

Amendment No. 3
to
Contract No. 5600 NS150000030
for
Interact Integration Workplace Management System (IWMS)
between
FM: Systems Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 22, 2018 through June 21, 2019. No more options remain.
- 2.0 The total contract amount is increased by \$30,047.31 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 06/22/2015 – 06/21/2016		
	\$27,523.80	\$27,523.80
Amendment No. 1: Option 1 – Extension 06/22/2016 – 06/21/2017	\$28,616.49	\$55,870.29
Amendment No. 2: Option 2 – Extension 06/22/2017 – 06/21/2018	\$30,047.31	\$85,917.60
Amendment No.3: Option 3 – Extension 06/22/2018 – 06/21/2019	\$31,549.00	\$117,466.60

- 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] May 18, 2018

Printed Name: Kurt von Koch
Authorized Representative

FM: Systems Inc.
2301 Sugar Bush Road, Ste 500
Raleigh, NC 27612

Sign/Date: [Signature]

Printed Name: JAMES T. HOWARD

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



Amendment No. 2
to
Contract No. NS150000030
for
Interact Integration Workplace Management System (IWMS)
between
FM: Systems
and the
City of Austin

- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective June 21, 2017 the term for the extension option will be June 22, 2017 through June 21, 2018 with one option remaining.
- 2.0 The total contract amount is increased by \$30,047.31 for the current extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 06/22/2015 – 06/21/2016	\$27,253.80	\$27,253.80
Amendment No. 1: Option 1 – Extension 06/22/2016 – 06/21/2017	\$28,616.49	\$55,870.29
Amendment No. 2: Option 2 – Extension 06/22/2017 – 06/21/2018	\$30,047.31	\$85,917.60

- 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: Kurt von Koch
Authorized Representative

FM: Systems
2301 Sugar Bush Road, Ste 500
Raleigh, NC 27612

Sign/Date: Barrieffe 06/23/17

Paula Barrieffe
Procurement Specialist 1 - IT Procurement
City of Austin
Purchasing Office



Amendment No. 1
of
Contract No. NS150000030
for
Interact Integration Workplace Management System (IWMS)
between
FM: Systems
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 22, 2016 to June 21, 2017 and there are two remaining options.
- 2.0 The total contract amount is increased by \$28,616.49 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 06/22/2015 – 06/21/2016	\$27,253.80	\$27,253.80
Amendment No. 1: Option 1 06/22/2016 – 06/21/2017	\$28,616.49	\$55,870.29

- 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: _____

Printed Name: Kurt von Koch

Authorized Representative

Signature: _____

Linell Goodin-Brown, Contract Compliance Supervisor
City of Austin
Purchasing Office

FM: Systems
2301 Sugar Bush Road, Ste 500
Raleigh, NC 27612



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

June 23, 2015

FM: Systems
James Sziksai
2301 Sugar Bush Road, suite 500
Raleigh, NC 27612

Dear Mr. Sziksai:

The City of Austin approved the execution of a contract with FM: System in accordance with the referenced master agreement.

Responsible Department:	Building Services
Department Contact Person:	Danny Cullum
Department Contact Email Address:	Danny.Cullum@austintexas.gov
Department Contact Telephone:	512-974-7683
Project Name:	Interact Integration Workplace Management System (IWMS)
Contractor Name:	FM: Systems
Contract Number:	MA NS150000030
Contract No: (Cooperative)	NA
Contract Period:	6/22/15-6/21/16
Extension Options:	Extension option #1 for \$28,618.49, for extension option 2, \$30,047.31 and \$31,549 for option 3.
Dollar Amount:	NTE \$ 117467.65
Agenda Item Number:	NA
Council Approval Date:	NA

A copy of the contract/purchase order will be forwarded via email.

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

Sincerely, 

Jonathan Harris
Senior Buyer Specilaist
City of Austin Purchasing Office
Finance and Administrative
Service Department

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
FM:Systems
FOR
INTERACT INTEGRATION WORKPLACE MANAGEMENT SYSTEM (IWMS)**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and FM:Systems ("Contractor"), having offices at 2301 Sugar Bush Road, Suite 500, Raleigh, North Carolina 27612.

