

CONTRACT

THIS CONTRACT made and entered into this 26th day of July, 2013, by and between, EATON CORPORATION, a(n) Ohio corporation, as Party of the First Part (hereinafter designated as the CONTRACTOR), and CITY OF NORMAN, a municipal corporation, Party of the Second Part, (hereinafter designated as the CITY).

WITNESSETH

WHEREAS, the CITY has caused to be prepared in accordance with law, specifications, and other bidding documents for the work hereinafter described and has approved and adopted all of said bidding documents, and has caused Notice to Bidders to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for the following project:

CITY OF NORMAN POLICE EMERGENCY UPS PROJECT

as outlined and set out in the bidding documents and in accordance with the terms and provisions of said CONTRACT; and,

WHEREAS, the CONTRACTOR, in response to said Notice to Bidders, has submitted to the CITY in the manner and at the time specified, a sealed proposal in accordance with the terms of this CONTRACT; and,

WHEREAS, the CITY, in the manner provided by law, has publicly opened, examined, and canvassed the proposals submitted and has determined and declared the above-named CONTRACTOR to be the lowest and best Bidder on the above-prepared project, and has duly awarded this CONTRACT to said CONTRACTOR, for the sum named in the proposal, to wit: Eighty-One Thousand Six Hundred Twenty and 39/100 Dollars (\$81,620.39);

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties to this CONTRACT have agreed, and hereby agree, as follows:

- 1) The CONTRACTOR shall, in a good and first-class, workman-like manner at his own cost and expense, furnish all labor, materials, tools, and equipment required to perform and complete said work in strict accordance with this CONTRACT and the following CONTRACT Documents: The Bid Notice published in the Norman Transcript, the Notice to Bidders, Instruction to Bidders, the Contractor's Bid or Proposal, the Construction Drawings, Specifications, Provisions, and Bonds thereto, all of which documents are on file in the Office of the Purchasing Agent of the City of Norman, and are made a part of this CONTRACT as fully as if the same were set out at length.

- 2) CITY will be invoiced on date of delivery for all deliverable items of hardware, equipment and an extended four (4) year warranty and invoiced for de-installation and installation at the time of installation. Payment of these invoices is due within thirty (30) days of the invoice date. Additionally, if any payment is not made when due, CONTRACTOR reserves the right to refuse to provide any further services until such payment and the applicable interest charge have been received.

On completion of the work, but prior to the acceptance thereof by the CITY, it shall be the duty of the project engineer, or other appropriate person, to determine that said work has been completely and fully performed in accordance with said CONTRACT documents; and upon making such determinations said official shall make his final certificate to the CITY.

The CONTRACTOR shall furnish proof that all claims and obligations incurred by them in connection with the performance of said work have been fully paid and settled; said information shall be in the form of an affidavit. Thereupon, the final payment will be approved and paid.

- 3) It is further agreed that the CONTRACTOR will commence said work within fourteen (14) days following receipt of a NOTICE TO PROCEED and perform the same vigorously and continuously, and complete the same in one hundred twenty (120) calendar days. CONTRACTOR will provide CITY a timeline for full replacement of the UPS.
- 4) That the CITY shall pay the CONTRACTOR for the work performed as follows:
- a. Payment for unit price items shall be at the unit price bid for actual construction quantities.

Should any defective work or materials be discovered or should a reasonable doubt arise as to the quality of any work completed, shall be remedied in accordance with the warranty. There will be deducted from the final payment an amount equal to the value of the defective or questionable work and shall not be paid until the defects are remedied.

And that the CONTRACTOR'S bid is hereby made a part of this Contract.

- 5) That the CITY reserves the right to add to or subtract from the estimated quantities or amount of work to be performed up to a maximum of fifteen percent (15%) of the total bid price. The work to be performed or deducted shall be at the unit price bid.
- 6) That the CONTRACTOR will not undertake to furnish any materials or to perform any work not specifically authorized under the terms of this Contract unless additional materials or work are authorized by written Change Order, executed by the CITY; and that in the event any additional work are provided by the CONTRACTOR without such

authorization, the CONTRACTOR shall not be entitled to any compensation therefore whatsoever.

