



Amendment No. 7
of
Contract Number MA 5600 NS140000034
for
FleetFocus Capital Asset Management Module
between
AssetWorks, LLC
and the
City of Austin

1.0 The City hereby amends this Contract by extending the contract by an additional 3 months at \$41,854.16. Contract will expire on August 27th, 2020. Quote attached hereto.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 05/28/14 - 05/27/17	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal	\$0.00	\$1,202,238.00
Amendment No. 2: Option 1 Extension 05/28/17 - 05/27/18	\$400,746.00	\$1,602,984.00
Amendment No. 3: Option 2 - Extension 05/28/18 - 05/27/19	\$400,746.00	\$2,003,730.00
Amendment No. 4: Add CAM Statement of Work and Cost Proposal Upgrade	\$0.00	\$2,003,730.00
Amendment No. 5: Option 3 - Extension 05/28/19 - 05/27/20	\$400,746.00	\$2,408,476.00
Amendment No. 6: Add MobileFocus and SmartApps enterprise license	\$0.00	\$2,408,476.00
Amendment No. 7: Contract Extension 05/28/20 - 08/27/20	\$0.00	\$2,408,476.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Date: 3/30/2020

Printed Name: Steven Occhiolini
Authorized Representative

AssetWorks, LLC
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Signature:

Date:

Digitally signed by Elisa
Folco

Date: 2020.03.30 14:36:22
-05'00'

Elisa Folco
Procurement Specialist IV

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310



Amendment No. 6
of
NS1400000034
for
FleetFocus Capital Asset Management Module between
AssetWorks, LLC ("Contractor")
and the
City of Austin

1.0 The City hereby amends this Contract by modifying Exhibit A, Pricing Agreement and Exhibit B, Statement of Work.

1.1 Add MobileFocus and Smart Apps enterprise license.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 5/28/14 – 5/27/17	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal, Funding already available in the contract amount	\$0.00	\$1,202,238.00
Amendment No. 2: Option 1 – Extension 5/28/17 – 5/27/18	\$400,746.00	\$1,602,984.00
Amendment No. 3: Option 2 – Extension 5/28/18 – 5/28/19	\$400,746.00	\$2,007,730.00
Amendment No. 4: Add CAM Statement of Work and Cost Proposal for Upgrade, Funding already available in the contract amount	\$0.00	\$2,007,730.00
Amendment No. 5: Option 3 – Extension 5/28/2019 – 5/27-2020	\$400,746.00	\$2,408,476.00
Amendment No. 6: Add MobileFocus and Smart Apps enterprise license, Funding already available in the contract amount	\$0.00	\$2,408,476.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Gordon Smith

Signature: D. Dellemonache

Date: 5/29/2019

Date: 5/30/19

Printed Name: Gordon Smith
Authorized Representative
AssetWorks, LLC
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Daniel Dellemonache
Procurement Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701



ORDER FORM

AssetWorks LLC

998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Order #: Q-03981-1

Date: 4/5/2019

Ship To

Rick Harland
City of Austin
Fleet Services
1190 Hargrave Street
Austin, Texas 78702
United States (512) 974-1541
rick.harland@austintexas.gov

Bill To

City of Austin
Fleet Services
1190 Hargrave Street
Austin, Texas 78702
United States

This Order Schedule is issued pursuant to Agreements entered into between AssetWorks and the above named Customer. Parties agree to be bound by those terms and conditions. Pricing below is valid if this Order Form is signed on or by 7/31/2019.

License

Description	QTY	UNIT PRICE	Line Total
MobileFocus / Smart Apps, Enterprise License	6,000.00	USD 7.60	USD 45,600.00
License TOTAL:			USD 45,600.00

Maintenance

Description	Line Total
Software Maintenance	USD 9,120.00
Maintenance TOTAL:	USD 9,120.00

Year Two Maintenance & Support not to exceed a 5% increase over year one.

Service

Description	Line Total
Project Management Services	USD 2,050.00
Software Installation	USD 4,920.00
Training Services	USD 4,920.00
Service TOTAL:	USD 11,890.00

TOTAL: USD 66,610.00

SmartApps Assumptions:

- SmartApps will be installed on existing M5 application servers. Refer to M5 sizing requirements and pre-requisites.
- Up to 3 days of training will be executed remotely via WebEx.
- With PM or trainer assistance, client is responsible for creating and distributing the agenda with desired curriculum to be covered.
- Client to coordinate attendees, secure space, provide overhead projection capabilities to attendees, if necessary.
- Effort is quoted on a fixed fee basis and is due on existing contract terms.
- No custom development or scripting services is included. Any additional services will require a change order.
- All costs quoted in USD.
- AssetWorks will assign a Professional Services Project Manager 4-8 weeks after fully executed and processed order. The Project Manager will engage with the client to kick-off the project and begin scheduling services. Implementers, consultants or trainers for on-site services will be secured by the Project Manager with a 6-8 week lead time once the project is kicked off.

In the event Customer's business practices require that Customer issue a purchase order number prior to payment of any AssetWorks invoices issued under this Agreement, then such purchase order number must be entered below. Customer's execution of the Order Form without designating a purchase order number shall be deemed Customer's acknowledgement that no purchase order number is required for payment of invoices hereunder.

Purchase Order Number: _____

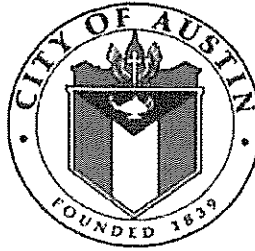
Accepted by Customer:

Accepted by AssetWorks:

Signature: _____	Signature: <u>Gordon Smith</u>
Name (Print): _____	Name (Print): <u>GORDON SMITH</u>
Title: _____	Title: <u>PORTFOLIO MANAGER</u>
Date: _____	Date: <u>5/29/2019</u>

Please sign and email to Allan Richardson at
allan.richardson@assetworks.com.