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 Section 2, 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 providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. 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.
- 1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be James Sziksai, Phone: 919-790-5320, ext. 722, Email:jsziksai@fmsystems.com. The City's Contract Manager for the engagement shall be Danny Cullum, Phone: (512) 974-7683, Email: danny.cullum@austintexas.gov. The City's 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 all deliverables described herein and in the Contractor's Offer 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 an amount not-to-exceed \$27,253.80 for the initial 12 month term and \$28,616.49 for extension option 1, \$30,047.31 for extension option 2 and \$31,549.68 for extension option 3 for all fees and expenses as described in the Offer.
- 3.2 **Invoices**
 - 3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
 - 3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. 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

- 3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- 3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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 deliverables or of the invoice, whichever is later.
- 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 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;
- 3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;
 - 3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,
 - 3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - 3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - 3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - 3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.3.4 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.
- 3.3.5 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 **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:

o 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.

3.6 **Final Payment and Close-Out**

- 3.6.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- 3.6.2 The making and acceptance of final payment will constitute:
- 3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
- 3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

- 4.1 **Term of Contract.** The Contract shall be in effect on June 1, 2015 for an initial term of 12 months and may be extended thereafter for up to 3 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 this paragraph. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.
- 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 the Contractor, the City 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 Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City'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 **Contractor To Package Deliverables:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- 5.2 **Shipment Under Reservation Prohibited:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
- 5.3 **Title & Risk of Loss:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
- 5.4 **Right Of Inspection And Rejection:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
- 5.5 **No Replacement Of Defective Tender:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
- 5.6 **Special Tools & Test Equipment:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.7 Equal Opportunity

5.7.1 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.

5.7.2 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.

5.8 Acceptance of Incomplete or Non-Conforming Deliverables: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.9 Delays:

5.9.1 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.

5.9.2 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.

5.10 Ownership And Use Of Deliverables: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.10.1 Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.10.2 Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

- 5.10.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.
- 5.11 **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.
- 5.12 **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 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. 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.
- 6.2.3 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.

SECTION 7. MISCELLANEOUS

- 7.1 **Place and Condition of Work:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
- 7.2 **Workforce**
- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
- 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.
- 7.2.2.1.1 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 **Compliance with Health, Safety, and Environmental Regulations:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 **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:
- 7.4.1 disposal of major assets;
- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 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;
- 7.4.5 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;

- 7.4.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation filed by a member against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 Right To Audit

- 7.5.1 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.
- 7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.
- 7.6 **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.

7.7 Indemnity:

7.7.1 Definitions:

7.7.1.1 "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:

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

7.7.1.1.2 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),

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

7.7.2 **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.**

7.8 **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.

- 7.9 **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: Elisa Folco, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

FM:Systems

ATTN: James Sziksai, Contract Manager

2301 Sugar Bush Road, Suite 500

Raleigh, North Carolina 27612

- 7.10 **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.

- 7.11 **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.

- 7.12 **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.

- 7.13 **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.

- 7.14 **Prohibition Against Personal Interest in Contracts:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the

performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

- 7.15 **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.
- 7.16 **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.
- 7.17 **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.
- 7.18 **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.
- 7.19 **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.

7.20 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 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.

7.22 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.

7.23 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.

7.24 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.

7.25 Non-Solicitation:

7.25.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.25.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.25.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not

hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

- 7.25.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor
- 7.26 **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.
- 7.27 **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>.
- 7.28 **Order of Precedence:** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
- 7.28.1 any exceptions to the Offer accepted in writing by the City;
- 7.28.2 the Supplemental Purchase Terms and Conditions;
- 7.28.3 the Standard Purchase Terms and Conditions;
- 7.28.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

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

FM:Systems

By: _____
Signature

Name: Kurt von Koch
Printed Name

Title: Vice President

Date: 6-17-2015

CITY OF AUSTIN

By: _____
Signature

Name: Jonathan Hargreaves
Printed Name

Title: Senior Buyer Specialist

Date: 6-22-15

List of Exhibits

Exhibit A	FM:Systems Offer
Exhibit B	Hosted Services Agreement
Exhibit C	Service Level Agreement
Exhibit D	Non Discrimination Certification

Exhibit A
FM:Systems Offer

SCHEDULE 1
SOFTWARE AND SERVICES

This Schedule is made and entered into by and between FM:Systems, Inc. ("FM:Systems") and the City of Austin ("Client"). This Schedule 1 incorporates the terms of the Hosted Services Agreement between the parties.

