

January 17, 2017

Melanie Kroll
City of Austin
Telecommunications and Regulatory Affairs
Claims Division
124 W 8th St Ste 210
Austin, TX 78701-2302

This letter is to verify that Columbia Ultimate, Inc., dba RevQ, is the only company that sells, installs, supports, and licenses the Revenue Results Software. RevQ has been providing revenue recovery solutions to government organizations since 1982 and to the City of Austin since 1999. RevQ is the sole provider of the Revenue Results product and related modules used by the City's TARA-Claims Division, in their recovery efforts. RevQ is uniquely qualified to provide the desired collection functionality in a technological environment that is compatible with the City's technical hardware, software, and database standards.

TARA's Claims Division will benefit from the continual input of other governments nationwide, as well as the experience of hundreds of private sector collection entities in new releases of the system. The new releases will add value and functionality in the solution that only RevQ offers.

RevQ appreciates your continued confidence in our revenue recovery solutions. Please contact me if additional information is required.

Sincerely,

Brett Sivits
Client Executive
Columbia Ultimate, Inc., dba RevQ
Brett.Sivits@Revq.com
360-260-5684

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Ontario Systems, LLC ("Contractor")
for
RevQ on Premise Support**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Ontario Systems, LLC ("Contractor"), having offices at 4400 NE 77th Ave, Ste 100, Vancouver, WA 98662.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Contract
- 1.1.2 Exhibit A, Supplemental Terms
- 1.1.3 Exhibit B, Ontario Systems' RevQ Software License Agreement and Proposal
- 1.1.4 Exhibit C, Non-Discrimination Certification

1.2 Quantity. Quantity of goods or services as described in Exhibit B.

1.3 Term of Contract. The Contract shall be in effect for an initial term of 12 months as indicated in Exhibit B and may be extended thereafter for up to 4 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.4 Compensation. The Contractor will be paid as indicated Exhibit B. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$6,153.22 for the initial term, \$6,338.00 for the first extension, \$6,528.00 for the second extension, \$6,724.00 for the third extension, and \$6,926.00 for the fourth extension, for a total estimated contract amount not to exceed \$32,669.22 comprising the software maintenance and support fees.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

Ontario Systems, LLC

David L. Hahn

Printed Name of Authorized Person

DocuSigned by:

David L. Hahn

Signature ID: 03794E2...

Vice President

Title:

February 26, 2020

Date:

CITY OF AUSTIN

Gil Zilkha

Printed Name of Authorized Person

Signature

Title:

Date:

Exhibit A – Supplemental Terms

Exhibit B – Ontario Systems' RevQ Software License Agreement and Proposal

Exhibit C – Non-Discrimination Certification

Exhibit A Supplemental Terms

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Brett Sivits, Phone: (360) 260-5684, Email Address: Brett.Sivits@ontariosystems.com. The City's Contract Manager for the engagement shall be Rudy Rodriguez, Phone: (512) 974-3433, Email Address: Rudy.Rodriguez@austintexas.gov.

2. **Invoices.**

Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3. **Travel Expenses.** No travel expenses are authorized under this Contract.

4. **Equal Opportunity**

5.1.1 **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. **Right To Audit**

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

Exhibit B
Ontario Systems' RevQ Software License Agreement and Proposal

Between

Ontario Systems, LLC
1150 W Kilgore Ave
Muncie, IN 47305
360-260-5838
Hereafter "Ontario Systems"

And

City of Austin
Hereafter "Client"

This Software License Agreement ("Agreement") is made by and between Ontario Systems and Client. These terms and conditions will become effective when all the parties have signed this document. The date these terms and conditions are signed by the last party (as indicated by the date associated with that party's signature) will be deemed the effective date of these standard terms and conditions ("Effective Date"). Ontario Systems and Client agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms have the meanings set forth below:

