

Amendment No. 3
to
Contract No. MA 5600 NC150000016
for
Pavement Analyst Pavement Management Systems
between
AgileAssets Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective August 21, 2019, to August 20, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$90,153 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/21/2015 – 08/20/2017	\$609,803.00	\$609,803.00
Amendment No. 1: Option 1 – Extension 08/21/2017 – 08/20/2018	\$90,153.00	\$699,956.00
Amendment No. 2: Option 2 – Extension 08/21/2018 – 08/20/2019	\$90,153.00	\$790,109.00
Amendment No. 3: Option 3 – Extension 08/21/2019 – 08/20/2020	\$90,153.00	\$880,262.00

- 3.0 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.
- 4.0 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: Joseph L. Garvey 7 JAN 2020

Sign/Date: Jim Howard

Printed Name: JOSEPH L. GARVEY
Authorized Representative

AgileAssets Inc.
3001 Bee Caves Road, Suite 200
Austin, Texas 78746
jgarvey@agileassets.com
512-623-3230

Jim Howard
Procurement Manager
City of Austin Purchasing Office
124 West 8th Street, Suite 310
Austin, Texas 78701



Amendment No. 2
to
Contract No. 5600 NC150000016
for
Pavement Analyst Pavement Management Systems
Between
Agileassets Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the above referenced contract. Effective August 21, 2018, the term for the extension option will be August 21, 2018 to August 20, 2019. Two options remain.
- 2.0 The total contract amount is increased by \$94,660.65 by this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/21/2015 – 08/20/2017	\$609,803.00	\$609,803.00
Amendment No. 1: Option 1 08/21/2017 – 08/20/2018	\$90,153.00	\$699,956.00
Amendment No. 2: Option 2 08/21/2018 – 08/20/2019	\$94,660.65	\$794,616.65

- 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: [Signature] 6-27-18

Printed Name: DIRK LUTHERO, CFO
Authorized Representative

AgileAssets Inc.
3001 Bee Caves Road, Suite 200
Austin, TX 78746

Sign/Date: [Signature] 6/27/18

Printed Name: Bartley Tyler
Authorized Representative

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

[Signature] 6/27/18



Amendment No. 1
to
Contract No. 5600 NC150000016
for
Pavement Analyst Pavement Management Systems
Between
Agileassets Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the above referenced contract. Effective August 21, 2017, the term for the extension option will be August 21, 2017 to August 20, 2018. Three options remain.
- 2.0 The total contract amount is increased by \$90,153.00 by this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/21/2015 – 08/20/2017	\$609,803.00	\$609,803.00
Amendment No. 1: Option 1 08/21/2017 – 08/20/2018	\$90,153.00	\$699,956.00

- 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: Joseph L. Garvey 19 MAY 2017

Printed Name: Joseph L. Garvey
Authorized Representative

AgileAssets Inc.
3001 Bee Caves Road, Suite 200
Austin, TX 78746

Sign/Date: Bartley Tyler 5/19/17

Printed Name: Bartley Tyler
Authorized Representative

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



Financial Service Department
Purchasing Office
124 W. 8th St., Austin, Texas, 78701

August 20, 2015

Agileassets, Inc
Joe Garvey
3001 Bee Caves Road, Suite 200
Austin, Texas 78746

Dear Mr. Garvey:

The Austin City Council approved the execution of a contract with your company for Pavement Analyst Pavement Management System for the Austin Public Works Department.

Responsible Department:	Public Works Department
Primary Department Contact Person:	Ed Poppitt
Contact Email Address:	Ed.poppit@Austintexas.gov
Contact Telephone:	(512) 974-9720
Project Name:	Pavement Analyst Pavement Management System
Contractor Name:	Agileassets Inc.
Contract Number:	MA-5600-NC150000016
Contract Period:	August 21, 2015 through August 20, 2017
Extension Options:	Four 12-month Options
Dollar Amounts:	Not to Exceed \$609,803.00 for the initial term and as per the contract for each extension option

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the Department Contact listed above.

Sincerely,

Shawn M. Willett

Shawn M. Willett
Corporate Purchasing Manager
IT Contract Management and Procurement Team
City of Austin, Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN
And
AGILEASSETS INC.
For
PAVEMENT ANALYST - SOFTWARE-AS-A-SERVICE (SaaS) PAVMENT MANAGEMENT SYSTEM

This Contract is between AgileAssets, Inc. having offices at 3001 Bee Caves Road, Suite 200 Austin, TX 78746 and the City, a home-rule municipality incorporated by the State of Texas. Solicitation requirements are met by using Department of Information Resources Contract No. DIR-SDD-2176

1.1 This Contract is composed of the following documents:

- 1.1.1 DIR-SDD-2176
- 1.1.2 This Contract
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Attachment D, AgileAssets Software as a Service Agreement, to Exhibit B, AgileAssets Offer
- 1.1.5 Exhibit B, AgileAssets Offer
- 1.1.6 Exhibit C, Non-Discrimination Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 DIR-SDD-2176
- 1.2.2 This Contract
- 1.2.3 Exhibit A
- 1.2.4 Attachment D
- 1.2.5 Exhibit B

1.3 Quantity. Quantity of goods or services as described in Exhibit B.

1.4 Term of Contract. The Contract will be in effect on the date executed by the City (Effective Date) and shall remain in effect for an initial term of twenty-four (24) months and may be extended thereafter for up to four (4) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.5 Compensation. The Contractor shall be paid a total not-to-exceed amount of \$609,803.00 for the initial twenty-four (24) month term, and will be paid an annual subscription fee charge, to be quoted on an annual basis and not to exceed the subscription fee cap detailed in section 5.a.i, Subscription Fees for the Hosted Service, of AgileAssets Offer, for each twelve (12) month extension option.