THANK YOU FOR YOUR
BUSINESS!



Amendment No. 5
to
Contract No. 5600 NS140000034
for
FleetFocus MS and FuelFocus Software and Maintenance
between
AssetWorks LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 28, 2019 through May 27, 2020. Zero (0) options remain.
- 2.0 The total contract amount is increased by \$400,746.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/28/2017 – 05/27/2017	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal, Funding already available in the contract amount	\$0.00	\$1,202,238.00
Amendment No. 2: Option 1 – Extension 05/28/2017 – 05/27/2018	\$400,746.00	\$1,602,984.00
Amendment No. 3: Option 2 – Extension 05/28/2018 – 05/27/2019	\$400,746.00	\$2,007,730.00
Amendment No. 4: Add CAM Statement of Work and Cost Proposal for Upgrade, Funding already available in the contract amount	\$0.00	\$2,007,730.00
Amendment No. 5: Option 3 – Extension 05/28/2019 – 05/27/2020	\$400,746.00	\$2,408,476.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Printed Name: Gordon Smith
Authorized Representative

AssetWorks LLC
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Sign/Date:

Printed Name: JAMES T. HOWARD
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 4
of
NS140000034
for
FleetFocus Capital Asset Management Module between
AssetWorks, LLC ("Contractor")
and the
City of Austin

1.0 The City hereby amends this Contract by modifying Exhibit A, Pricing Agreement and Exhibit B, Statement of Work.

1.1 CAM upgrade and database update.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 5/28/14 – 5/27/17	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal, Funding already available in the contract amount	\$0.00	\$1,202,238.00
Amendment No. 2: Option 1 – Extension 5/28/17 – 5/27/18	\$400,746.00	\$1,602,984.00
Amendment No. 3: Option 2 – Extension 5/28/18 – 5/28/19	\$400,746.00	\$2,007,730.00
Amendment No. 4: Add CAM Statement of Work and Cost Proposal for Upgrade, Funding already available in the contract amount	\$0.00	\$2,007,730.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Handwritten signature of Gordon Smith in blue ink.

Date: 10/09/2018

Signature:

Handwritten signature of Daniel Dellemonache in blue ink.

Date:

10/10/18

Printed Name: Gordon Smith, Portfolio Manager
Authorized Representative

AssetWorks, LLC
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Daniel Dellemonache
Procurement Specialist III

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701



Amendment No. 3
to
Contract No. 5600 NS140000034
for
FleetFocus MS and FuelFocus Software and Maintenance
between
AssetWorks LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 28, 2018 through May 27, 2019. One (1) option will remain.
- 2.0 The total contract amount is increased by \$400,746.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/28/2017 – 05/27/2017		
	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal, Funding already available in the contract amount	\$0.00	\$1,202,238.00
Amendment No. 2: Option 1 – Extension 05/28/2017 – 05/27/2018	\$400,746.00	\$1,602,984.00
Amendment No. 3: Option 2 – Extension 05/28/2018 – 05/27/2019	\$400,746.00	\$2,007,730.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Gordon Smith 5/14/18

Printed Name: Gordon Smith
Authorized Representative

Sign/Date: J. T. Harrod

Printed Name: JANE T. HARROD
Authorized Representative

AssetWorks LLC
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 2
to
Contract No. NS140000034
For
FleetFocus MS and FuelFocus Software and Maintenance
between
AssetWorks LLC
and the
City of Austin

- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective May 28, 2017 the term for the extension option will be May 28, 2017 through May 27, 2018 and there are two (2) options remaining.
- 2.0 The total contract amount is increased by \$400,746.00 for the current extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 5/28/2014 – 5/27/2017	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal, Funding already available in the contract amount	\$0.00	\$1,202,238.00
Amendment No. 2: Option 1 – Extension 5/28/2017 – 5/27/2018	\$400,746.00	\$1,602,984.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: 12 Apr 2017

John H. Hines III

Printed Name: John H. Hines III, President
Authorized Representative

AssetWorks LLC
998 Old Eagle School Road, Suite 1215,
Wayne, PA 19087

Sign/Date:

Jane Neal 4/12/17

Printed Name: Jane Neal
Authorized Representative

City of Austin
Purchasing Office



Amendment No. 1
to
NS140000034
for
FleetFocus M5 and FuelFocus Software and Maintenance
between
AssetWorks LLC (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise Exhibit B to include the attached Capital Asset Management Statement of Work and Cost Proposal.

2.0 The total Contract authorization is recapped below:

Term	Action Amount (Cost)	Total Contract Amount
Original Contract: 5/28/14 – 5/27/17	\$1,202,238.00	\$1,202,238.00
Amendment No. 1: Add CAM Statement of Work and Cost Proposal, Funding already available in the contract amount	\$0.00	\$1,202,238.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature:

Printed Name:

Date:

Signature:

City of Austin Purchasing Office

Date:

AssetWorks LLC

998 Old Eagle School Road, Suite 1215

Wayne, PA 19087



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

May 26, 2014

Assetworks, LLC
Allan Richardson
998 Old Eagle School Road, Suite 1215
Wayne PA 19087

Mr. Richardsdson:

The Austin City Council approved the execution of a contract with your company for FleetFocus M5 and FuelFocus Software and Maintenance.