- 1.1. "Administrator" The person assigned by the Client to be the main contact when communicating with Ontario Systems regarding error reporting.
- 1.2. "Documentation" means the tangible or intangible information necessary for the use, planning, operation and maintenance of the Software as outlined in the RevQ User Guide manual.
- 1.3. "Go Live Date" means the date that Ontario Systems makes available to Client any of the Software in a production, non-test environment. There may be multiple Go Live Dates for each implementation and in such case, where this Agreement references a Go Live Date it references the first of such Go Live Dates unless explicitly stated otherwise.
- 1.4. "Hardware" means any piece of tangible equipment used for the purpose of running Software.
- 1.5. "Product(s)" means those goods, supplies, materials, items, components, hardware, and the incidental associated software listed and/or described in this Agreement. Client is aware that Ontario Systems does not manufacture nor maintain any hardware or networks.
- 1.6. "Professional Services" means the professional services provided by Ontario Systems to Client as outlined in Schedule A or a separate attachment that describes the professional services to be provided by Ontario Systems, which may include, but is not limited to, any implementation, data conversion, set-up, consulting, training, interface, and advisory services. The term "Professional Services" does not include Support Services.
- 1.7. "Release" means an update of the Software, subsequent to the initial delivery of the Software, in which Ontario Systems provides one or more new features and functionality to the Software. A Release will have updated Documentation, a new Release number, and may include any accumulated corrections which make the Software conform to the Documentation, or any improvements in the performance of the Software.
- 1.8. "Server" means all the inclusive attributes of the RevQ software residing on the Hardware used to store the database and RevQ software application.
- 1.9. "Software" means the software identified in the description section of Schedule A.
- 1.10. "Support Guide" means the then-current Ontario Systems Support Guide available through Ontario Systems' online customer resource center. Such Support Guide may be updated from time to time by Ontario Systems by making such Support Guide available to Client through the Ontario Systems' online customer resource center.
- 1.11. "Support Services" means those support and maintenance services specifically described in Ontario Systems' Support Guide.
- 1.12. "Upgrades" means an update to the Software, subsequent to the initial delivery of the Software, in which Ontario Systems has incorporated any accumulated corrections which make the Software conform to the then current Documentation or any improvements in the performance of the Software.
- 1.13. "Workstation Software" means any RevQ software loaded onto any Client workstations or other equipment to access the Server.

2. COPYRIGHT.

The Software and Documentation are licensed, not sold. All title to and copyrights in the Software, the Documentation and any copies of the Software and/or Documentation are owned by Ontario Systems, its suppliers, or its licensors. Client may not copy or modify, or permit others to copy or modify the Software or Documentation except as expressly

provided herein. Client may not reverse engineer, decompile or disassemble the Software. Client may not access, disable or modify the access code that controls the operability of the Software. Ontario Systems, its suppliers and its licensors continue to own all rights to the copy of the Software licensed to Client under this Agreement along with all copies and modifications that Client makes to the Software whether or not such copies or modifications are authorized by Ontario Systems. Client does not own the copy of the Software licensed to Client or any media on which the software may be embodied. Client's right to possess and use the Software is only as specified in this Agreement. Nothing in this Agreement constitutes a waiver of any rights under U.S. copyright law or any other international, federal or state law.

3. SCOPE OF LICENSE.

- 3.1. During the term of and subject to the provisions of this Agreement, Ontario Systems grants to Client a nonexclusive, nontransferable license, without the right to sublicense, for the Software, to be used for accounts receivable purposes.
- 3.2. The Software is licensed to Client so that only one copy of the Software residing on the Server is in use at any given moment and that the Client will only access the Server up to the maximum Software licenses the Client has purchased from Ontario Systems.
- 3.3. Ontario Systems continues to own all rights to the copy of the Software licensed to the Client under this Agreement along with any and all copies that the Client is authorized to make.
- 3.4. Client's rights to use Software are specified in this Agreement, and Ontario Systems retains all rights not expressly granted in this Agreement.
- 3.5. Client may make one back-up copy for Client's disaster recovery use.
- 3.6. The data populated by the Client is solely owned by the Client.
- 3.7. Upgrades and Releases will be offered to the Client at no additional charges as long as the Client has paid all licensing fees for the current Term. If a CD is requested for the Software, then Client is responsible for any freight charges or applicable taxes that may be associated with sending the Software to the Client in a media other than electronically over the internet.

