

SERVICE AGREEMENT NO. 98065

Uninterruptible Power Supplies - Refresh/Replacement Maintenance Services

THIS **Uninterruptible Power Supplies Refresh/Replacement Maintenance Services Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Freeit Data Solutions, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Uninterruptible Power Supplies Refresh/Replacement Maintenance Services in response to Request for Bid/Proposal No. DIR-TSO 4229 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide Uninterruptible Power Supplies Refresh/Replacement Maintenance Services ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
- 2. Term.** This Agreement is for five years, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or the Contracts and Procurement Department, or the performance date listed in the notice to proceed, whichever is later. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so by written amendment prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$146,400.00, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. Contractor shall invoice no more frequently than once per month. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Phillip Grant
Information Technology Department
361-826-3845
phillipg2@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The

purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.

7. Inspection and Acceptance. City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

9. Quality/Quantity Adjustments. Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.

10. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
12. **Subcontractors.** In performing the Services, the Contractor will not enter into subcontracts or utilize the services of subcontractors.
13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Phillip Grant
IT Infrastructure Manager
1201 Leopard St., Corpus Christi, TX 78401
Phone: 361-826-3845
Fax: n/a

IF TO CONTRACTOR:

Freeit Data Solutions, Inc.
Attn: Joe White
Account Executive
P.O. Box 1572, Austin, TX 78767
Phone: 800-478-5161
Fax: 888-416-0471

17. ***CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF***

PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Owner's Manual and Preventative Maintenance. Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

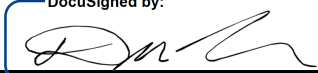
20. Limitation of Liability. The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

21. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written

consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

22. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
23. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Contractor's bid response (Exhibit 2).
24. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
25. **Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
26. **Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
27. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

CONTRACTOR

Signature:  DocuSigned by:
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Printed Name: Dulari von Christierson

Title: Director of Operations

Date: 2/4/2021

CITY OF CORPUS CHRISTI

Josh Chronley
Interim Assistant Director, Contracts and Procurement

Date: _____

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance and Bond Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB/RFP No. DIR-TSO 4229
- Exhibit 2: Contractor's Bid/Proposal Response

ATTACHMENT A: SCOPE OF WORK

PROJECT NAME: Uninterruptible Power Supplies (UPS) Refresh\Replacement and Maintenance Services

PROJECT ADDRESS:

1. City of Corpus Christi IT Department, 1201 Leopard Street, IT Basement, Corpus Christi, TX 78401.
2. City of Corpus Christi IT Department, 321 John Sartain Street, Corpus Christi, TX 78401
3. City of Corpus Christi Stevens Plant, 13101 Leopard Street, Corpus Christi, TX 78410
4. Corpus Christi Airport, 1000 International Drive, Corpus Christi, TX 78406
5. Corpus Christi Fleet Maintenance, 5352 Ayers Street, Corpus Christi, TX 78415

Scope of Work:

- A. The Contractor shall provide upgrades and extend/reinstate service contracts for existing hardware units for the provided serial numbers listed below and their project locations, which will also include the Advantage Ultra Service Plan.
 1. Serial Numbers PD0635160106 (Police) and JK1341001647 (O.N. Stevens Water Treatment Plant) – Term Date 02/13/2026
 2. Serial Number PD1405150017(O.N. Stevens Water Treatment Plant) – Term Date 02/13/2026
- B. The Contractor shall include upgrades that allows yearly preventative maintenance visits (except where otherwise noted) to be scheduled 24x7, instead of only during business hours and features a 4-hour 24x7 response time for on-site remedial services. The service contract covers the below units for the service periods/terms listed below:
 1. Serial Numbers PD0635160106 (Police) and JK1341001647 (O.N. Stevens Water Treatment Plant) – Term Date 02/13/2026
 2. Serial Number PD1405150017(O.N. Stevens Water Treatment Plant) – Term Date 02/13/2026
- C. The Contractor shall provide and extend/reinstate service contracts for existing hardware units for the provided serial number below and its project location, which will include the Advantage Ultra Service Plan for the following hardware to term 12/31/2021, since the device is going end of life.