- 7) That if any additional work is performed or additional materials provided by the CONTRACTOR upon authorization by the CITY, the CONTRACTOR shall be compensated therefor at the unit price and as agreed to by both parties in the execution of the Change Order.
- 8) That the CONTRACTOR shall perform the work and provide the materials strictly in accordance with the specifications as to quality and kind and all work and materials shall be subject to rejection by the CITY through its authorized representatives for failure to meet such requirements, and in the event of such rejection, the CONTRACTOR shall replace the work and materials without compensation therefor by the CITY.
- 9) The CONTRACTOR shall complete the work in accordance with the terms of this Contract.
- 10) The CONTRACTOR shall furnish surety bonds and certificate of insurance as specified herein which bonds and insurance must be approved by the CITY prior to issuance of the Work Order and commencement of work on the project.
- 11) No provision of this CONTRACT or of any such aforementioned document shall be interpreted or given legal effect to create an obligation on the part of the CITY to third persons, including, by way of illustration but not exclusion, sureties upon performance bonds, payment bonds or other bonds, assignees of the CONTRACTOR, subcontractors, and persons performing labor, furnishing material or in any other way contributing to or assisting in the performance of the obligations of the CONTRACTOR; nor shall any such provisions be interpreted or given legal effect to afford a defense against any obligation owed or assumed by such third person to the CITY or in any way to restrict the freedom of the CITY to exercise full discretion in its dealing with the Contractor.
- 12) Subject to Section 13 herein, CONTRACTOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents, from and against any and all claims, liabilities, damages, demands, losses, causes of action and suits, including reasonable attorney's fees incident thereto, to the extent they result directly from or out of (1) any injury to or death of any person or damage to or destruction of any property caused by the negligent acts, errors, omissions or willful misconduct of CONTRACTOR, its agents or employees, and (2) any violation of federal or state law, regulation, order, rule or of any other governmental authority having jurisdiction by CONTRACTOR, its employees or agents.
- 13) The remedies of the CITY set forth in this Agreement are exclusive and are its sole remedies for any failure of CONTRACTOR to comply with its obligations hereunder. Notwithstanding anything in this Agreement or otherwise to the contrary, in no event shall CONTRACTOR or CITY, or their respective officers, directors, employees or

agents be liable to the other for any incidental, indirect, special or consequential damages, such as, but not limited to, delay damages, lost profits or revenue, lost data or lost opportunity damages, resulting from or in connection with any claim or cause of action, whether brought in contract or in tort, even if CONTRACTOR or CITY knew or should have known of the possibility of such damages. Under no circumstances shall the aggregate liability arising out of or in connection with this Agreement exceed the price paid hereunder for the goods and services provided.

- 14) The CITY may not cancel or terminate this CONTRACT without prior written notice to the CONTRACTOR and upon payment of cancellation charges which shall take into account, among other things, expenses already incurred and commitments made by the CONTRACTOR. Cancellation charges are as follows: (a) for standard items, cancellation between 61-90 days prior to shipment, 25% of the total invoice; between 31-60 days prior to shipment, 50% of the total invoice; between 0-30 days prior to shipment, or after order has shipped, 100% of the total invoice; (b) 100% of total invoice on all custom aspects of an order; (c) 100% of the total invoice on all drop ship items (e.g. batteries, racks, MBPs, PDUs etc.). Changes made to an order may be subject to increase or decrease in purchase order amount, change order charges, and changes in schedule date.
- 15) CONTRACTOR warrants the equipment purchased hereunder in accordance with the terms of the limited warranty applicable hereto ("Limited Warranty") and provided separately to the CITY.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in three (3) duplicate originals, the day and year first above written.

(REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the said parties of the First and Second Part have hereunto set their hands and seals respectively the 26th day of July, 2013, and the ____ day of _____, 2013.

Party of the First Part:

EATON CORPORATION,

a(n) Ohio Corporation

ATTEST:

By: 

Title: Senior Contracts Manager

Corporate Secretary

Address: 8609 Six Forks Road

Raleigh, NC 27615

Telephone: (919) 870-3143

Fax: (919) 870-3191

Party of the Second Part:


CITY OF NORMAN,

a municipal corporation

By: _____

Cindy Rosenthal, Mayor

Approved as to form and legality this ____ day of _____, 2013.



City Attorney

Approved by the City of Norman this ____ day of _____, 2013.

ATTEST:

City Clerk

Cindy Rosenthal, Mayor

ACKNOWLEDGEMENT

COUNTY OF Wake)
)
 STATE OF NORTH CAROLINA)

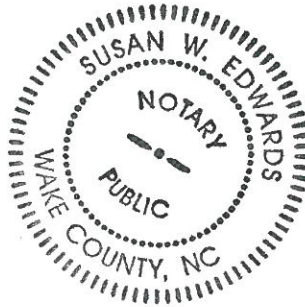
Jerry F. Pugh, of lawful age, being first duly sworn, on oath says that (s)he is the Senior Contracts Manager of EATON CORPORATION, the CONTRACTOR, and is authorized to submit the above CONTRACT to the CITY. Affiant further states that CONTRACTOR has not paid, given or donated or agreed to pay, give, or donate to any officer or employee of the CITY any money or other thing of value, either directly or indirectly, in the procuring of the CONTRACT.

Submitted and sworn to before me this 26th day of July, 2013.

(SEAL)

My Commission Expires:

11/16/2013



Notary Public