

## WHATCOM TRANSPORTATION AUTHORITY

### PUBLIC WORKS AGREEMENT FOR

#### EATON UNINTERRUPTED POWER SUPPLY MAINTENANCE AND REPLACEMENT BATTERY

This AGREEMENT ("Agreement") is entered into by and between **WHATCOM TRANSPORTATION AUTHORITY** ("WTA"), a Washington Public Transportation Benefit Area formed under RCW Chapter 36.57A and **EATON CORPORATION**, of 13205 SE 30<sup>TH</sup> Street, Suite 101, Bellevue, WA, 98005, a duly-qualified Washington Corporation and a licensed contractor authorized to do business in the State of Washington ("Contractor").

- 1. PURPOSE/SERVICES TO BE PROVIDED:** This Agreement establishes a public works contract and Contractor's agreement to supply and install one (1) full internal replacement battery and to service the uninterrupted power supply at WTA's Maintenance, Operations and Administration Base located at 4011 Bakerview Spur in Bellingham, pursuant to the Contractor's Quote Sheets which are attached hereto and incorporated by this reference as Exhibit A ("Services").
- 2. PROJECT MANAGER:** WTA designates Cindy Campen as its Project Manager and principal contact for the Services. Contractor designates Kimberley Panchana as its Project Manager and Contractor's representative to WTA for all purposes under this Contract.
- 3. PAYMENT:** Contractor will be paid in accordance with the itemized prices set forth in Contractor's Quote Sheets, in the total Agreement price of Sixteen Thousand One Hundred Nineteen Dollars and Twenty-Two cents (\$16,119.22), exclusive of tax.

Invoices and Progress Payment Applications will be sent to ap@ridewta.com.

Any invoices submitted to WTA must be approved by the Project Manager prior to payment. No final payment shall be made until the Services are accepted by WTA.

Payment will be made in a Net thirty (30) days term upon receipt of invoice for each invoice/progress payment request.

- 4. PREVAILING WAGES:** Contractor and all Subcontractors are responsible for complying with applicable Washington State Department of Labor and Industries and Department of Revenue requirements and procedures, including but not limited to prevailing wage requirements RCW 39.12. This includes obtaining and timely filing of Intent to Pay Prevailing Wages, Affidavit of Wages Paid, Notice of Completion of Public Work Contract, and any other required documents.
- 5. TIME FOR COMPLETION:** Upon full execution of this Agreement, WTA authorizes Contractor to order materials listed in the Quote Sheet.

Contractor will inform WTA's Project Manager when all materials have been delivered to Contractor and that Contractor is ready to perform the Services. Upon this confirmation, WTA's Project Manager will issue a Notice to Proceed by way of a Purchase Order. Contractor shall begin to perform the Services within thirty (30) days of being issued the Purchase Order and shall complete work within fifty (50) days.

- 6. INSURANCE:** Contractor shall provide a current Certificate of Insurance on an ACORD form or its equivalent evidencing the following minimum coverages and limits:
  - Commercial General Liability (CGL): \$1,000,000 per occurrence; \$2,000,000 in the aggregate
  - Professional Liability Insurance: \$2,000,000 per occurrence; \$2,000,000 in the aggregate (this coverage is not mandatory for this scope of work)

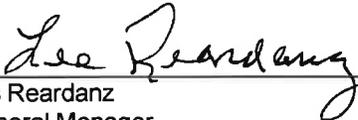
- Automobile Insurance: \$1,000,000 combined single limit per accident
- Workers Compensation: Statutory amount

CGL limits may be met through any combination of primary, umbrella, or excess coverage. Contractor's CGL policy shall: (a) be primary and not seek contribution from any insurance maintained by WTA; ; and (b) provide additional insured coverage to WTA to the extent of Contractor's negligence, including for both ongoing and completed operations. Completed operations coverage must remain in place for a minimum of three (3) years following substantial completion of the project.

7. **CHANGES:** No alterations or variation of any of the terms, conditions, prices, quantities, or specifications of this Agreement shall be effective without prior written consent of WTA's Purchasing & Contracts Manager.
8. **WARRANTIES:** Contractor represents and warrants that the goods are new, current, and fully warranted by the manufacturer unless specifically identified otherwise: that all goods comply with applicable specifications; and are free from defects in labor, material and manufacture: and that the Services will be provided pursuant to the terms and conditions set out in the Quote Sheet and this Agreement.
9. **GENERAL TERMS AND CONDITIONS:** This Agreement is supplemented by and the parties shall be bound to the general terms and conditions set out in Exhibit B which is attached hereto and incorporated by reference ("General Terms"). To the extent that there is any conflict between any other provision of this Agreement and the General Terms, the terms and conditions of the provision contained in this Agreement shall control over the General Terms.
10. **FULLY INTEGRATED CONTRACT:** The parties agree that this Agreement and its incorporated documents are the complete expression of the terms. Any oral representation or understandings not incorporated are excluded. Failure to comply with any of the provisions shall constitute material breach of the Agreement and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of all provisions.
11. **SIGNATURES:** Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

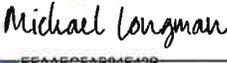
EXECUTED this 21st day of February, 2024

WTA:

  
Les Reardanz  
General Manager

2/21/24

Eaton Corporation

DocuSigned by:  
  