Responsible Department:	Fleet Department
Department Contact Person:	Hazel Black
Department Contact Email Address:	Hazel.Black@austintexas.gov
Department Contact Telephone:	(512) 974-1751
Project Name:	FleetFocus M5 and FuelFocus Software and Maintenance
Contractor Name:	Assetworks, LLC
Contract Number:	MA-5600-NS140000034
Contract Period:	May 28, 2014 through May 27, 2017
Dollar Amount:	Not-to-exceed \$1,202,238.00 per initial contract term and \$400,746.00 for each extension option
Extension Options:	Three 12-month options
Requisition Number:	RQM-7800-13102500049
Agenda Item Number:	27
Council Approval Date:	May 22, 2014

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-2274.

Sincerely,

Shawn M. Willett
Corporate Contract Compliance Manager
Purchasing Office
Financial Services Department

cc: Hazel Black, Fleet Department

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
AssetWorks, Inc.
For
FleetFocus M5 and FuelFocus Software and Maintenance**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and AssetWorks LLC (formerly known as AssetWorks, Inc.) ("Contractor"), having offices at 998 Old Eagle School Road, Suite 1215, Wayne PA 19087.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Exhibit B, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Allan Richardson, Phone: (817) 243-6776, Email: allan.richardson@assetworks.com. The City's Contract Manager for the engagement shall be Hazel Black, Phone: (512) 974-1751, Email: Hazel.Black@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK.

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide support and maintenance services as more specifically described in Exhibit B in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION:

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$1,202,238.00 for all fees and expenses with three 12-month extension options in an amount not-to-exceed \$400,746.00 per extension option, for a total contract amount not-to-exceed \$2,404,476.00 for all fees and expenses.

3.2 **Invoices**

3.2.1 Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Additionally, invoices shall include, as applicable, the following information: A unique Purchase or Delivery Order Number, Equipment and/or parts numbers and descriptions, documentation to support all parts charged to the City per Exhibit 2- FuelFocus Commercial

Price List in Section 0600, and the Contractor's business name, "remit to" name and address, and if applicable, taxpayer identification number on the invoice must exactly match the information in the Vendor's registration with the City. Invoices received without all required information cannot be processed and will be returned to the Contractor.

3.2.2 Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Fleet Services cannot process payments to or for a Third Party on behalf of the Contractor until the Third Party has been approved by the City and included in the Vendor's registration with the City.

3.2.3 Invoices shall be mailed to the Fleet Services Department, Attention: Accounts Payable, 1190 Hargrave, Austin, TX 78702.

3.2.4 Monthly statements shall be mailed to the below address:

	City of Austin
Department	Fleet Services
Attn:	Accounts Payable
Address:	1190 Hargrave Street
City, State, Zip Code	Austin, TX 78702

3.2.5 The Contractor agrees to accept payment by either credit card, check, or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the pricing. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

3.2.6 Final invoices at the end of the Contract must be received at the Fleet Service Center that placed the order within thirty (30) calendar days after the Contract expiration date to be considered for payment. No exceptions to this 30-day submission requirement will be considered.

3.3 **Payment**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the invoice.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.4 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any

Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Verification of Contractor's Parts Pricing**

3.5.1 Fleet Services Parts Room, Contract Compliance and/or Accounts Payable personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed using Exhibit 2-FuelFocus Commercial Published Price List.

3.5.2 If pricing is found to be different, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the Contract Manager.

3.6 **Restocking Fees.** The Contractor may bill the City restocking fees of 25% of the total cost of the item or items returned, including shipping charges back to Contractor's warehouse for parts that are ordered by the City under the Contract during the Contract term and returned for refund. No returns will be accepted without a RMA. All items being returned must be clean, unused, and in original packaging.

3.7 **Price List**

3.7.1 The City may need to purchase any part in various quantities from Exhibit 2-FuelFocus Commercial Price List.

3.7.2 Two (2) CDs or electronic copies, if available, of the price list(s) upon which the discounts are based shall be submitted within five (5) business days after notice of award. Contractor may provide a website for the City to access this price list.

3.7.3 This price list may be superseded or **replaced during the Contract term** only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the documentation supporting the price revision must be submitted to the Contract Manager in the Fleet Department with the effective date of change to be at least **30-calendar days** after written notification. The City reserves the right to refuse any list revision.

3.7.4 The percentage discounts on material, supplies, and parts shall be fixed throughout the life of the Contract, and are not subject to increase. They shall also remain firm through subsequent renewal periods if the City and the Contractor choose to renew the Contract.

3.7.5 Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

3.8 **Economic Price Adjustment**

3.8.1 **Price Adjustments:** Prices shown in this Contract in Exhibit A shall remain firm for each 12-month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.8.2 **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.8.3 **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated Specified Parts price listing once agreed to adjustment(s) have been approved by the parties.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to 3 (three) additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph 3.1 above. A price increase, subject to the provisions of this Contract, may be requested by the designee.

4.1.3 This is a 36-month Contract. Firm prices are to be submitted for the first twelve (12) month period.

4.2 **Right To Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause:** In the event of a default by either party, the other party shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirement applies.

5.1.1. **General Requirements.** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

5.1.1.1 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. City may terminate the Contract for Contractor's failure to provide the required Certificate of Insurance..

5.1.1.2 The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.2. **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

5.1.2.1.1. The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

5.1.2.1.1.1. Waiver of Subrogation, Form WC 420304, or equivalent coverage

5.1.2.1.1.2. Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

5.1.2.2. **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

5.1.2.2.1. The policy shall contain the following provisions:

- 5.1.2.2.1.1. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- 5.1.2.2.1.2. Contractor/Subcontracted Work.
- 5.1.2.2.1.3. Products/Completed Operations Liability for the duration of the warranty period.
- 5.1.2.2.2. The policy shall also include these endorsements in favor of the City of Austin:
 - 5.1.2.2.2.1. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - 5.1.2.2.2.2. Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - 5.1.2.2.2.3. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

5.1.2.3. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned (if any), non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

- 5.1.2.3.1. The policy shall include these endorsements in favor of the City of Austin:
 - 5.1.2.3.1.1. Waiver of Subrogation, EndorsementCA0444, or equivalent coverage
 - 5.1.2.3.1.2. Thirty (30) days Notice of Cancellation, EndorsementCA0244, or equivalent coverage
 - 5.1.2.3.1.3. The City of Austin listed as an additional insured, EndorsementCA2048, or equivalent coverage.

