THIS WARRANTY IS EXCLUSIVE EXCEPT FOR WARRANTY OF TITLE. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE CONTRACTOR'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR FAILURE OF CONTRACTOR TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CLAIMS OF CUSTOMER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. Parts or materials supplied, but not manufactured by Contractor, are warranted solely by the manufacturer. Contractor's obligation under this Warranty is conditioned upon receipt of all payments due from Customer.

12. **ASSIGNMENT:** Neither party shall assign this Agreement or any of its rights and interests herein without the prior written consent of the other party. Notwithstanding anything in this Agreement or otherwise to the contrary, upon written notice to the other party, either party may assign this Agreement or any of its rights and interests herein to: (i) any parent, subsidiary, affiliated or successor corporation; or the purchaser of any of these entities; (ii) any corporation to which the party has sold all or substantially all of its assets (including the purchaser of any of the party's subsidiaries); or (iii) any corporation or legal entity with which the party may merge or consolidate.

~~13. **SUBCONTRACTING:** Contractor reserves the right to subcontract any portion of Service provided for under this Agreement without the prior consent of Customer.~~

14. **INDEMNITY:** Subject to Section 15 herein, Contractor shall defend, indemnify and hold harmless Customer, its officers, employees and agents (Indemnified Parties), from and against any and all claims, liabilities, damages, demands, losses, causes of action and suits brought against the Indemnified Parties, to the extent they result directly from or out of (1) bodily injury to or death of any person or damage to or destruction of any property caused by the negligent acts, errors, omissions or willful misconduct of Contractor, its agents or employees, and (2) any violation of federal or state law, regulation, order, rule or of any other governmental authority having jurisdiction by Contractor, its employees or agents, while Contractor is performing work on site.

15. **LIABILITY:** The remedies of the Customer set forth in this Agreement are exclusive and are its sole remedies for any failure of Contractor to comply with its obligations hereunder. Notwithstanding anything in this Agreement or otherwise to the contrary, in no event shall Contractor or Customer, or their respective officers, directors, employees or agents be liable to the other for damage to property or equipment, other than to equipment sold or

serviced hereunder, or any incidental, indirect, special or consequential damages, such as, but not limited to, delay damages, lost profits or revenue, lost data, loss of use or lost opportunity damages, resulting from or in connection with any claim or cause of action, whether brought in contract or in tort, even if Contractor or Customer knew or should have known of the possibility of such damages. The total cumulative liability of Contractor arising from or related to this Agreement whether the claims are based in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product or services on which such liability is based.

16. **PAYMENT:** All payments are due net thirty (30) days in full from date of invoice. Customer shall be invoiced for, and shall pay for, all Service not expressly provided for by the terms hereof, such as, but not limited to, site calls involving no-fault found inspections where no corrective maintenance was required. If any payment is not made when due, Contractor reserves the right to refuse to provide any further Service until such payment has been received. Customer shall be liable for expenses, including reasonable attorneys' fees, associated with collection proceedings for non-payment. In the event of early termination: i) Customer will be liable for any Service rendered to the reasonable satisfaction of Customer prior to the effective date of termination; and ii) Contractor, at its discretion, will provide a credit against any advance payments received as follows: a) a pro-rated amount based on the terminated portion of the fixed-price fee due Contractor; or b) an amount based on the difference between the amount paid by Customer prior to the effective date of early termination and the actual cost of Service completed (including emergency repair calls) by Contractor prior to the effective date of early termination.

17. **TAX:** Contractor's price is exclusive of any applicable tax. All orders will be subject to all applicable sales tax unless a current tax exemption certificate is on file with Contractor covering the state where Covered Equipment under this Agreement is located.

18. **PARTS:** Unless otherwise agreed to by the parties in writing, all parts removed for replacement shall be Contractor's property. Parts used from Customer-owned spare parts kit shall be replaced by Contractor at no cost. Replacement parts shall be new or of the same quality as new.

19. **FORCE MAJEURE:** Contractor shall not be liable for any failure to perform, or delay in performing Service for Customer to the extent that such failure or delay results from causes beyond its reasonable control including, without any limitation, any act of God, war, revolution, riot, civil commotion, labor strike or any applicable governmental or judicial law or regulation, order or decree.

20. **INFORMATION:** All information of Customer shall be deemed non-confidential and Contractor will be under no duty of non-disclosure unless both parties execute a mutual non-disclosure agreement.

21. **GENERAL:** The terms and conditions of this Agreement cannot be modified or waived except by a writing signed by the parties hereto and waiver by Contractor or Customer of any provision hereof in any one instance shall not constitute a waiver as to any other instance. If a provision of this Agreement is invalidated for any reason, this Agreement remains binding except for such invalid provision. ~~This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina. Customer and Contractor hereby agree that all disputes arising out of this Agreement shall be submitted solely to the jurisdiction of the state and federal courts located in Wake County, North Carolina.~~

Eaton is a trademark of Eaton Corporation.

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.