Signature

Michael Longman President CPDI

Printed Name and Title



**Quotation #: KP112310**  
**Date:** 11/09/2023  
 (Effective until 12/09/2023)

**Kimberley Panchana, Service Sales Executive**  
**Performance Power Concepts**  
**206.371.2025**  
**Email: kpanchana@ppcwa.com**

**Prepared For:**

Billing Contact: Accounts Payable,  
 Billing Company: Whatcom Transportation Authority  
 4011 Bakerview Spur Rd.  
 Bellingham, WA 98226  
 (360) 739-0290  
 Email: AP@ridewta.com

**For Covered Equipment at Site:**

Site Contact: Cindy Campen,  
 Site Company: Whatcom Transportation Authority  
 4011 Bakerview Spur Rd.  
 Bellingham, WA 98226  
 360.739.0290  
 Email: cindyc@ridewta.com

We are pleased to provide the following services proposal for your power quality equipment. Please refer to the Scopes of Work (SOW) for descriptions of service coverage and exclusions. Eaton Corporation terms and conditions (Eaton Corp. Service Agreement T-0 attachment) govern this proposal, and any purchase order submitted to Eaton pursuant thereto. Additional or different terms proposed by Buyer, whether in its purchase order or otherwise, shall not be binding upon Eaton Corporation and are hereby rejected unless expressly agreed to in writing by Eaton Corporation. Eaton Corporation cannot be held liable, and Buyer shall not be entitled to any damages and/or indemnifications, in case Eaton Corporation is prevented, hindered or delayed from or in performing any of its obligations resulting from the impact of the outbreak of COVID-19 for reasons not attributable to Eaton Corporation.

Serial Number	New/Renewal	Model Description	Battery Type, Quantity	Coverage Type
BD441KXX05	R	9355-20-30	VRLA Sealed, 6	Flexible

**Quantity 1, Eaton 9355-20-30, VRLA Sealed, 6****Battery Replacement Items**

- 1x Full Internal Battery Replacement, 6x P-106000220 (kit including 2 battery trays, 9 batteries per tray) 7x24 installation (108Batt 12Tray) ( P-106000220 )

**Grand Total Price: \$10,766.12**

- Non Contract Payment Terms: Net 30 days, Billing Cycle: Upon Completion
- Removal and EPA disposal of old batteries, all scrap is property of Eaton
- Dock to Dock quoted:** Inside Delivery may inquire separate charges
- Important Tax Notice: Tax is not included in the above purchase price. All orders will be subject to all applicable sales tax unless a current tax exemption certificate is on file covering the state shown in the ship-to address or service equipment location.
- To purchase, please sign and date below. **Return signed quote, along with purchase order (if applicable) to kpanchana@ppcwa.com.**
- MAKE PAYMENTS TO: Eaton Corporation, 29035 Network Place, Chicago, IL 60673-1290**

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

**Eaton Tech Support**  
**(800) 843-9433**

**Did you know?** Eaton has PredictPulse remote monitoring and a suite of professional assessment and testing services (Load Bank, IR Scan, PQ Meter) that take traditional preventive maintenance to the next level by proactively identifying issues for greater peace of mind. Learn more at [Eaton.com/UPSservices](http://Eaton.com/UPSservices)



Powering Business Worldwide

## LIMITED FACTORY WARRANTY FOR EATON BATTERY PRODUCTS

**WARRANTOR:** The warrantor for the limited warranties set forth herein is Eaton Corporation, an Ohio Corporation ("Eaton").

**LIMITED WARRANTY:** This limited warranty (this "Warranty") applies only to the original Purchaser (the "End-User") of the Eaton brand VRLA Battery Products (the "Product") and cannot be transferred. This restriction applies even in the event that the Product is initially sold by Eaton for resale to an End-User. This Warranty gives you specific legal rights, and you may also have other rights which vary from State to State (or jurisdiction to jurisdiction).

**WHAT THIS LIMITED WARRANTY COVERS:** Eaton warrants, within the terms of this Warranty, that the Eaton brand VRLA Battery Products, (individually and collectively, the "Warranted Items") are free from defects in material and workmanship. A battery will not be considered defective or nonconforming if it has delivered at least eighty percent (80%) of its rated capacity during the Warranty Period. If a properly maintained battery fails to meet 80% of its rated capacity, Eaton will replace the battery part or apply credit towards the purchase of a new battery.

For Product installed (and currently located) in the fifty (50) United States and the District of Columbia, if, in the opinion of Eaton, a Warranted Item is defective, Eaton's sole obligation, at the option of Eaton, will be to refurbish or replace such defective Warranted Item (including the costs of providing diagnosis, service, and labor ["labor coverage"]). The defective Warranted Item will be replaced onsite at the End-User's location or such other location as determined by Eaton. Any parts that are replaced may be new or reconditioned. In any replacement endeavor, all parts removed by Eaton shall become the property of Eaton.

For Product installed (and currently located) outside the fifty (50) United States and the District of Columbia, if, in the opinion of Eaton, a Warranted Item is defective, Eaton's sole obligation, at the option of Eaton, will be to refurbish or replace such defective Warranted Item (not including the costs of labor coverage). The defective Warranted Item will be refurbished or replaced onsite at the End-User's location or such other location as determined by Eaton. Any parts that are replaced may be new or reconditioned. In any replacement endeavor, all parts removed by Eaton shall become the property of Eaton.