5.1.3. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 Equal Opportunity

5.2.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit D. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 Delays:

5.3.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.3.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.4 **Performance:** In the event that the Contractor cannot provide the deliverables required by this Contract, the Contractor must supply deliverables from other sources at the Contract price in accordance with the terms and conditions of the Contract. If the Contractor delays in the above, the City reserves the right to purchase the deliverables on the open market and charge the Contractor the difference between the Contract price and the purchase price (see also Paragraphs 21.D and 22.C in Section 0300 and Section 0900).

5.5 **Quantities:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5.6 **Delivery Requirements:**

5.6.1 Delivery shall be made as specified in the Statement of Work Section 0500 after the order is placed. All orders must be shipped complete unless arrangements for partial shipments are made in advance.

5.6.2 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.

5.6.3 The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

5.6.4 Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).

5.7 **Rights to Proposal and Contractual Material:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **Publications:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty - Price**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 Contractor warrants that for a period of ninety (90) days, any software (upgrades, patches, etc.), will conform to Contractor's published specifications. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.2 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

6.3 **Warranty – Parts:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.3.1 The Contractor warrants that all parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time.

6.3.2 The warranty period for all parts shall not start until the part is actually installed on a unit as evidenced by the City's work order or the Contractor's invoice for repairs. A copy of the manufacturer's parts warranty shall be provided to the Contract Manager or their designee within five (5) calendar days of request by the City.

6.3.3 The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.

SECTION 7. MISCELLANEOUS

7.1 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.1.1 disposal of major assets;

7.1.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.1.3 any significant termination or addition of provider contracts;

7.1.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.1.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.1.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.1.7 known or anticipated sale, merger, or acquisition;

7.1.8 known, planned or anticipated stock sales;

7.1.9 any litigation filed by a member against the Contractor; or

7.1.10 significant change in market share or product focus.

7.2 **Right To Audit**

7.2.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

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

7.3 **Stop Work Notice:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.4 **No Warranty By City Against Infringements:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations

or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

7.5 Indemnity and Limitation of Liability:

7.5.1 Definitions:

7.5.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.5.1.1.1 damage to or loss of the property of any person (including, but not limited to the Contractor, the parties' respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.5.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.5.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.5.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.5.3 Limitation of Liability.

7.5.3.1 Except for infringement, in the event of any claim brought by one party against another hereunder, except for infringement, a party will be liable only for actual, direct losses or damages incurred (including cost of cover), limited to the amount of fees paid to Contractor for maintenance services; provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.

7.5.3.2 Irrespective of the basis or theory of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

7.6 Claims: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.7 **Notices:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

AssetWorks, Inc.

ATTN: Contract Manager

998 Old Eagle School Road, Suite 1215

Wayne PA 19087

7.8 **Confidentiality:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.9 **Advertising:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.10 **No Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.11 **Gratuities:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.12 **Independent Contractor:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent

contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.13 Workforce Security Clearance and Identification (ID)

7.13.1 Access to the Fleet Services Department building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Fleet Services Department building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.

7.13.2 Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.

7.13.3 Contractor personnel will be required to check in at the Service Writer's desk when entering or leaving the Fleet Services Department building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.

7.13.4 The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.

7.14 **Assignment-Delegation**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.15 **Waiver**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.16 **Modifications**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.17 **Interpretation**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.18 **Post-Award:** The Contractor may be required to attend a post award meeting with City personnel within thirty (30) calendar days after Contract award. The purpose of the meeting is to discuss the terms and conditions of the contract.

7.19 **Recycled Products:** The City prefers that Contractors offer products that contain recycled materials. When a recycled product is offered by the Contractor, the Contractor must state in their Contract the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.

7.20 **Dispute Resolution**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Subcontractors**

7.21.1 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.21.1.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.21.1.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.21.1.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.21.1.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.21.1.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.21.2 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.21.3 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten days after receipt of payment from the City.

7.22 **Jurisdiction And Venue:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.23 **Invalidity:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24 **Non-Compliance:** The City will not tolerate non-compliance to the City's terms and conditions and Statement of Work (Section 0500) as stated in the Contract. The City will be the sole judge evaluating any unacceptable performance under the Contract. The City will notify the Contractor of any unacceptable performance in writing. The Contractor shall prepare a written response to the Contract Manager within two (2) working days after receipt of the City's notification. The Contractor's response shall include action taken to correct and prevent unacceptable performance from reoccurring. The City may terminate the Contract for cause based on repetitive non-compliance pursuant to Paragraph 27 of Section 0300.

7.25 **Holidays:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November

Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification:** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents:** **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf> .

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

AssetWorks LLC (formerly AssetWorks Inc.)

By: _____

R David Sadoo

Signature

Name: R. David Sadoo
Printed Name

Title: Sr Vice President

Date: 23 May 2014

CITY OF AUSTIN

By: _____
Signature

Name: Shawn Willett
Printed Name

Title: Corp. Contract Compliance Mgr.

