

## SERVICE AGREEMENT NO. 97035

### Azure Stack HCI for Landfills

THIS **Azure Stack HCI for Landfills Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Area Electronics Systems, Inc., dba DataON ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Azure Stack HCI for Landfills in response to Request for Bid/Proposal No. 97035 ("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 Azure Stack HCI for Landfills ("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 \$74,010.50, 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  
Phone: 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 30<sup>th</sup> 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:**

Area Electronics Systems, Inc., dba DataON  
Attn: Howard Lo  
VP Sales and Marketing  
1247 N. Lakeview Ave., Suite C, Anaheim, CA 92807  
Phone: 888-726-8588  
Fax: n/a

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.

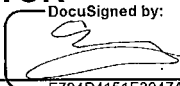
**20. Limitation of Liability.** The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

**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: Howard Lo

Title: Vice President

Date: 1/22/2021

**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. 97035
- Exhibit 2: Contractor's Bid/Proposal Response

## **ATTACHMENT A: SCOPE OF WORK**

PROJECT NAME: DataON Solid Waste Server Refresh

PROJECT ADDRESS: City of Corpus Christi 1201 Leopard Street, Corpus Christi Texas, 78401, 2397 Co Rd 20, Robstown, TX 78415, and 6594 Greenwood Dr, Corpus Christi, TX 78415.

Scope of Work:

- A. The Contractor shall deliver the four servers to 1201 Leopard Street for the Cefe & Elliot Landfills.
- B. The contractor shall include Data on management Utility Software Tools for each server.
- C. The Contractor shall provide Remote Hands-On Deployment Services and training for the two sites.
- D. The Contractor shall include hardware and warranty support for the servers, which includes power supplies, or any other items that are related to hardware being purchased.
- E. The Contractor shall provide NBD (Next Business Day) replacement on failed parts, which will include support via email, WebEx, and phone.
- F. The Contractor shall provide an 8-hour response time; 7 days a week: 24 hours a day hardware support.
- G. Contract Administrator for IT: Phillip Grant, phone number 361-826-3845, [phillipg2@cctexas.com](mailto:phillipg2@cctexas.com).







# Quotation



**Customer:** The City of Corpus Christi (TX)  
**Contact:** Sam Bhakta | Josh Chronley  
**Phone:** (361) 826-3094  
**Email:** SamitB@cctexas.com

Quote Date: 1/5/2021  
 Valid Thru: 3/31/2021  
 Phone: (714)-993-0300  
 Fax: (714)-386-6125

Salesperson		Payment Terms	Shipping Method
Ben Milbourne		Net 30 Day with Credit Approval	FedEx LTL Freight
Project/Codename: 2x K2N-216 HCI Appliances for ELLIOT2 / CEFE2 Landfills			
Qty	Part#	Description	MSRP
Part A - Compute Platform			
4	S2D-5216i	DataON™ S2D-5216i 2U 16 x 2.5" All-NVMe HCI Ready Node	
		Form factor: 2U Rack Server, 3.42" H x 17.24" W x 28.86" D Supports Dual Intel Xeon® Scalable™ Gen 2 Processor Series & (24) DDR4 DIMM Drive Bay: (16) NVMe U.2 2.5" Hot-swappable PCIe Slot: (7) PCIe 3.0 x8 or (2) x16 + (3) x8 Onboard NIC: (2) Built-In 10GbE RJ45 1300W (1+1) 110V hot-swappable redundant PSU with NEMA 5-15 Power Cords Intel® Remote Management Module 4	 
1	S2D-MUST	DataON® MUST™ - Management Utility Software Tools	
Node Configuration			
8	CPU-XEON-4214Y-08	Intel® Xeon® Scalable Gen.2 Silver 4214Y 2.4 GHz, 8-Core, 16.5MB Cache	
16	MMD4-32G-2933	Samsung® 32GB DDR4 2933MHz ECC-Register RDIMM	
8	M.2-S4510-480	Intel® S4510™ 480GB SATA M.2 Boot Drive For OS	
Storage Configuration			
20	SSD-IN-P4510-2T (U.2)	- Intel® DC P4510™ NVMe 2TB 2.5" SSD; Storage Tier -	
I/O Adapters			
8	NC-MCX4121AACAT	Mellanox® ConnectX-4 Lx EN Dual Port SFP+ 10/25GbE RDMA Card	
4	CB-MCP2M00-A003	3M Mellanox® LinkX™ Passive Copper cable, ETH, up to 25Gb/s, SFP28, 28 AWG	

**Note: Microsoft Windows Server Licenses Not Included**

Part A: \$ 58,270.00

Part B - Warranty & Professional Services				
1	SPRT-HCI-DMT	DataON™ HCI Remote Hands-On Deployment Services with 4 Hours Training	\$	3,500.00
1	WRTY-5YR-WW	5 Years DataON™ Advanced Replacement Warranty & Support	\$	8,740.50
Operating System/Special Item				
1	SPRT-HCI-DMT	DataON™ HCI Remote Hands-On Deployment Services with 4 Hours Training	\$	3,500.00
		-	\$	-
Part B: \$				15,740.50

Solution Overview:

- 64 CPU Cores Total
- 128 GB RAM - Per Node
- 0 Cache Drive - Per Node
- (5) SSD - Per Node
- 0 HDD - Per Node

Resiliency 2-Way Mirroring - S2D/K2N  
14.4 TB - Usable Storage Total  
100% All Flash  
- Gb/s RDMA Network

Sales Tax Not Included

Total:	\$	74,010.50
Shipping, Handling and Insurance:	Included	
	-	
Sales Tax:		
Grand Total:	\$	74,010.50

PO#:

Special Notice:

- (2) separate clusters for ELLIOT2/CEFE2 sites
- ~7.2TB usable capacity per cluster

Authorized Signature Date

Warranty and Support Terms:

24/7 service and hardware support  
Standard business hours: 7am – 6pm PST, Monday- Friday  
Web Form: submit an e-support request form at [www.dataonstorage.com/support](http://www.dataonstorage.com/support)  
For phone support, call: +1-800-680-9305  
For e-mail support, contact: [DataON\\_support@dataonstorage.com](mailto:DataON_support@dataonstorage.com)  
Sales Rep: benm@dataonstorage.com

Statement of Conditions:

- 1.The information in this document is believed to be accurate. However, DataON assumes no responsibility for inaccuracies, errors, or omissions, and shall not be liable for direct, indirect, special, incidental, or consequential damages resulting from any such error or omission. DataON is not responsible for pricing or other errors, and reserves the right to cancel orders arising from such errors.
2. DataON may make changes to this proposal including changes or updates to the products and services described, including pricing, without notice or obligation.
3. All information supplied for the purpose of this proposal is to be considered CONFIDENTIAL information belonging to DataON.

### **Attachment C: Insurance Requirements**

Insurance is not required for this agreement; therefore, Section 5 - Insurance; Bonds, subsection 5 (A) and 5 (B) is null and void.

## **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.