4. TERM AND TERMINATION.

- 4.1. The term of this License shall begin upon the Effective Date and last for the term indicated on Schedule A ("Initial Term") or unless otherwise terminated in accordance with the terms of this Agreement. Thereafter, this Agreement will renew for successive one (1) year terms (each a "Renewal Term") unless a party provides the other party written notice of termination at least sixty (60) days prior to the renewal date. "Term" means the Initial Term and any Renewal Term(s).
- 4.2. This Agreement may be terminated, at Ontario Systems' discretion, if (i) Client fails to pay any amount owed to Ontario Systems that is not in dispute and client does not cure such default within ten (10) days following written notice to Client of such failure to pay; in which case, termination will automatically occur at the end of such ten (10) day period; or (ii) Client infringes, misappropriates, or otherwise violates Ontario Systems' proprietary rights, in which case termination will occur upon Ontario Systems notifying Client of the breach and Ontario Systems exercising its termination rights under this Section.
- 4.3. Upon termination of this Agreement, Client shall promptly return all copies of the Software and accompanying written materials to Ontario Systems.

5. FEES AND CHARGES.

- 5.1. RevQ is licensed on a subscription basis and Client must pay a periodic fee as identified in Schedule A (i.e., monthly, quarterly, annually) for the right to use RevQ for the Term. Ontario Systems may modify RevQ fees from time to time to be effective the subsequent Renewal Term.
- 5.2. Unless otherwise specified on the invoice, all payments shall be due upon invoice and shall be deemed late if not paid within thirty (30) days from the date of Client's receipt of invoice. Prices and fees are exclusive of, and Client shall be solely responsible for paying, all sales, use, excise and similar taxes relating to the sale or license of the Software.
- 5.3. Products or services requested by Client in addition to those specified in this Agreement will be billed to Client at Ontario Systems' then current rates.
- 5.4. Freight charges will be billed as incurred at the then current ground shipping rates unless Client requests additional methods of transportation.

6. SUPPORT.

- 6.1. Support Services. Provided that the Client pays all fees owed to Ontario Systems under this Agreement or any other agreement between the parties and maintains a secure connection as required by Ontario Systems, Ontario Systems shall provide the Support Services for the Software in accordance with the Support Guide. Client shall report any perceived problem to Ontario Systems' support services in accordance with the Support Guide and Ontario Systems

shall use its reasonable efforts to correct or have corrected any reproducible material nonconformance with the Documentation for RevQ. While Ontario Systems may choose to provide the Support Service, in its sole discretion, for older versions, Client acknowledges that Ontario Systems shall only be obligated to provide the Support Services for the most recent version of the Software, and the immediately prior version of the Software. If such defect results from something other than the Software or from a breach of Client's obligations under this Agreement, Ontario Systems shall be permitted to charge Client and Client shall pay Ontario Systems' then current hourly rate for such assistance.

- 6.2. Additional Services. Any services provided in addition to those specified in the initial purchase order will be billed to Client at Ontario Systems' then current rates under a separate written agreement.
- 6.3. Ontario Systems may refuse to furnish Software Support under this Agreement if Software Support is required as a result of:
 - 6.3.1. (Applicable to on-premises deployments only) Operation of the Software in environmental conditions outside those prescribed by the hardware platform manufacturer or those defined in the Hardware Specifications provided by Ontario Systems for the Release the Client is running on;
 - 6.3.2. (Applicable to on-premises deployments only) Failure by Client to keep the hardware platform properly maintained in accordance with standards of maintenance prescribed by the manufacturer; or
 - 6.3.3. The Software being maintained or modified by anyone other than Ontario Systems or a third party authorized by Ontario Systems.
 - 6.3.4. Client being on an unsupported version.
- 6.4. In the event it is determined that Ontario Systems provided Software Support arising within the framework stated in 6.3 above or from some other cause not related to the Software, Ontario Systems may charge Client for the performance of such Software Support as an additional service at Ontario Systems' then current hourly rates.
- 6.5. Client agrees to assign one person as Administrator.