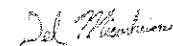
Term:

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 _____, _____

CONTRACTOR

Authorized
Signature



Title _____

Digitally signed by Del Misenheimer
DN: cn=Del Misenheimer, o=Eaton - Power Quality Division, ou=SVP/ GM, email=Delmisenheimer@eaton.com, c=US
Date: 2016.08.22 14:31:46 -04'00'

Directions for Completing

FSD Purchasing Office Certification of Exemption Form

(The following steps must be completed prior to forwarding form to Purchasing)

1. Enter date of request in MM/DD/YYYY format
2. Enter Purchasing Buyers name
3. Enter Department requesting exemption
4. Enter Originator of certification
5. Enter phone number of Originator
6. Select one of the exemptions that that apply to this procurement
7. Complete the Exemption Form providing any additional information required for the chosen exemption
8. Enter Vendor's Company Name
9. Enter Total Aggregate Amount
10. Obtain signature of:
 - Person requesting exemption (Originator)
 - Department Director or designee
 - AE General Manager (for Critical Business Needs)
 - Assistant City Manager, AE General Manager or designee (for all other exemptions where the purchase > \$50,000)
11. Forward completed form to Purchasing:
 - Buyer reviews and signs document
 - Purchasing Officer or designee (only required if purchase > \$50,000)



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 12/30/2015 DEPT: Communications & Technology Management
TO: Purchasing Officer or Designee FROM: Chuck Brotherton, CTM-Wireless Manager
BUYER: Shawn Willett PHONE: (512) 927-3209

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

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).

The mission-critical nature of the Greater Austin-Travis County Regional Radio System (GATRRS) and its related components, including Eaton Corporation uninterruptible power supply (UPS) equipment that supports GATRRS infrastructure at CTECC, makes it vital that all systems and equipment be supported and maintained by trained and certified technicians using proprietary software, repair documentation, and other materials.

Eaton Corp. is the only authorized provider of service, support, and software for 3-phase Eaton UPS products. Eaton does not train, certify, or support independent third-party service providers. Likewise, Eaton technicians do not service non-Eaton branded power quality equipment. Eaton technicians only work on Eaton branded equipment or devices they have been certified to fully support and maintain (e.g., flywheels, static transfer switches). No other servicer is authorized to possess Eaton proprietary (copyrighted) software, repair documentation, processes, or materials.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Eaton Corporation which will cost approximately \$ 20,920.12 (Provide estimate and/or breakdown of cost).

Charles C.
Brotherton

Digitally signed by Charles C. Brotherton
DN: cn=Charles C. Brotherton, o=CTM,
ou=Wireless Communication Services Division,
email=charles.brotherton@austintexas.gov, c=US
Date: 2015.12.30 10:28:48 -06'00'

Recommended
Certification

Originator

Date

Approved
Certification

Department Director or designee

Date

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

Date

Purchasing Review
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

- 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.

This contract supports mission-critical public safety communication equipment. A sole-source vendor confirmation letter is attached.



Powering Business Worldwide

Power Quality Service
Greg Wolff
630-260-6252

December 28th, 2015

UPS OEM Sourcing Letter

For your records and information: As the original equipment manufacturer (OEM), and an ISO9001 certified supplier, Eaton Corporation (formerly: "Eaton Electrical Inc." and "Powerware") is the provider of factory-supported, factory trained, factory authorized and factory certified service for your critical UPS (Uninterruptible Power Supply) equipment.

Eaton offers power quality services for its UPS products, as well as for related equipment such as power distribution units (PDUs), batteries, alternative energy devices and Cutler-Hammer switchgear. Eaton also services products from legacy brands, including Powerware, Exide Electronics, Best Power, IPM, Deltec and Lortec.

Eaton is the only authorized provider of service support with the Eaton developed proprietary service software for 3-phase Eaton UPS products. Eaton does not train, certify or support independent third party service providers to deliver or service Eaton UPS and power quality products.

Due to its lack of training on competitor's platforms Eaton technicians do not service non-Eaton branded power quality equipment. Eaton technicians only work on Eaton branded equipment or devices they have been certified to fully support and maintain (e.g., flywheels, static transfer switches).

No other service supplier is authorized to possess Eaton proprietary (copyrighted) software, repair documentation, processes or materials.

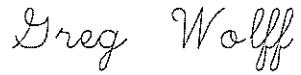
Advantages to buying UPS services from Eaton include:

- Eaton trains its 230 field technicians to be experts on the products it built 15 years ago and builds today.
- Many parts are stocked with the field technicians to maximize our first time fix rate and resolve problems fast.
- When emergencies occur, our customer support and field service employees will professionally diagnose and resolve your problem.
- Eaton has a 7x24 Customer Reliability Center to answer your calls and technical support, and a 7x24 parts logistics and remote monitoring team to ship parts and respond to critical alarms globally.
- Preventive maintenance allows our techs to thoroughly test, inspect for worn parts, install firmware updates and calibrate when needed so the UPS meets Eaton's most current operating specification.
- Safety and insurance resources to protect you against the unexpected: every field technician has the OSHA, IEEE and NFPA tools, personal protection equipment and training to comply with arc flash and electrical safety so you, your employees and Eaton employees avoid unsafe conditions.
- Eaton is committed to flawless service execution: We survey every customer for satisfaction, drive continuous improvements and employ Six Sigma and Eaton Quality programs.

Eaton uses only factory authorized parts for our repairs. Parts replaced by Eaton technicians ensure that the UPS returns to proper operating condition.

Should you have further questions, or need further assistance of any kind, please do not hesitate to call on me. Thank you for this opportunity to be of service.

Sincerely,

A handwritten signature in cursive script that reads "Greg Wolff".

Greg Wolff
Director of Service