Date: May 26, 2014

List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Statement of Work
Exhibit C	Software License Agreement
Exhibit D	Non Discrimination Certification (UC Note for reference only 5.2.1)
Exhibit E	Section 0100, Standard Purchase Definitions

Exhibit A Pricing Agreement

FEES AND PAYMENTS									
CITY OF AUSTIN ("CITY") - FLEET SERVICES DEPARTMENT									
SOFTWARE MAINTENANCE AND SUPPORT SERVICES FOR FLEETFOCUS M5 AND FUELFOCUS SUITE OF APPLICATIONS, TRAINING SERVICES, AND FUEL HARDWARE									
SECTION 1 -- Annual Software Maintenance Fee for FleetFocus M5									
Year 1	\$35,131								
Year 2	\$39,351								
Year 3	\$104,343								
Year 4	\$110,196								
Year 5	\$115,706								
Year 6	\$121,431								
SECTION 2 -- Annual Software Maintenance Fee for FuelFocus									
Year 1	\$43,763								
Year 2	\$45,957								
Year 3	\$48,255								
Year 4	\$50,668								
Year 5	\$53,201								
Year 6	\$55,861								
SECTION 3 -- Annual Training Services Fee									
Provide price per day (8 hours) for approximately 10 days of training services per year in accordance with the Statement of Work, Section 0500.									
Unit Price Per Day		Estimated Quantity		Extended Annual Training Services Fee					
\$1,640		10 Days		\$16,400					
DELIVERY METHOD FOR PARTS: COMMON CARRIER _____ VENDOR STAFF _____									
COMPANY NAME:									
ADDRESS:									
CITY, STATE:									
SIGNATURE OF AUTHORIZED REPRESENTATIVE:									
EMAIL ADDRESS:									

Exhibit B
Statement of Work

1. PURPOSE

- A. The City of Austin (City) is requesting AssetWorks Inc. (Contractor) provide a proposal for the tasks required for the on-going Maintenance and Support Services of the Contractor's fleet maintenance FleetFocus M5 and FuelFocus Suite of Applications ("Software") that the City has licensed from AssetWorks pursuant to a separate license agreement between the parties.
- B. The proposal includes an agreement for the conversion of existing licensed Software from unit based to user based, future purchase of additional software licenses for complete and full functionality of the Software to enable the City to utilize multiple components within the Software, with the maintenance and support services for Software and the supply of fuel hardware required for the maintenance of the fueling system.

2. SCOPE OF WORK

- A. Contractor shall provide the on-going annual software maintenance and support services for the Software that was originally licensed by the City under Contract No. NS080000002. The license and all amendments are attached hereto as Exhibit C – Software License with Amendments.
- B. Maintenance under this Agreement shall commence on May 28, 2014.
- C. Correction of Deviations – In the event the City encounters an error and/or malfunction ("Deviation") in the Software, the City shall communicate the circumstances and any supporting information to the Contractor. Upon receipt, the Contractor will respond as follows:

Priority Description	Definition	Expected Average Response Time	Expected Average Resolution Time
Critical (1)	Error or Issue that renders the Software and/or Interfaces are inoperable.	1 hour during normal business hours, 2 hours outside of business hours	Work until corrected 24 hours per day, 7 days per week
Severe (2)	Error or Issue that results in a significant impairment of performance of the Software, and impairs essential operations.	1 business day	Work until corrected during normal business hours
Minor (3)	Error or Issue that has minor impact to City's business. Error that does not impact normal operation of the Software.	5 days	Future Patch or Release
Minimal(4)	Error or Issue that has minimal impact or no impact on City's business.	30 days	Future Release

- D. Software Revisions– The Software may be revised by Contractor as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or increase the capabilities of the Software (hereafter “Revisions”). Revisions shall be of two kinds:
1. Revisions that the City is obliged to implement (“Mandatory Revisions”);
 2. Revisions that may be implemented by the City at its option (“Optional Revisions”).
 3. No charge shall be made to the City for either Mandatory Revisions or Optional Revisions.
 4. The Contractor shall support two (2) releases in arrears. The Contractor shall take full responsibility for maintaining the integrity of Contractor provided interfaces with Software releases and maintenance updates.
- E. Software New versions - New Versions of the Software may be issued by Contractor from time to time. Compared to a Revision, a New Version substantially improves the performance of the Software and/or substantially increases its functionality and capability. The Contractor, in its sole discretion, shall decide which upgrades and improvements will be issued as Revisions and/or New Versions without charge to the City. The City shall have sole option to decide if it desires to implement a New Version.
- F. Hardware – The warranty for third party hardware is provided by the manufacturer. The Contractor shall provide a return-to-depot replacement service for the WAF controllers during the term of this Agreement. If the City replaces a WAF controller and returns “broken” controller to Contractor, Contractor will promptly send the City a spare controller when the Contractor receives the WAF controller from the manufacturer. Failure to return a “broken” controller within thirty (30) days will require the City to pay for spare controllers.
- G. Telephone Hotline Assistance – The Contractor, at its expense, shall make available technically qualified personnel to provide telephone, email, or remote access support during normal business hours. The Contractor shall respond to all reasonable telephone requests, Monday through Friday, excluding state and federal holidays, during normal business hours, that may be made by the City relating to the application and operation of the Software and hardware. The Contractor shall provide the City with a contact telephone number and email address for reporting problems. For times other than normal business hours, the Contractor shall provide a telephone number contact for reporting urgent or emergency communications.
- H. Remote Diagnostic Access – The Contractor shall provide appropriate remote access where the Contractor may, with the permission of the City, access City resources for the purpose of remote diagnostics and support of the Software.
- I. Technical Literature - The Contractor shall make available electronically to the City technical literature that is considered by the Contractor to be relevant to the Software.
- J. Transmission - All Revisions and New Versions will be available for download or transmitted to the City electronically as mutually agreed. The City shall be solely responsible for downloading the media and executing the appropriate instructions in order to transfer the Revisions or New Versions onto its system.
- K. Proper Use
1. The City agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused.
 2. In the event that the City or its agent misuses the Software or data files, including, but not limited to, inserting, updating, deleting, or otherwise modifying data through a means other

than the Software, the Contractor is not obligated to correct such misuse. However, as mutually agreed, the Contractor may attempt to correct the situation if possible. The services provided to correct such a situation may be at the City's expense.