**LIMITED WARRANTY PERIOD:** The period covered by this Warranty for Product installed (and currently located) in the fifty (50) United States and the District of Columbia is twelve (12) months from the date of Product installation for labor coverage and for (a) Eaton brand batteries, two hundred (200) watts per cell and greater, thirty-six (36) months from the date of installation or forty-two (42) months from the manufacturing date code listed on the battery, whichever occurs first, or, (b) Eaton brand batteries less than 200 watts per cell, twenty-four (24) months from the date of installation or thirty (30) months from the manufacturing date code listed on the battery, whichever occurs first for the refurbishment/replacement of parts.

The period covered by this Warranty for Product installed (and currently located) outside of the fifty (50) United States and the District of Columbia is twelve (12) months from the date of Product purchase or eighteen (18) months from date of Product shipment, whichever occurs first, for the refurbishment/replacement of parts.

**WHAT THIS LIMITED WARRANTY DOES NOT COVER:** This Warranty does not cover any defects or damages caused by: (a) failure to properly store the Product before installation, including the "trickle charge" of batteries no later than the date indicated on the packaging; (b) shipping and delivery of the Product if shipping is FOB Factory; (c) neglect, accident, fire, flood, lightning, vandalism, acts of God, End-User's neglect, abuse, misuse, misapplication, incorrect installation; (d) repair or alteration, not authorized in writing by Eaton personnel or performed by an authorized Eaton Customer Service Engineer or Agent; (e) improper testing, operation, maintenance, adjustment, or any modification of any kind not authorized in writing by Eaton personnel or performed by an authorized Eaton Customer Service Engineer or Agent; (f) Claims for full replacement not made within three (3) months of failure; (g) failure to have both the initial and replacement batteries installed by an authorized Eaton Corporation Service Engineer (in USA) or Agent (outside of USA); (h) **claims resulting from an epidemic part failure by the battery OEM.**

It is recommended for optimal battery life and discharge performance to keep the ambient air temperature the battery is used in at 25°C. Eaton battery cabinets are rated at 25°C +/- 3°C ambient unless otherwise specified in writing by Eaton. This Warranty is not valid: if the Product's serial numbers or manufacturing date codes have been removed or are illegible; if each battery is not the proper size, design, and capacity for its intended applications at 25°C (77°F); if the product discharge depth and frequency exceed during the warranty period 225 Cycles at 30% depth, 185 Cycles at 50% depth or 100 Cycles at 100% depth.



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Warranty period shall be adjusted based on operating temperatures, frequency, and depth of discharge. For every 10°C (18°F) increase in operating temperature above 25°C (77°F), the coverage period will be reduced by 50%. If the discharge rate is in excess of 4 complete discharges per month (96 or 144 complete discharges over the Coverage period), this will be considered cyclical service and thus void the warranty period. Any Warranted Items repaired or replaced pursuant to this Warranty will be warranted for the remaining portion of the original Warranty subject to all the terms thereof. Eaton does not provide a labor warranty for Product located outside of the fifty (50) United States or the District of Columbia. **Non Eaton brand batteries shall pass the original manufacturer's warranty through to the Purchaser.**

**THIS WARRANTY IS THE END-USER'S SOLE REMEDY AND IS EXPRESSLY IN LIEU OF, AND THERE ARE NO OTHER, EXPRESSED OR IMPLIED GUARANTEES OR WARRANTIES (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED). SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND/OR EXCLUSIONS MAY NOT APPLY TO YOU.**

**LIMITATION OF LIABILITY:** In no event shall Eaton be liable for any indirect, incidental, special or consequential damages of any kind or type whatsoever, resulting from or in connection with any claim or cause of action, whether brought in contract or in tort (including negligence and strict liability). Some States or jurisdictions do not allow the exclusion of limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. Eaton shall not be responsible for failure to provide service or parts due to causes beyond Eaton's reasonable control. In no case will Eaton's liability under this Warranty exceed the replacement value of the Warranted Items.

**END-USER'S OBLIGATIONS:** In order to receive the benefits of this Warranty, the End-User must; use the Product in a normal way; follow the Product's operators and maintenance manual; and protect against further damage to the Product if there is a covered defect.

**OTHER LIMITATIONS:** Eaton's obligations under this Warranty are expressly conditioned upon receipt by Eaton of all payments due from End-User (including interest charges, if any). During such time as Eaton has not received payment of any amount due to it for the Product, in accordance with the contract terms under which the Product is sold, Eaton shall have no obligation under this Warranty. Also during such time, the period of this Warranty shall continue to run and the expiration of this Warranty shall not be extended upon payment of any overdue or unpaid amounts.

**COSTS NOT RELATED TO WARRANTY:** The End-User shall be invoiced for, and shall pay for, all services not expressly provided for by the terms of this Warranty, including without limitation, site calls involving an inspection that determines no corrective maintenance is required. Any costs for replacement equipment, installation, materials, freight charges, travel expenses or labor of Eaton representatives outside the terms of this Warranty will be borne by the End-User.

**OBTAINING WARRANTY SERVICE:** In the United States, call the Eaton Customer Reliability Center 7x24 at 800-843-9433. Outside of the United States, call your local Eaton sales or service representative, or call the Eaton Customer Reliability Center in the United States at 919-870-3028. For comment or questions about this Limited Factory Warranty, write to the Customer Quality Representative, 3301 Spring Forest Road, Raleigh, North Carolina 27616 USA.