7. CONFIDENTIAL INFORMATION.

The term "Confidential Information" means all Ontario Systems Confidential Information and all Client Confidential Information as defined herein and in any attachment hereto. The term "Ontario Systems Confidential Information" means the Software and Documentation, including any subsequent revisions thereto, and any trade secrets related thereto, this Agreement and all Schedules and attachments thereto, and any proposals, price quotations, estimates, statements of work or other proprietary information provided by Ontario Systems to Client which Ontario Systems labeled "Confidential" or "Proprietary" at the time of disclosure or, if the disclosure is oral, is reduced to writing and marked "Confidential" or "Proprietary" within ten (10) days of the time of the first oral disclosure. The term "Client Confidential Information" means the identity of Client's clients, debtor financial information contained in Client's database(s) and other proprietary information disclosed by Client to Ontario Systems which Client labeled "Confidential" or "Proprietary" at the time of disclosure or, if the disclosure is oral, is reduced to writing and marked "Confidential" or "Proprietary" within ten (10) days of the time of the first oral disclosure.

- 7.1. Non-Disclosure of Confidential Information. Neither Client nor Ontario Systems shall disclose or use the other's Confidential Information for any purpose not expressly permitted by this Agreement unless such disclosure is expressly authorized in writing by Disclosing Party. The Receiving Party will take all reasonable steps necessary to ensure that neither the Disclosing Party's Confidential Information nor any portion thereof are disclosed or made available by the Receiving Party, or by any of its agents or employees, in any form (including, but not limited to, magnetic tape, disk, or memory) to any organizations or individuals other than the Receiving Party. The Receiving Party will ensure that all individuals having access to the Disclosing Party's Confidential Information will observe and perform this confidentiality covenant. This confidentiality covenant applies to all Disclosing Party's Confidential Information provided to the Receiving Party at any time prior to, contemporaneously with or subsequent to execution of this Agreement. The Receiving Party stipulates that, in the event the Receiving Party breaches this confidentiality covenant, Disclosing Party will be harmed in a manner that cannot be cured by monetary damages and that therefore Disclosing Party shall be entitled to injunctive relief without the need to prove actual damages or the unavailability of a remedy at law.
- 7.2. Exclusions. Neither Ontario Systems nor Client shall have any obligation to limit disclosure of the following information:
 - 7.2.1. Information in the public domain at the time it is communicated by the disclosing party. Information shall not be deemed in the public domain if only a minor portion of such information is in the public domain, or if substantially all the information is found only by combining information from multiple public domain sources;
 - 7.2.2. Information that enters the public domain through no fault of the non-disclosing party;
 - 7.2.3. Information that enters the public domain through a breach of this Agreement by the disclosing party; and
 - 7.2.4. Information which the non-disclosing party can establish by its written or electronic records to have been in its possession prior to and independent of the disclosing party's communication of that information to it.