3. In the event that diagnostic assistance is provided by the Contractor, which, in the reasonable opinion of the Contractor and the City, relates to problems not caused by a Deviation in the Software, such assistance may be at the City's expense.

3. FEES and PAYMENTS

A. Software License and Maintenance Fees

1. The Contractor agrees to convert the FleetFocus M5 licenses from the current 7,000 Units to 400 concurrent Users at no additional license cost to the City for the conversion from Units to Users. Except for this change, the License granted pursuant to Contract No. NS080000002 remains in full force and effect.
2. Annual Software Maintenance Fee for FleetFocus M5 for the existing 400 Users - In consideration of the FleetFocus M5 Maintenance and Support services to be provided by the Contractor for the Software each 12-month period hereunder, the City shall pay to the Contractor the amount as follows in twelve monthly installments for each year:

Year 1	\$95,191
Year 2	\$99,951
Year 3	\$104,949
Year 4	\$110,196
Year 5	\$115,706
Year 6	\$121,491

3. Annual Software Maintenance Fee for FuelFocus – In consideration of the FuelFocus Maintenance and Support services to be provided by the Contractor for the Software each 12-month period hereunder, the City shall pay to the Contractor an amount as follows for the existing 43 FuelFocus Island Controllers (ICU) at 33 locations (hence 33 Veeder Root Integrations) in twelve monthly installments for each year:

Year 1	\$43,769
Year 2	\$45,957
Year 3	\$48,255
Year 4	\$50,668

Year 5	\$53,201
Year 6	\$55,861

4. Additional Software License Fee and Associated Maintenance Fee for FleetFocus M5
 - a. In the event the City acquires additional User software in addition to that indicated in Schedule 1 of the Software License Agreement, the City will pay the Contractor a User License Fee of \$2,200 for each additional User and such license shall be pursuant to Contract No. NS080000002 (the existing license agreement).
 - b. The Maintenance and Support services set forth herein shall be extended to cover the Additional Software for Users, and the City shall pay an additional annual Maintenance fee in an amount equal to \$440 for each additional Software User starting with the next renewal date unless otherwise agreed by the parties in writing.
 5. Additional Software License Fee and Associated Maintenance Fee for FuelFocus
 - a. In the event the City acquires additional ICUs in addition to that indicated in Schedule 1 of the Software License Agreement, the City will pay the Contractor an ICU License Fee of \$2,495 for each additional ICU. In the event the City adds a fuel site to the system in addition to that indicated in Schedule 1 of the Software License Agreement, the City will pay the Contractor a Site License Fee of \$1,295 for each additional fuel Site since each site requires Veeder Root integration.
 - b. The Maintenance and Support services set forth herein shall be extended to cover the Additional Software for ICUs and fuel sites, and the City shall pay an additional annual Maintenance fee in an amount equal to \$500 for each additional ICU and \$260 for each additional fuel site, starting with the next renewal date unless otherwise agreed by the parties in writing.
- B. Other Fees and Expenses – If onsite maintenance is required, the Contractor will provide a quote detailing the estimate of required hours, fees and expenses; if the quote is approved by the City, the City will pay reasonable travel and living expenses for the Contractor’s employees or agents in accordance with the City’s Standard Purchase Terms and Conditions, Travel Expenses, which shall be billed and paid as the expenses are incurred. No amounts in excess of the Travel Policy shall be paid. Contractor will provide a billing rate schedule for qualified personnel to be attached as an exhibit in the contract.
- C. Training – The City may utilize Contractor’s training services as mutually agreed. Fees for training is \$1640 for each day, \$16,400 for ten days.
1. The Contractor may be required to provide on-site training in a classroom environment suitable for training.
 2. The City will be responsible for providing and preparing the training facility.
 3. This training will include a maximum number of approximately 12 individuals for each training session in order to insure proper attention can be given to individual users and maintain the needed pace to insure ample time is given to cover the topic.

4. This training may include various users and may include various levels of training such as Security, Key-User, End-User, Technical training for Application and Hardware for both FleetFocus M5 and FuelFocus.
5. The City will reimburse Contractor for reasonable travel and living expenses for the Contractor's employees or agents in accordance with the City's Standard Purchase Terms and Conditions, Travel Expenses provision. No amounts in excess of the Travel Policy or Rates shall be paid.

D. Supply of Hardware for FuelFocus.

1. The Fleet Fueling System includes parts and components needed to maintain or repair Fuel Island Terminals, as well as Fueling and RF Hardware for the City's vehicles.
2. The City may need to purchase any part listed in Exhibit A, Pricing Agreement, Fees and Payments in various quantities. The City may purchase maintenance and repair parts from the FuelFocus Commercial Price List. The prices for these items shall be based on the Price List and percentage discounts as indicated in Exhibit A.
3. The City makes no guarantee of purchasing specific quantities for either purchasing method and will order parts on an as-needed basis according to the City's actual needs.
4. The City will maintain its own inventory of some Hardware in order to operate, maintain, repair, and manage all hardware needs required to utilize FuelFocus technology.
5. The Contractor shall stock or have immediate access to a comprehensive supply of FuelFocus Hardware (repair parts and components) with sufficient inventory to enable the City to make needed repairs to the Fleet Fueling system in a timely manner.
6. The City understands there is no electronic copy of Exhibit A and will accept a printed copy only if no electronic format is available.
7. The Contractor's Percentage Discounts, as provided in FuelFocus Commercial Price List shall remain firm throughout the life of the contract for the purchase of all future repair parts and components.
8. The Contractor shall provide new parts. Parts must meet all applicable federal, state and local requirements for quality and safety.
9. The Contractor warrants that ALL parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time. This warranty shall provide for replacement parts and shall include the return of the defective part and delivery of the replacement part at no additional cost.
10. The Contractor shall provide a copy of the manufacturer's parts warranty to the Contract Manager or their designee within five (5) calendar days of request by the City. The warranty period for all parts shall not start until the part is actually installed on a unit as evidenced by the City's work order.
11. The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.
12. The Contractor shall notify the Contract Manager or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding the parts being sold.
13. The Contractor shall provide a point of contact for receiving orders from the City. A City representative from the Fleet Service Center will contact the Contractor by e-mail, fax, or