## **Eaton Valve Regulated (Sealed) Battery System Replacement (Update) Scope of Work Attachment R-11**

Battery replacement (update) service includes, and is expressly limited to, those tasks set forth below. <sup>1</sup>Due to the size and type of battery, testing and work procedures vary between battery jars above and below 100 watts per battery; work procedures may vary by UPS or related device and battery type and may be limited by safety requirements. All additional work will be billable at the applicable rates per Attachment X-1.

### **Performed During Installation:**

1. New Batteries
  - a. Removal and EPA approved disposal of old batteries.
  - b. Installation utilizing proper torque values (where applicable) and verification of new batteries
2. Visually inspect conditions and appearance of the following:
  - a. Connection terminals inter cell/battery connectors, cables and associated hardware.
  - b. Cell/battery covers, containers, and post seals.
  - c. Battery racks or cabinets and associated components and hardware.
  - d. Cell/battery jar or cover, noting any excessive distortion.
3. Perform cleaning of all accessible surfaces as required.
4. Reporting of Battery Update Visit:
  - a. The technician(s) will issue the customer a verbal report summarizing the work that was performed, condition of the battery and identifying any critical issues before leaving the customer's site.
  - b. A Field Activity Report containing applicable notes and observations will be sent to the customer within 5 business days.

Eaton is a trademark of Eaton Corporation



**Quotation #: KP102216rev3**  
**Date:** 11/17/2023  
 (Effective until 12/17/2023)

**Kimberley Panchana, Service Sales Executive**  
**Performance Power Concepts**  
**206.371.2025**  
**Email: kpanchana@ppcwa.com**

**Prepared For:**

Billing Contact: Accounts Payable,  
 Billing Company: Whatcom Transportation Authority  
 4011 Bakerview Spur Rd.  
 Bellingham, WA 98226  
 (360) 739-0290  
 Email: AP@ridewta.com

**For Covered Equipment at Site:**

Site Contact: Cindy Campen,  
 Site Company: Whatcom Transportation Authority  
 4011 Bakerview Spur Rd.  
 Bellingham, WA 98226  
 360.739.0290  
 Email: cindyc@ridewta.com

We are pleased to provide the following services proposal for your power quality equipment. Please refer to the Scopes of Work (SOW) for descriptions of service coverage and exclusions. Eaton Corporation terms and conditions (Eaton Corp. Service Agreement T-0 attachment) govern this proposal, and any purchase order submitted to Eaton pursuant thereto. Additional or different terms proposed by Buyer, whether in its purchase order or otherwise, shall not be binding upon Eaton Corporation and are hereby rejected unless expressly agreed to in writing by Eaton Corporation. Eaton Corporation cannot be held liable, and Buyer shall not be entitled to any damages and/or indemnifications, in case Eaton Corporation is prevented, hindered or delayed from or in performing any of its obligations resulting from the impact of the outbreak of COVID-19 for reasons not attributable to Eaton Corporation.

We will be happy to supply any further information you may need. It is recommended that a pre-contract survey is purchased for equipment that has had a lapse in service. If a pre-contract survey isn't purchased, the preventative maintenance visit purchased as part of your service contract will be used for those purposes. Prior to commencement of any service agreement entailing corrective maintenance coverage, correction of any conditions, deemed pre-existing by Eaton, will be billed outside of any agreement terms or coverage, at the time and materials rates.

Serial Number	New/Renewal	Model Description	Battery Type, Quantity	Coverage Type
BD441KXX05	R	9355-20-30	VRLA Sealed, 6	Flexible

**Quantity 1, Eaton 9355-20-30, VRLA Sealed, 6**

**Coverage Start Date:** TBD/2023    **Coverage End Date:** TBD/2024    **Term:** 1 Year

**Flex: 8 Hr Rsp, 7x24 Cvg Only (FL87NXXX-0030)**

- After Hours (7x24) w/ Parts&Labor
- 8 HR Response Time
- Age based pricing has been applied
- 1x Concurrent PCS and UPS PM 7x24 (0005NPSP-0030-1)
- 1x UPS PM, Bus Hrs, 5x8, 1 PM per year (0006NXXX-0030-1)
- 1x Internal Sealed Battery Preventive Maintenance, Included with UPS PM SOW, 1 PM per year (0005NSXXINT-1)
- EOSL Status Active

**Grand Total Price: \$5,353.10**

*Please note: To add another 2 option years, please add 6% a year to the flex service plan total.*

**Did you know?** Eaton has PredictPulse remote monitoring and a suite of professional assessment and testing services (Load Bank, IR Scan, PQ Meter) that take traditional preventive maintenance to the next level by proactively identifying issues for greater peace of mind. Learn more at [Eaton.com/UPSservices](http://Eaton.com/UPSservices)



- Contract Payment Terms: Net 30 days, Billing Cycle: Annual
- Important Tax Notice: Tax is not included in the above purchase price. All orders will be subject to all applicable sales tax unless a current tax exemption certificate is on file covering the state shown in the ship-to address or service equipment location.
- To purchase, please sign and date below. **Return signed quote, along with purchase order (if applicable) to [kpanchana@ppcwa.com](mailto:kpanchana@ppcwa.com).**
- **MAKE PAYMENTS TO: Eaton Corporation, 29085 Network Place, Chicago, IL 60673-1290**

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

**Eaton Tech Support**  
**(800) 843-9433**

**Did you know?** Eaton has PredictPulse remote monitoring and a suite of professional assessment and testing services (Load Bank, IR Scan, PQ Meter) that take traditional preventive maintenance to the next level by proactively identifying issues for greater peace of mind. Learn more at [Eaton.com/UPSservices](http://Eaton.com/UPSservices)

**EXHIBIT B**

Contractor agrees to be bound by all of the below terms and conditions in association with any services or good provided to Whatcom Transportation Authority ("WTA").