8. PROFESSIONAL SERVICES.

- 8.1. Performance of Professional Services. Ontario Systems will determine the manner in which the Professional Services will be performed and whether such Professional Services will be performed at Client's Site, Ontario Systems' offices or elsewhere. In the event the Professional Services need to be performed at Client's Site, the parties will mutually agree when such Professional Services will be performed at Client's Site and Client will provide Ontario Systems' personnel with a work environment that provides reasonable workspace, furniture, supplies and equipment to allow Ontario Systems to perform the Professional Services. Client will provide Ontario Systems with data, materials and/or system access that Ontario Systems reasonably requests to assist Ontario Systems in rendering the Professional Services. In addition to all other remedies Ontario Systems has available under this Agreement, at law or in equity, Ontario Systems may suspend the provision of Professional Services during any period when Client has failed to timely pay any amount due to Ontario Systems.
- 8.2. Client Delay. Ontario Systems will not be responsible for any delays in the performance of the Professional Services caused by Client or the failure of Client's personnel to participate in meetings or perform Client's responsibilities ("Client Delay"). Should Client cancel a meeting or postpone the performance of any Professional Services within fourteen (14) days of any scheduled date, Client shall comply with this Section regarding scheduling resources and travel. If a Client Delay impacts the performance of the Professional Services, Ontario Systems may issue a Change Order and Client shall agree to such Change Order reflecting Ontario Systems' costs, fees and expenses in modifying the schedule for performing the Professional Services and continuing with the Professional Services. If the parties fail to agree to any such Change Order, Ontario Systems may suspend the performance of the Professional Services.
- 8.3. Change Order. Ontario Systems will have no obligation to provide Professional Services and Deliverables other than those specified in Schedule A or any agreed to attachment. Client may obtain additional and/or changes to Professional Services and Deliverables by agreeing with Ontario Systems to either (i) a change order document that sets forth the additional and/or changes to the Professional Services and any fee changes (a "Change Order") or (ii) other separate Attachment describing the additional Professional Services and/or Deliverables to be provided and additional fees. Unless the parties agree to other rates set forth in an agreed to Change Order or Attachment, Client will pay for additional work and/or work that falls outside of the scope of an Attachment at Ontario Systems then-current hourly rates. Ontario Systems shall be entitled to issue a Change Order as set forth above.
- 8.4. Scheduling Resources and Travel. Provided Client approves the travel event in advance, Client authorizes Ontario Systems to make the necessary travel arrangements required to deliver any of the Services. Ontario Systems requires two (2) weeks advance notice for scheduling of resources. Client acknowledges that, once scheduled and committed, Ontario Systems may incur damage if Client cancels or reschedules the delivery of any of the Professional Services. Accordingly, resources may be rescheduled or canceled at no charge upon two (2) weeks prior written notice. If Client reschedules or cancels without such prior written notice, Client shall be liable for actual expenses incurred by Ontario Systems. Client acknowledges that in the event of such rescheduling or cancellation, Client will be scheduled for the next available place in the service queue (i.e., bottom of queue).
- 8.5. Professional Services Liability. ONTARIO SYSTEMS' TOTAL LIABILITY FOR CLAIMS ARISING FROM OR RELATED TO THE PROFESSIONAL SERVICES AND/OR DELIVERABLES, REGARDLESS OF THE LEGAL THEORY OF ANY CLAIM (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE), SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT TO ONTARIO SYSTEMS FOR THE PROFESSIONAL SERVICES INDICATED IN SCHEDULE A OR UNDER AN APPLICABLE ATTACHMENT IN THE SIX (6) CALENDAR MONTHS PRIOR TO THE DATE FROM WHICH THE CLAIM IS MADE BY CLIENT, AND SUCH A CLAIM FOR A RETURN OF AMOUNTS PAID SHALL BE CLIENT'S EXCLUSIVE REMEDY FOR ANY CLAIM RELATED TO THE PROFESSIONAL SERVICES AND/OR DELIVERABLES.

9. WARRANTY.

- 9.1. Services Warranty. Ontario Systems warrants that it will provide the Software Support using reasonably qualified personnel and provide such services in a professional manner. Client's sole and exclusive remedy for a breach of the foregoing warranty shall be the re-performance of the applicable Software Support at no additional cost to Client.
- 9.2. Software Warranty. Ontario Systems warrants that the Software shall materially comply with the applicable Documentation for a period of ninety (90) days from the Go Live Date of the Software (the "Warranty Period"). Client's sole and exclusive remedy for a breach of the foregoing warranty shall be Ontario Systems correcting such nonconformity at no additional cost to Client. The foregoing warranty shall not apply to any nonconformity caused by: (i) Client's use or operation of the Software with an application or in an environment other than that recommended in writing by Ontario Systems; (ii) Client's failure to comply with the Documentation or the requirements set forth in this Agreement; or (iii) modifications or alterations made to the Software that were not made by Ontario Systems or its subcontractors. Ontario Systems shall have no obligation to correct any nonconformity under this Section that is

reported outside of the Warranty Period or that cannot be reproduced by Ontario Systems. For nonconformities reported outside of the Warranty Period, all such nonconformities will be handled through Software Support.