telephone to place an order for parts. The request will include the part number, part description, delivery requirements, and a unique delivery order number.

14. The Contractor shall confirm the quantity to be shipped to the ordering Fleet Service Center representative by telephone or e-mail within two (2) hours after the order is sent.
15. The Contractor shall ship all orders for parts complete unless arrangements for partial shipments are made in advance. The Contractor shall provide, with each delivery, an invoice showing the description of each item, quantity, and unit price.
16. The Contractor shall deliver Parts to the designated Fleet Service Center within ten (10) working days after the order is sent. The Contractor shall advise the ordering Fleet Service Center representative by telephone or e-mail of when the part(s) will be available.
17. Deliveries shall be made as specified herein during normal City business hours Monday through Friday between the hours of 7:00 A.M. through 5:00 P.M. except for City-recognized legal holidays and weekends unless requested by Fleet Services in advance (see paragraph 52 in Section 0300 for City Holidays).
18. The Contractor shall provide, upon request, a monthly and/or yearly total of all parts purchased by Fleet Services. The City prefers that the report be in an electronic format that may be sorted, or other City-approved format. The report shall include date purchased, invoice number, part number, part description, price per part, and the total dollar amount for all parts purchased.

E. Payment Terms –

1. The Software Maintenance and Support Services Fees for FleetFocus M5 and FuelFocus will be invoiced and paid on a monthly basis.
2. The first monthly payment for the Software Maintenance and Support Services for FleetFocus M5 and FuelFocus will be invoiced upon contract execution and monthly thereafter thirty (30) days before the start of the month for which fees are due.

4. CITY REQUIREMENTS

Third-Party Licenses and Adapters:

The FleetFocus M5 application utilizes several third-party applications to provide the relational database and the reporting platforms. The City is required to maintain the following:

- A. Oracle Enterprise Edition – Oracle Enterprise is the recommended database platform for a single-database, multi-company (fleet) implementation.
- B. Business Objects Enterprise – The FleetFocus M5 reporting platform is used to schedule, execute, and distribute the standard FleetFocus M5 InfoCenter reports. It will also support client written custom reports.

Exhibit C
Software License Agreement

SOFTWARE LICENSE AGREEMENT

The FleetFocus™ M5 license is for a maximum 5000 units

The City's FleetFocus™ M5 license includes the products listed on Schedule 1.

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Software License Agreement ("SLA") is made as of the Effective Date of the Agreement by and between MAXIMUS, Inc., with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("Contractor"), and City of Austin, with offices at 124 W. 8th Street, Austin, TX 78701 ("City"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

ARTICLE I - LICENSE

- A. Contractor grants to City a non-exclusive, perpetual (subject to Article V) non-transferable license for the number of units specified in Schedule 1 to make use of the software specified in Schedule 1 (herein "Software") on the City's database servers and application servers designated in Article VII (the database servers and application servers shall be referred to as the "Enterprise"); provided, however, that if any part of the Enterprise becomes temporarily inoperative the license may be extended to backup servers until such time as the Enterprise becomes operative again at which time all Software will be returned to the Enterprise. City may replace any component of the Enterprise by giving Contractor prior written notice of the new servers. Except as provided above, use of Software in excess of limits defined in Schedule 1 or other than on the Enterprise requires additional fees. City's license is to use the Software in its own business; City has no right to use the Software in processing work for third parties.
- B. City shall have the right to use only one copy or image of the Software for production purposes to manage up to the number of Active Equipment Units identified in the Product Schedule (Schedule 1) and shall not copy or use the Software for any other purpose except (i) for archival purposes, (ii) in connection with a disaster recovery program, and (iii) for the purpose of testing the operation of the Software, provided such testing copy shall not be used in a live production environment. City may increase the number of authorized Active Equipment Units by executing a subsequent Product Schedule and paying in full the applicable fees. Upon signing the subsequent Product Schedule and paying in full the applicable fees, City shall have the right to monitor the revised number of Active Equipment Units as set forth in the subsequent Product Schedule. "Active Equipment Unit" shall mean any in service unit (or track mile for LinearFocus/ rail track and signal maintenance) to which work orders, fuel tickets, or usage tickets are posted.