**Independent Contractor:** An independent contractor relationship will be created by any Agreement with WTA. The parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another in performance of this Contract. Contractor shall not make any claim of right, privilege or benefit as would an employee of WTA under any statute or otherwise, including, but not limited to, RCW Chapter 41.06 or RCW Title 51. Contractor shall indemnify and hold harmless WTA from and against any and all costs (including attorneys' fees) or liabilities (including payroll taxes, penalties or interest) arising out of any assertion that the Contractor is not an independent contractor.

**Payments:** All payments are due net thirty (30) days in full from the date of invoice, unless otherwise mutually agreed upon in writing. WTA shall be invoiced for, and shall pay for, all Service not expressly provided for by the terms, such as site calls involving no-fault found inspections where no corrective maintenance was required. Contractor reserves the right to refuse to provide any further Service until all due payments have been received. In the event of an early termination: i) WTA is liable for any Service performed prior to the effective date of termination; and (ii) Contractor, at its discretion, will provide a credit against any advance payments received as follows: a) for fixed-rate Agreements, a pro-rated amount based on the terminated portion of the fixed-price fee due Contractor; or b) for any new work outside of the Services provided in this Agreement, an amount based on the difference between the amount paid by WTA prior to the effective date of early termination and the actual cost of Service completed (including emergency repair calls) by Contractor prior to the effective date of early termination, or c) for pre-paid multi- year contracts if WTA terminates the Agreement partway through the Agreement term, WTA will be entitled to a refund of the unused portion of the contract MINUS the applied discount for the pre-payment.

**Taxes:** Contractor will include applicable Washington State sales and local tax as a separate line item on the invoice, excluding Federal Excise Tax, and supply exemption certificate when necessary.

**Inspection and Acceptance:** Services performed for and goods provided to WTA will be monitored and inspected, with payment conditioned upon acceptance by WTA's Project Manager or designee. Acceptance of any portion of the services or goods to be provided does not release the Contractor from liability for faulty workmanship or goods, or failure to comply with all Contract terms and conditions. WTA may inspect all goods and services at any time during the Contract term. WTA may, in its discretion and in addition to all other remedies available to it, reject goods or services not conforming to specifications or other Contract terms.

**Contract Modifications/Change Orders:** No changes, modifications or amendments to the Contract, including these terms and conditions, prices, quantities, scope of work, or specifications otherwise negotiated or included as part of the Contract or solicitation shall be effective without a prior writing executed by the parties. Oral changes or modifications are not permitted nor enforceable and will not be paid for by WTA. Only WTA's General Manager, or his/her designee, shall have the authority to alter, amend, modify, add, or waive any section or condition of the Contract on behalf of WTA.

Either party may initiate a change request that is reasonably within the general scope of the Contract. Such changes might include, but are not limited to: the method of operations, requirements for record keeping, and emergency service. WTA may add or delete items, services, or locations, provided such items, services, or locations could reasonably be related to those originally contracted items, services or locations and will not represent a significant increase or decrease in size or scope of the Contract. After receipt of a written change

## **EXHIBIT B**

request from WTA, Contractor shall submit any request for equitable adjustment in the Contract Sum and or Contract Time of the Contract. Any requested adjustment in the Contract Sum must be consistent with the original price and relate to the original scope of work. Any request for adjustment of the Contract Time must be reasonable and demonstrate continued efficiency and productivity. Failure to agree to any adjustment shall be a dispute resolved through the Dispute Resolution clause; however, nothing shall excuse the Contractor from proceeding with the Work as agreed.

If the time of Contractor's performance is changed due to an act of Force Majeure or the fault or negligence of WTA or anyone for whose acts WTA is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

If it is determined a change is necessary and immediately required to avoid causing undue harm to WTA or the public, the Project Manager, or designee may direct Contractor to proceed immediately with a Critical Directive Change or a Field Authority Change on a time and materials basis. A price proposal for the change must be submitted to the Project Manager in writing no more than five (5) business days after the authorization is applicable.

Any Change Order to the Contract Sum shall constitute final settlement of all claims that Contractor may have against WTA. Under no circumstances shall WTA pay for indirect or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work whether covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment to the Contract Sum.

If WTA and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, WTA shall provide Contractor with its final offer. If Contractor does not accept WTA's final offer within seven (7) calendar days, or the parties are otherwise unable to reach agreement, Contractor may decline the change in Work or the parties may attempt to resolve through the Dispute Resolution clause.

**Supervision and Coordination:** Contractor shall: 1) competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; and 2) designate a representative for the Work under this Contract.

**Service of Notice:** All Contract notices, orders, directions, requests, waivers, and other communication must be in writing. Verbal notices will not be accepted. Notice is considered received within five (5) business days after issue. Notice may be given via fax, email, posted at the work site or mailed to the Contractor at the address provided in the Contract. If mailed, any form of communication will be deemed to have been given to and received by the Contractor five (5) business days after the postmark date.