- 9.3. **Disclaimer.** THERE ARE NO REPRESENTATIONS, PROMISES, WARRANTIES OR UNDERSTANDINGS RELIED UPON BY CLIENT WHICH ARE NOT CONTAINED IN THIS AGREEMENT. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, ONTARIO SYSTEMS DISCLAIMS ALL WARRANTIES WITH REGARD TO THE PRODUCTS AND SERVICES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. ONTARIO SYSTEMS DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DATA STORED PURSUANT TO PRODUCTS AND SERVICES WILL NOT BE LOST. ONTARIO SYSTEMS IS NOT LIABLE FOR THIRD PARTY ITEMS OR HARDWARE IN ANY MANNER. ONTARIO SYSTEMS DISCLAIMS ANY WARRANTY OR REPRESENTATION UNDER THIS AGREEMENT TO ANY PERSON OTHER THAN CLIENT.

10. LIMITATIONS.

- 10.1. Limitation of Liability. ONTARIO SYSTEMS' LIABILITY IN THE AGGREGATE TO CLIENT FOR ANY CAUSES OF ACTION, CLAIMS, OR ASSERTIONS ARISING UNDER OR RELATED TO THIS AGREEMENT AND/OR THE PRODUCTS AND SERVICES (EACH A "CLAIM"), REGARDLESS OF THE FORM OF ACTION (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE), IS LIMITED TO THE FEES (IF ANY) PAID BY CLIENT THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM IS MADE. IN NO EVENT WILL ONTARIO SYSTEMS OR ITS SUPPLIERS BE LIABLE TO CLIENT FOR LOSS OF DATA, LOST PROFITS, OR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE, EVEN IF ONTARIO SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ONTARIO SYSTEMS BE LIABLE FOR ANY CLAIM ARISING OUT OF OR RELATING TO (A) THE USE OF CLIENT DATA OR OTHER CLIENT INFORMATION THAT ARE INACCURATE OR INCOMPLETE WHEN SUPPLIED BY CLIENT; OR (B) CLIENT'S USE OF THE THIRD PARTY ITEMS OR HARDWARE, EVEN IF ONTARIO SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM.
- 10.2. Time Limitation on Claims. Neither party may bring any claim or action arising out of or related to acts and/or omissions relating to or arising from this Agreement, regardless of the form, against the other party more than two (2) years after the occurrence of such acts and/or omissions.

11. INDEMNIFICATION.

INDEMNIFICATION. Ontario Systems will defend and pay the cost and damages made in settlement or awarded as a result of a legal action based upon an allegation that the Software infringes a duly issued U.S. patent or copyright or violates a known trade secret if Ontario Systems is notified promptly in writing of such action, if Ontario Systems has sole control of defense and negotiations for settlement and if Client fully cooperates concerning the legal action. If Client's use of the Software is finally enjoined, Ontario Systems will, at its option: (1) procure the continued right of use; or (2) replace or modify the Software to restore the right of use; or (3) terminate the Agreement for the infringing Software. If Ontario Systems remedies the infringement by providing Client with a new Release which modifies the Software in such a manner as to restore Client's right to use the Software ("Corrected Release"), Client shall, notwithstanding any other provision of this Agreement, accept and utilize the Corrected Release and immediately cease all further use of all prior Releases of the Software. Ontario Systems shall not be obligated to provide indemnification if the infringement claim arises from: (1) Client's use of the Software in a manner not specified or authorized by this Agreement; (2) Any modification of the Software by anyone other than Ontario Systems; (3) Any combination or merger of the Software with or into any computer program(s) not licensed by Ontario Systems; or (4) Client's failure to use the Corrected Release. Ontario Systems' total liability to Client hereunder is limited to the license fees (if any) paid by Client the twelve (12) months prior to the date the claim is made regarding the infringing software. The foregoing states the entire liability of Ontario Systems with respect to claims based on and resulting from the infringement of patents, copyrights or trade secrets.