ARTICLE II - FEES AND PAYMENTS

- A. City shall pay Contractor the fees specified in Schedule 1 attached to this SLA.
- B. City shall be responsible for all taxes and charges assessed or imposed with respect to amounts payable hereunder, including, without limitation, state and local, occupation, sales, use or excise taxes paid or payable by Contractor, exclusive, however, of taxes imposed on Contractor' net income by the United States or any political subdivision thereof.
- C. City shall be entitled to the support described in the Agreement, which shall commence upon execution of the Agreement; in consideration for the start day for Support Services, Contractor will continue to support the existing MAXIMUS (M4) fleet product used by City and which current maintenance agreement expires on September 30, 2007 until the early of (i) the completion of the Services, or (ii) the first anniversary of execution of the Agreement

ARTICLE III - NON-DISCLOSURE

- A. Subject to the other paragraphs in this Article III, City agrees that the Software shall be held in confidence by City and shall not be disclosed to others without the prior written consent of Contractor, which may be withheld by Contractor in its sole discretion. This obligation to hold confidential does not apply to any portion of the Software (1) developed by City and in City's possession prior to the receipt of same from Contractor; (2) which at the time of disclosure is part of the public domain through no act or failure to act by City; or (3) which is lawfully disclosed to City without restriction on further disclosure by another party who did not acquire same from Contractor.
- B. The City may copy, in whole or in part, any printed material relative to the Software that may be provided by Contractor under this Agreement. Additional copies provided by Contractor will be billed to City at Contractor's standard rates.
- C. Any Software provided by Contractor in machine-readable form may be copied by City for use with the designated servers to the extent necessary for archive or emergency restart purposes, to replace a worn copy, or to understand the contents of such machine-readable material.
- D. The City agrees to keep the original and any copies of that Software at the same location as the City's designated servers, except that a machine-readable copy of the Software may be kept for archive or emergency restart purposes only at another facility.
- E. All of City's records with regard to the Software shall be made available to Contractor at all reasonable times at Contractor's request, and City shall certify to the truth and accuracy of thereof.

ARTICLE IV - WARRANTIES

- A. Contractor represents that it has the right to license the Software to City as provided in ARTICLE I. Contractor further represents that the Software will conform to the description contained in the User Manual but, except as provided in Article IV B, Contractor makes no other representations, warranty, or guarantees, express or implied, with respect to the accuracy, completeness, or usefulness of the Software, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In the event the Software fails to conform to the description contained in the User Manual, Contractor's sole obligation shall be to correct the errors in accordance with the provisions of Article IV E. This limited warranty is lieu of all liabilities or obligations of Contractor for damages arising out of or in connection with the delivery, use or performance of the Software.
- B. Contractor will defend, at its own expense, any action brought against City to the extent that it is based on a claim that the Software supplied by Contractor infringes a United States patent or copyright, and Contractor will pay those costs and damages finally awarded against City in any such action that are attributable to any such claim; provided, such defense and payments are conditioned on the following: (1) that Contractor shall be promptly notified in writing by City following its receipt of any such claim; (2) that Contractor shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in Contractor's opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then City shall permit Contractor, at its option and expense, either to (A) procure for City a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for City a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year over the lifetime of the Software, which the parties agree shall be five (5) years. Contractor shall have no liability to City under any provision of this clause with respect to any claim of patent or copyright infringement that is based on City's unauthorized use or combination of the Software with software or data not supplied by Contractor as part of the Software.

- C. City agrees to defend and hold Contractor harmless against any claims made by any third party against Contractor arising out of City's use of the Software unless such claims are due to the negligence or willful misconduct of Contractor.
- D. In no event shall either party be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.
- E. The warranty period for the Software shall extend for a period of six (6) months from the date of delivery of the Software provided City is current on payments for Support Services.. During the warranty period, in the event that the City encounters an error and/or malfunction whereby the Software does not conform to the description in the User Manual, Contractor will respond as follows:
 - 1. In the event that, in the mutual and reasonable opinion of Contractor and the City, there exists an error or nonconformance to the User Manual, Contractor will take such steps as are reasonably required to correct the error with due dispatch.
 - 2. In the event that, in the mutual and reasonable opinion of Contractor and the City, the error or nonconformance to the User Manual does not constitute a serious impediment to the normal intended use of the Software, Contractor will correct the error and distribute the correction to the City in accordance with Contractor's normal Software revision schedule.

ARTICLE V - TERMINATION

- A. The license conveyed pursuant to Article I-A may be terminated by Contractor in the event of breach or default by City under this SLA if Contractor notifies City in writing of the breach or default and City does not correct same within thirty (30) days of Contractor's written notice.
- B. In addition, City shall have the right to terminate this SLA at any time after one (1) year from the effective date of this SLA; provided such termination shall not relieve City of its obligations (1) to pay any remaining unpaid balance for the total software license fee (as per Schedule 1), and (2) to honor the terms of the Agreement or the Software Maintenance Agreement, which were independently executed and each of which must be terminated in accordance with its terms.
- C. All Software and documentation supplied hereunder by Contractor shall be and remain the property of Contractor. Upon termination of this SLA, whatever the reason, such Software and documentation and any copies thereof made by City pursuant to Article III-B and C shall be promptly returned to Contractor.

ARTICLE VI - ASSIGNMENT

This Agreement shall not be assigned by either party without the prior written consent of the other party, and any attempted assignment without such consent shall be void. No assignment of this Agreement shall be valid until and unless consented to in writing by the consenting part and assumed by the assignee in writing. When duly assigned in accordance with the foregoing, this SLA shall be binding upon and shall inure to the benefit of the assignee.

ARTICLE VII – CITY'S ENTERPRISE

City's application server(s) and database server(s) are as follows:

<u>Server(s)</u>	<u>Location(s)</u>
Application Server(s): Unlimited	No restrictions
Database Server(s): Unlimited	No restrictions

ARTICLE VIII – DOCUMENTATION

Contractor shall provide the City with current documentation containing the specifications for the Software along with user manuals. Whenever the Software is upgraded with a new version or release, Contractor shall update the documentation to reflect such upgrade or release and provide the updated documentation to the City within thirty (30) days of commercial release. The City requests that the documentation be provided in an easy manner to update the manual such as switching out certain pages.

Exhibit D
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 23 day of May, 2014

CONTRACTOR AssetWorks LLC

Authorized
Signature



Title

Sr Vice President