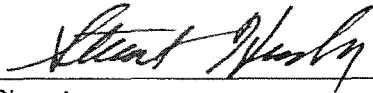
This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

AGILEASSETS INC.

Stuart W. Hudson, P.E.

Printed Name of Authorized Person



Signature

President & CEO

Title:

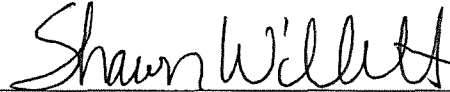
13 AUG 2015

Date:

CITY OF AUSTIN

Shawn Willett

Printed Name of Authorized Person



Signature

Corp. Purchasing Manager

Title:

Aug 20, 2015

Date:

Exhibit Listing

Exhibit A	Supplemental Terms
Exhibit B	AgileAssets Offer
Exhibit C	Non Discrimination Certification

Exhibit A
Supplemental Terms

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Joe Garvey, Phone: 512-740-6053, Email: jgarvey@agileassets.com. The City's Contract Manager for the engagement shall be Ed Poppitt; Phone: 512-974-9720, Email: Ed.Poppitt@austintexas.gov.

2. **Invoices.**

Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3. **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

expenses are not authorized under this Contract.

4. **Equal Opportunity**

4.1.1 **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.

4.1.2 **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. **Right To Audit**

5.1.1 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.

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

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

6.1.1 **General Requirements**

6.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

6.1.1.2 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 fourteen (14) calendar days after written request from the City.

6.1.1.3 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.

6.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by 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.

6.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

6.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

6.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

6.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

6.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or

exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

6.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

6.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

6.1.2 **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.

6.1.2.1 **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 Injuries). The policy shall contain the following provisions and endorsements.

6.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

6.1.2.1.2 Contractor/Subcontracted Work.

6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

6.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

6.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

6.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, 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. The policy shall contain the following endorsements:

6.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

6.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

6.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

6.1.2.3 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. The policy shall contain the following provisions and endorsements:

6.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

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

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

Exhibit B
AgileAsset's Offer



**Pavement Analyst,
Software-as-a-Service
(SaaS) Pavement
Management System**



Proposal For:
City of Austin
Public Works Department
Street and Bridge Operations



Response Date:
11 May 2015



Submitted to:

Ed Poppitt, P.E.
Consulting Engineer
City of Austin, Public Works Department,
Street and Bridge Operations
505 Barton Springs Rd
Austin, TX 78704



Submitted by:

AgileAssets Inc.
3001 Bee Caves Rd., Ste. 200
Austin, TX 78746
Main: (512) 327-4200
www.AgileAssets.com



Exhibit C
Non Discrimination Certification

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 17 day of August, 2015

CONTRACTOR

Authorized Signature

Title


President + CEO

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
AGILEASSETS, INC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and AgileAssets, Inc. (hereinafter “Vendor”), with its principal place of business at 3144 Bee Caves Road, Austin, TX 78746.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-198, on November 12, 2012, for Software Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-198 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Software License and/or Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-198, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-198, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1 and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to those software products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to those software services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one-half of one percent (0.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Robin Abbott, Manager
Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Joe Garvey
AgileAssets, Inc.
3144 Bee Caves Road
Austin, TX 78746
Phone: (512) 623-3230
Facsimile: (512) 328-7246
Email: jgarvey@agileassets.com

7. Software License

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement and Maintenance Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement and Maintenance Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the Software License Agreement and Maintenance Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreement and Maintenance Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement and Maintenance Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement and Maintenance Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

8. Intellectual Property Matters

This Contract does not contemplate or authorize the writing of custom software. The services contemplated herein will be fulfilled with the Vendor's preexisting software products.

9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

1. **Section 9.A. 1) Acts or Omissions**, is hereby restated in its entirety:

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. VENDOR DOES NOT WAIVE ANY DEFENSES UNDER TEXAS LAW EXCEPT THAT NO CLAIM OR DEFENSE OF CONTRIBUTORY NEGLIGENCE SHALL APPLY, THE PARTIES AGREE THAT TEXAS LAW SHALL GOVERN ANY CLAIMS OR DEFENSES

ARISING UNDER THIS PROVISION.

This Contract is executed to be effective as of the date of last signature.

AgileAssets, Inc.

Authorized By: Signature on File

Name: Stuart Hudson

Title: President

Date: 29 Jul 2013

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Karen Robinson

Title: Executive Director

Date: 8/15/13

Office of General Counsel: Signature on File