12. **DISPUTE RESOLUTION.** In the event a dispute between the parties arises and upon one party requesting dispute resolution under this Section, Ontario Systems and Client agree to work cooperatively to resolve the dispute amicably. Each party shall make available at least its project manager, as well as, at least one officer of the company with the authority to resolve the dispute on behalf of the party to discuss the dispute and possible resolutions. Both parties acknowledge that time is of the essence in resolving such disputes and that unless otherwise agreed to by the parties in writing, all such resolution discussions shall be completed within thirty (30) days from the date a party requests dispute resolution under this Section. If a resolution is not reached within such thirty (30) day period or any extended period agreed

to by the parties in writing, either party may take all legal actions it deems necessary to enforce its rights hereunder. The parties acknowledge and agree that this dispute resolution process is required and shall be followed prior to either party terminating this Agreement, the applicable attachment or seeking any remedy available to it (including but not limited to filing any type of legal action). Notwithstanding this Section, Ontario Systems shall not have to follow this dispute resolution process prior to and Client shall not assert that this Section prevents Ontario Systems from terminating this Agreement or the applicable attachment as permitted in Section 4 and seeking all available remedies to Ontario Systems related to such termination.

13. MISCELLANEOUS.

- 13.1. Force Majeure. Except for Client's payment obligations, neither party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond such party's control, including acts of God, civil commotion, strikes, labor disputes, interruption of transportation, unavoidable accidents, or governmental demands or requirements.
- 13.2. Non-solicitation. Customer acknowledges and agrees that in the course of performing Customer's obligations under this Agreement, Customer will be introduced to and work with employees, agents and representatives of Ontario Systems. Customer acknowledges and agrees that the employees, agents and representatives of Ontario Systems are valuable resources in which Ontario Systems has invested considerable time, effort, and resources. Therefore, Customer agrees that for the duration of this Agreement, and for one year thereafter, Customer shall not directly or indirectly solicit, interfere with, entice away, hire, or employ, whether as an employee, agent, representative, consultant, independent contractor, or otherwise, any employee, agent or representative of Ontario Systems without the express written consent of Ontario Systems.
- 13.3. Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the state of Texas in the United States without regard to conflict of law principles. All disputes arising out of or related to this Agreement shall be exclusively brought and exclusively maintained in the State courts located in Texas. Each party consents to and waives any objection to the exclusive personal jurisdiction and venue of such State and Federal courts.
- 13.4. Binding Effect. This Agreement inures to the benefit of and is binding upon the permitted successors and assigns of the parties and upon any bankruptcy trustee of the parties.
- 13.5. Severability. If any provision of this Agreement shall be held to be invalid, it shall not affect the balance of this Agreement.
- 13.6. Notices. Except as otherwise provided herein, any notice or other communication given hereunder shall be in writing and shall be given by personal service, express courier (such as UPS), telecopy, or by certified or registered mail to the addresses shown on this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by certified or registered mail shall be deemed to have been given at the date and time of receipt.
- 13.7. Travel and Reimbursable Expenses. Ontario Systems will invoice Client and Client shall pay Ontario Systems reasonable travel, lodging and meal expenses, and any other reasonable expenses incurred on behalf of Client in rendering any of the services. Ontario Systems will invoice Client for all foregoing expenses as incurred on a monthly basis and Client shall pay such invoices within thirty (30) days of the date of such invoice. Should Client be required to travel to Ontario Systems' facility, Client is responsible for its own travel and related expenses.
- 13.8. Compliance. The Client shall assume all responsibility for compliance with local laws, ordinances or other regulation relating to the operation and the use of the Software.
- 13.9. Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party will be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.
- 13.10. Assignment. Client may not assign, transfer, or delegate any of its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of Ontario Systems. Any assignment, transfer, or delegation made by Client without complying with this Section shall be null and void and permit Ontario Systems to terminate this Agreement immediately upon providing written notice to Client.
- 13.11. This Agreement shall not be modified in any way except by a written agreement subscribed to by both parties. Only an instrument in writing executed by all the parties may amend this Agreement. Only a written instrument executed by the party waiving compliance may waive a provision of this Agreement. No waiver of any provision of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement will not operate as a waiver of such provision or any other provision.