Notice to WTA will be provided to:

ATTN: Procurement  
4011 Bakerview Spur  
Bellingham, WA 98226  
[procurement@ridewta.com](mailto:procurement@ridewta.com)  
360-788-9332

## EXHIBIT B

Notice to Contractor shall be provided to:

Eaton Corporation

Attn: Eaton Legal

1000 Eaton Blvd.

Cleveland, OH 44122

**Suggestions to Contractor:** Any plan or method of work suggested by either party, but not specified or required in writing under the Contract or confirmed through written change order, will be performed at the risk and responsibility of the Contractor. WTA assumes no liability for work performed outside the scope of the Work or a written and executed change order.

**Safety Measures:** All work under this Contract will be performed in a safe manner. The Contractor will exercise every precaution at all times for the prevention of accidents and the protection of people and property. WTA shall, at all times during the provision of Services hereunder, have a representative present at the service site at no cost to, and solely for, the safety of Contractor.

**Compliance with Laws:** Contractor and all subcontractors shall comply with all applicable federal, state, and local laws and regulations, including the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1970 (WISHA), Washington State Department of Labor and Industries (WA-LNI) and the standards and regulations issued. WTA will not make adjustments for loss of time or disruption of work caused by any actions against the Contractor. If the Contract is financed with FTA assistance, it must comply with applicable federal requirements. Any applicable law or regulation change will apply to the Work as required.

Contractor shall comply with WTA environmental standards and applicable portions of the following statutes, ordinances and regulations and such other regulatory measures pertaining to environmental pollution and the preservation of public natural resources as identified by WTA or other public agencies as applicable to the Work.

- Federal. Natural Environmental Policy Act of 1969, 42 USC 4321 et Seq.; Executive Order 11514; Clean Water Act, 33 USC 1251 et seq.;
- State. Water Pollution Control Act, Chapter 90.48 RCW; State Environmental Policy Act of 1971, Chapter 43.21C RCW and WAC Chapter 197-10; Noise Control Act of 1974, Chapter 70.107 RCW; Washington Clean Air Act, Chapter 70.94 RCW and WAC Chapter 1; Shoreline Management Act of 1971, Chapter 90.58 RCW.
- Regional. Any applicable Air Pollution Control District regulations.
- Whatcom County. Any applicable County ordinances and regulations.
- Local. Any applicable City of Bellingham, City of Lynden, City of Ferndale ordinances and regulations.

Contractor shall give the notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the Work. Contractor shall be liable for violations of the law in connection with work it/he/she provides. If the Contractor observes that any applicable drawing, specification or other portions of the Work are contrary to any laws, ordinances, rules or regulations, WTA must be notified promptly in writing. WTA shall promptly review the matter and, if necessary, issue a change order or take any other action necessary to bring about compliance with the law, ordinance, rule or regulation in question. Contractor agrees not to perform Work known to be contrary to any laws, ordinances, rules or regulations.

**Access to Records and Sites of Project Performance:** With the exception of orders quoted on a fixed-fee basis and excluding Contractor's proprietary, cost and financial accounting data, Contractor shall keep in accordance with generally accepted accounting practices complete and accurate time records, invoices, expense receipts and supporting data, and other documents that are specifically identified and designated for preservation in writing by the parties ("Records"). Records shall be maintained and preserved as required by Contractor's

## **EXHIBIT B**

**record retention schedule. WTA, or its authorized representative, if approved in writing by Contractor, shall have the right, at a mutually agreed time and place, to examine the Records at Contractor's facility during normal business hours at WTA's sole cost and expense, excluding any records which Contractor considers proprietary and/or confidential.**

**Licenses, Permits and Taxes:** Contractor shall obtain all permits and licenses, pay all charges, fees and taxes, and give all notices necessary to perform the services for or provide the goods called for under the Contract to WTA.

**Civil Rights Requirements and Discrimination:** Contractor shall not discriminate on the basis of race, religion, creed, color, national origin, gender, gender identity or expression, sexual orientation, marital status, sensory, mental, or physical disability, or other basis prohibited by local state, or federal law, unless based upon a bona fide occupational qualification in the performance of this Contract, or in any hiring or employment resulting from this Contract. Contractor shall comply with the Federal Civil Rights Act of 1964, the Equal Employment Opportunity Act, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, and their regulations.

**Personal Liability:** In no event shall any official, officer, employee, or agent of the WTA be personally liable or responsible for any term or condition of this Contract or statement whether expressed or implied, and Contractor waives any such claim that it may have arising from the Contract.

**Assignment:** This Contract may not be assigned by Contractor to a third party without the prior written consent of WTA which shall not be unreasonably withheld. Notwithstanding anything in this Agreement or otherwise to the contrary, upon written notice to the other party, either party may assign this Agreement or any of its rights and interests herein to: (i) any parent, subsidiary, affiliated or successor corporation; or the purchaser of any of these entities; (ii) any corporation to which the party has sold all or substantially all of its assets (including the purchaser of any of the party's subsidiaries); or (iii) any corporation or legal entity with which the party may merge or consolidate.

**Project Time Limit:** All goods and services shall be provided within negotiated time periods. Modifications to any time periods or the Contract Time will only be granted by WTA if Contractor is delayed by causes outside of its/his/her control, such as weather, nature, labor stoppages, or Force Majeure event. During periods when weather or other conditions are unfavorable for performing Work, the Contractor shall pursue only such portions of the Work that are not adversely impacted. No portions of the Work where acceptable quality or efficiency will be affected by unfavorable conditions shall be performed while those conditions exist.