1. Serial Number ED0414000043 (City Hall).
- D. The Contractor will include a Pre-Contract Audit required to re-certify units are in working condition. Additional repairs (with additional cost) may be required before units can be recertified for:
1. Serial Numbers AD1723320355, AD1749120010 (Corpus Christi International Airport)
 - a. No preventative maintenance until the hardware is certified.
 - b. After the units are certified; The Service Contract Reinstatement term will be for one year
- E. The Contractor shall include installs and replacements of the below hardware at the customer project locations. The hardware purchase will include UPS and battery units that feature five-year, 24/7 monitoring and dispatch service coverage with monitoring via embedded network management card within the UPS units. The hardware purchase and install/replacement will include the following:
1. Qty. 2 - 5.4kVA smart UPS units featuring 208V output voltage and embedded network card – Fleet Maintenance.
 2. Qty. 4 - 192V 5kVA and 6kVA RM battery pack units – Fleet Maintenance.
 3. Qty. 4 – SYBT4 battery modules (O.N. Stevens Water Treatment Plant) - Battery replacements.
- F. The Contractor will provide hardware support for purchased hardware listed above where it includes all power supplies, or any other items that are related to hardware in this replacement/install, including:
1. Support and replacement of any failed parts.
 2. NBD (Next Business Day) replacement on hardware.
 3. Hardware support via email, WebEx, and phone support with four-hour response time. Support 7 days a week, 24 hours.

IT Point of Contact:

Phillip Grant
1201 Leopard St.
Corpus Christi, TX 78401
Office 361-826-3845, phillipg2@cctexas.com

Attachment B: Bid/Pricing Schedule

DATA SOLUTIONS

City of Corpus Christi

Sam Bhakta
 PO Box 9277, MIS 4th Floor
 Corpus Christi, TX 78469
 Ph: (361) 826-2489
 samitb@cctexas.com

Quote Number: 7195888
Quote Date: 1/28/2021
Expiration Date: 4/28/2021

Contract No: DIR-TSO-4229
TAX ID#: 27-2209002
Term: NET 30
FOB: Destination

Freeit Data Solutions, Inc.

P.O. Box 1572
 Austin, TX 78767
 PH: (800) 478-5161 / FAX: (888) 416-0471

Freeit Contact: Joe White
 (512) 553-8928 Joe@freeitdata.com

Qty	Part Number	Description	List Price	Contract % Discount	Unit Price	Ext Price
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Freeit Data Solutions - UPS Professional Services**Services**

1	FDS-UPSU-PS-7	Professional Services to install, configure and upgrade uninterruptible power supplies - Refer to SOW FDS01202021	\$219,100.00	15.00%	\$146,400.00	\$146,400.00
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List Total:	\$219,100.00
DIR Discounted Total:	\$186,235.00
Shipping and Tax not applicable:	\$0.00
Additional Discount:	(\$39,835.00)
Grand Total:	\$146,400.00

Customer Signature of Acceptance**PO#**

By issuance of a PO, I acknowledge that I have the authority on behalf of my company to make purchasing decisions to order the items in this quote and to begin project initiation. This quote is subject to and will be governed by the terms and conditions and RMA policy located at www.freeitdata.com/policies and will govern our relationship and any PO issued in relation to this quote. Any and all competing or conflicting terms and conditions are hereby unconditionally rejected.

Attachment C: Insurance Requirements

A. CONTRACTOR'S LIABILITY INSURANCE

1. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
2. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
Commercial General Liability Including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS' COMPENSATION EMPLOYER'S LIABILITY	Statutory \$500,000 /\$500,000 /\$500,000

3. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

B. ADDITIONAL REQUIREMENTS

1. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on

a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.

2. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.
3. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

4. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
 - List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide 30 calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than 10 calendar days advance written notice for nonpayment of premium.
5. Within 5 calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

6. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
7. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
8. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2020 Insurance Requirements

Ins. Req. Exhibit **4-B**

Contracts for General Services – Services Performed Onsite

06/08/2020 Risk Management – Legal Dept.

Attachment D: Warranty Requirements

Warranty is not required for this agreement; therefore, Section 8 - Warranty, subsection 8 (A) and 8 (B) is null and void.