SCHEDULE A TO EXHIBIT B

Initial Term: October 1, 2019 through September 30, 2020

City of Austin #80218

ANNUAL FEES

for October 1, 2019 through September 30, 2020

Qty	Description	Annual Amount
4	Revenue Results OnP Licenses Current Release: 11.0-1	\$6,153.22
TOTAL		\$6,153.22

City of Austin #80218

ANNUAL FEES

for October 1, 2020 through September 30, 2021

Qty	Description	Annual Amount
4	Revenue Results OnP Licenses Current Release: 11.0-1	\$6,338.00
TOTAL		\$6,338.00

City of Austin #80218

ANNUAL FEES

for October 1, 2021 through September 30, 2022

Qty	Description	Annual Amount
4	Revenue Results OnP Licenses Current Release: 11.0-1	\$6,528.00
TOTAL		\$6,528.00

City of Austin #80218

ANNUAL FEES

for October 1, 2022 through September 30, 2023

Qty	Description	Annual Amount
4	Revenue Results OnP Licenses Current Release: 11.0-1	\$6,724.00
TOTAL		\$6,724.00

City of Austin #80218

ANNUAL FEES
for October 1, 2023 through September 30, 2024

Qty	Description	Annual Amount
4	Revenue Results OnP Licenses Current Release: 11.0-1	\$6,926.00
TOTAL		\$6,926.00



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 01/17/2017

DEPT: TARA

TO: Purchasing Officer or Designee

FROM: Melanie Kroll Eichman

BUYER: Gil

PHONE: (512) 974-2909

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

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)

- ☐ 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.

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 City of Austin has been in a continuous relationship with RevQ /Columbia Ultimate since we purchased their software in November 1999. Throughout this period, RevQ has performed flawlessly in providing reliable support to the City for its product. The costs presented in the associated Columbia Ultimate invoice # 10145896 are for the annual on premises support of their proprietary software.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Columbia Ultimate, INC., dba RevQ for annual support which will cost approximately \$ 5,800.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Melanie K E 01/17/17
Originator Date

Approved
Certification

Rondelle Hawkins 01/17/17
Department Director or designee Date

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

Purchasing Review
(if applicable)

[Signature] 2/28/20
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

[Signature] 2/28/20
Purchasing Officer or designee Date

02/26/2013

**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 or Contractor's substantially similar language.
- (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, or substantially similar language, 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.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD

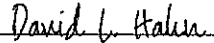
Sanctions:

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. If it is determined that Contractor is not complying with the requirements of Chapter 5-4, the City may notify Contractor in writing describing the failure and Contractor will have a period of six (6) months after the receipt of the written notice to remedy the failure. If Contractor does not remedy the failure in this time period, then the City may terminate the Agreement between the parties.

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 25th day of February, 2020

CONTRACTOR	Ontario Systems, LLC
Authorized Signature	<div>DocuSigned by:  1EA9B43003794E2...</div>
Title	Vice President

Certificate Of Completion

Envelope Id: CD845681A42A44028F96EEE9C9501D5D

Subject: City of Austin - RevQ Renewal 2020

Source Envelope:

Document Pages: 13

Certificate Pages: 1

AutoNav: Enabled

Envelope Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:

Joshua Schreiner

4400 NE 77th Ave, Ste 100

Vancouver, WA 98662

joshua.schreiner@columbiaultimate.com

IP Address: 50.126.124.173

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joshua.schreiner@columbiaultimate.com

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Signer Events

David L. Hahn

Dave.hahn@ontariosystems.com

Vice President

Vice President

Security Level: Email, Account Authentication (Optional)

Signature

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1EA0B43003794E2

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Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Gil Zilkha

gil.zilkha@austintexas.gov

Security Level: Email, Account Authentication (Optional)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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Witness Events

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Notary Events

Signature

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Envelope Sent

Hashed/Encrypted

2/26/2020 5:07:53 AM

Certified Delivered

Security Checked

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Signing Complete

Security Checked

2/26/2020 5:07:53 AM

Completed

Security Checked

2/26/2020 5:07:53 AM

Payment Events

Status

Timestamps