If work falls ten (10) calendar days or more behind the accepted schedule, Contractor agrees to take all reasonable actions, including some or all of the following, to return the project to the accepted schedule:

1. increase manpower in quantities and crafts;
2. increase the number of working hours per shift, shifts per working day, working days per week, or amount of equipment, or any combination thereof; or
3. reschedule activities.

If requested, Contractor will propose a schedule revision to WTA's Project Manager demonstrating a plan to make up the lag in progress, return the project to the accepted schedule and insure completion of the Work within the Contract Time. The schedule shall be adjusted upon a revised schedule only if approved by WTA in writing. All actions to return the project to the accepted schedule are at the Contractor's expense.

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It is further understood and agreed that monitoring, reviewing, and reporting project status and progress by WTA's Project Manager shall relieve the Contractor of responsibility for planning and managing work according to the original schedule.

**Delays and Extensions of Time:** Contractor waives claims for damages for any hindrance or delay in performing under the Contract, except those incurred for unreasonable delays caused by WTA.

WTA may, in its discretion, grant Contractor equivalent extensions of time caused by any hindrance or delay, under the following circumstances:

- Delay caused by any suit or other legal action by someone other than Contractor against WTA, unless the delay exceeds ninety (90) calendar days. In such instance, WTA may, upon written request of the Contractor, either negotiate a Contract termination or grant a further extension of time, whichever is in the best interest of WTA.
- Time lost due to inclement weather which could not have been reasonably anticipated by Contractor, but only subject to the approval of WTA. Delays due to weather conditions which are not abnormal (precipitation as rain, hail, or snow, low temperature, a windstorm, ice, snow, and other weather conditions that could reasonably have been anticipated from the National Weather Service historical records of the general locality of the Work) shall not be regarded as unavoidable as the Contractor agrees to plan his work with prudent allowances for potential interference by normal weather conditions.
- Should abnormal conditions prevent the work from beginning at the usual starting time or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least five (5) hours per day, and the crew is dismissed as a result, they will not be charged for a working day.
- Time lost due to a strike, fire, flood, a natural disaster, or events which are unavoidable, not the fault of or are beyond the control of the Contractor.

It is understood and agreed by the Contractor and WTA that extensions due to unavoidable delays will be granted only for delays involving controlling operations preventing project completion within the specified Contract Time. Except for WTA caused delays, the Contractor's only remedy for unavoidable delays shall be a request for an extension of time. If WTA later determines that there was an excusable reason for untimely performance, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

WTA may grant an extension of time if an extension is in WTA's best interest.

### **Force Majeure**

- a. **No Liability.** Neither party will be liable for performance delays nor for non-performance due to causes that were not reasonably foreseeable, unavoidable and (a "Force Majeure") beyond its/his/her reasonable control, except for payment obligations, for services or goods previously received by WTA.
- b. **Best Efforts to Cure.** In the event of a threatened default or default caused by a Force Majeure, the defaulting party shall nonetheless exercise its/his/her best efforts to avoid and cure such default.
- c. **Right to Terminate.** In the event that a Force Majeure prevents performance thereunder for a period in excess of ninety (90) calendar days, then the non-defaulting party may elect to terminate this Contract and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

For purposes of this Agreement, a Force Majeure shall be an event that prevents the Contractor from proceeding with at least seventy-five percent (75%) of its/his/her normal labor and equipment force for at least five (5) hours per day toward completion of any current controlling item on an accepted critical path schedule, and such was outside the control of the Contractor. Such causes include, but are not limited to, war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, a labor dispute, plague, pandemic, epidemic, or apocalypse.

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**Suspension of Contract:** WTA may, at any time and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from WTA.

**Termination for Convenience:** WTA may terminate all or part of this Contract by providing written notice, when in WTA's best interest. In such case, Contractor shall deliver to WTA any goods and/or work completed, and equipment or property of WTA. Contractor will invoice WTA for services provided prior to termination, or goods accepted by WTA, within thirty (30) days of receiving notice of termination for convenience and shall be entitled to the Contract price for such accepted services or accepted goods.

**Notice of Breach of Contract:** The parties will immediately notify one another in writing once the notifying party becomes aware of any breach of this Contract, or commission of an error or omission.

**Opportunity to Cure:** Where a party has breached this Contract, the non-breaching party may, in its sole discretion, allow the breaching party up to thirty (30) calendar days to cure the breach, unless another timeframe is otherwise negotiated and agreed on between the parties. In such case, the non-breaching party will detail in writing what the breaching party must do to remedy the breach and the timeframe to complete the remedy.

**Default:** If either party breaches any term of the Contract and fails to cure such breach within any cure period, the non-breaching party may terminate this Contract for default by providing three (3) days written notice to the breaching party. Contractor may invoice WTA for goods and services provided and accepted by WTA prior to termination at the Contracted price.

If WTA later determines that there was an excusable reason for Contractor's breach, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

**Dispute Resolution:** In the event of a dispute between the parties arising out of or related to this Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies.

1. A meeting shall be held promptly between the parties, attended by representatives having decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
2. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral"), seeking assistance in such regard from the American Arbitration Association, Center for Public Resources, or other mutually agreed-upon organization if they have been unable to agree upon such appointment within forty (40) days from the initial meeting. The fees of, and authorized costs incurred by, the Neutral shall be shared equally by the parties.
3. In consultation with the Neutral, the parties will select or devise an alternative dispute resolution procedure ("ADR") by which they will attempt to resolve the dispute, and a time and place for the ADR to be held, with the Neutral making the decision as to the procedure, and/or place and time if the parties have been unable to agree on any of such matters within twenty (20) days after initial consultation with the Neutral. In any case, the ADR shall be held not later than sixty (60) days after selection of the Neutral.
4. The parties agree to participate in good faith in the ADR to its conclusion. If the parties are not successful in resolving the dispute through the ADR, then either party may pursue other available remedies upon seven (7) days

## **EXHIBIT B**

written notice to the other party specifying its intended course of action.

**No Waiver of Rights:** Either party's failure to immediately enforce any of its rights shall not be a waiver of its rights to seek enforcement of such right, or to enforce any other rights or remedy under the Contract for any other breach.

**Applicable Law, Jurisdiction Venue, and Attorneys' Fees:** This Contract is executed and governed in interpretation and performance by the laws of the State of Washington. Any action to enforce the Contract shall be filed in the Superior Court for the State of Washington, Whatcom County, and Contractor waives any objection to the jurisdiction and venue of this Court. In any action to enforce or interpret this Contract, the prevailing party shall be entitled to recover, in addition to all other remedies, its reasonable attorneys' fees and costs incurred.

**Refusal to Execute Contract:** Similarly, Contractor's failure to furnish proof of insurance within fifteen (15) days of Contract award or other negotiated time frame, may result in withdrawal of the award, and award the Contract to another bidder/proposer or resolicit.

**Severability:** If any portion of this Contract is legally unenforceable or invalid, that portion may be renegotiated by the parties. The remaining portions of the Contract shall remain in full force and effect.

**Counterparts:** Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature.

Signatures submitted electronically must be fully legible to be valid.

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

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Contractor warrants to WTA as follows in association with the services or goods to be provided:

- a. Contractor and all of its/his/her employees and subcontractors shall be knowledgeable and have proper training to provide the proposed services or goods, and will safely operate any and all equipment associated with the Work;
- b. Contractor will timely pay all wages, salaries, invoices and other compensation or amounts due and owing to its employees, agents, subcontractors and others who provide services or goods to WTA on Contractor's behalf;
- c. all equipment used by Contractor and subcontractors will be suitable to provide the services or goods; and
- d. all services or goods provided by Contractor and subcontractors to WTA shall be in conformity with all specifications, terms and conditions of the Contract Documents.

Contractor warrants to WTA that it has the right and all necessary licenses to provide the services or goods and that such services or goods will be of the highest quality; free from liens, infringements and defects, be in conformance with the Contract Documents.

**Liens:** Eaton shall promptly pay all costs incurred by Eaton in performing the Work and shall take all action reasonably necessary to (a) avoid the attachment of a lien on Buyer's property, or (b) remove any lien on Buyer's property arising from the Work. Eaton and/or subcontractor shall promptly and satisfactorily settle any such claims. Eaton shall indemnify and hold harmless Buyer from any cause of action, claims, liabilities, costs (including attorney's fees), damages, losses, liens, or judgments arising out of any claims or causes of action for failure of Eaton to pay for services, labor, materials, supplies or equipment furnished directly or indirectly by Eaton or any of its subcontractors or suppliers under this Agreement.

**Indemnification/Hold Harmless:** Contractor shall defend, indemnify and hold harmless WTA, its officers, employees and agents (Indemnified Parties), from and against any and all claims, causes of action or suits brought against the Indemnified Parties to the extent they result directly from (1) bodily injury to or death of any person or damage to or destruction of any property caused by the negligent acts or willful misconduct of Contractor, its agents or employees, and (2) any violation of federal or state law, regulation, order, rule or of any other governmental authority having jurisdiction by Contractor, its employees or agents, while Contractor is performing work on site. The Indemnified Party shall cooperate in a reasonable manner to provide information and access to personnel related to the defense of any indemnified claim.

**Liability:** The remedies of the WTA set forth in this Agreement are exclusive and are its sole remedies for any failure of Contractor to comply with its obligations hereunder. IN NO EVENT SHALL CONTRACTOR OR WTA, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER FOR ANY AND ALL CLAIMS ARISING OUT OF (A) DAMAGE TO PROPERTY OR EQUIPMENT, OTHER THAN DIRECT DAMAGES TO EQUIPMENT SOLD OR SERVICED HEREUNDER, OR (B) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, DELAY DAMAGES, LOST PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE OR LOST OPPORTUNITY THAT RESULT FROM OR IN CONNECTION WITH ANY CLAIM(S) OR CAUSE(S) OF ACTION, WHETHER BROUGHT IN CONTRACT OR IN TORT, EVEN IF CONTRACTOR OR WTA KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. WITH THE EXCEPTION OF THIRD PARTY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE DEATH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR ARISING FROM OR RELATED TO THIS AGREEMENT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.

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**Public Records Obligations:** WTA complies with RCW Chapter 42.56. With the exception of Contractor confidential information this Contract and any other documents relating to this Contract or services or goods provided by Contractor will be disclosed if a Public Disclosure Request (PDR) is submitted. If WTA receives any PDR that includes a request for all or a portion of this Contract or any documents relating to the Contract or services or goods provided by Contractor, WTA is required to comply with this request under RCW Chapter 42.56, subject to any exception that may apply to WTA. Nonetheless, any information provided by Contractor labeled "Confidential" or "Proprietary" will be withheld and WTA.