1. Licensed Software and Summary of Hosting Fees

SOFTWARE	Type of License/Notes	Quantity	Fees
FM:Interact Workplace Management Suite (includes Space Management, Strategic Planning, and Asset Management)	Power Users	4	\$2,271.15
FM:Interact Workplace Management Suite (includes Space Management, Strategic Planning, and Asset Management)	General Users	Unlimited	\$0
LICENSE FEE	Term of June 1, 2015 to May 31, 2016	Annual Fee	\$27,253.80

Option Renewal Years	Type of License/Notes	Quantity	Fees
2016 Optional Renewal Term	Term of June 1, 2016 to May 31, 2017	1 Year	\$28,616.49
2017 Optional Renewal Term	Term of June 1, 2017 to May 31, 2018	1 Year	\$30,047.31
2018 Optional Renewal Term	Term of June 1, 2018 to May 31, 2019	1 Year	\$31,549.68

2. Payment Terms

- a. Yearly Hosting Fees will be invoiced annually in advance. Support and maintenance services are included at no additional charge as part of the Yearly Hosting Fees.
- b. Invoices shall contain a unique invoice number, the purchase order number or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. FM:Systems name and, if applicable, the tax identification number on the invoice must exactly match the information in FM:Systems' registration with the Client. Unless otherwise instructed in writing, the Client may rely on the remittance address specified on FM:Systems invoice. Invoices received without all required information cannot be processed and will be returned to FM:Systems. Invoices shall be mailed to City of Austin, Building Services Department, Attn: Accounts Payable, P.O. Box 1088, Austin, TX 78767. Federal excise taxes, State taxes, and City sales taxes must not be included in the invoiced amount. The Client will furnish a tax exemption certificate upon request.
- c. Notice is hereby given of Article VII, Section 1 of the Austin City Charter which prohibits 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.
- d. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic

transfer of funds. FM:Systems agrees that there shall be no additional charges, surcharges, or penalties to the Client for payments made by credit card or electronic transfer of funds.

3. Types of Licenses

- a. **Base Package.** License is restricted to installation on one production server or one logical instance installed on clustered servers. There is no limit on installations on non-production servers used for testing or development.
- b. **Read Only User:** A single user license allowing the user to view data, reports and floor plans that have been permissioned for universal access. Read only users share a single user account and cannot be added to other groups for additional permissioning. Read only users cannot submit forms or edit data.
- c. **General User License:** A single user license allowing the user to submit move, service and project requests and edit the data related to their requests. General users have specific accounts in FM:Interact and can be added to groups to enable permissioning of views, data, reports and floor plans. General users cannot edit data or requests submitted by other users.
- d. **Power User License:** A single user license providing the user with full access to the functionality of the licensed module including the ability to view, edit and delete data, define reports, and configure the system.
- e. **Single User.** License is restricted to use by one named user. The FM:CAD product is further restricted to installation on one CPU.

4. Hosting Services

- a. FM:Systems will provide hosting service to house the FM:Interact application and database with combined 50GB of storage. Hosting will be done at a secure data center with five levels of physical security, managed firewall protection, uninterruptible power, redundant HVAC, fire suppression, and nightly backups.
- b. Hosting Services will be subject to Exhibit B Service Level Agreement.

Exhibit B
Hosted Service Agreement

Hosted Services Agreement

This Hosted Services Agreement (this "**Agreement**") is made and entered into as of _____, 2015 (the "**Effective Date**") by and between FM:Systems, Inc., a North Carolina corporation with an address at 2301 Sugar Bush Road, Suite 500, Raleigh, North Carolina 27612 ("**FM:Systems**"), and the **City of Austin**, a Texas home-ruled municipality organized under the laws of the State of Texas with an address at 411 Chicon, Austin TX, Austin, TX 78702 ("**Client**").

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Introduction.** Under the terms of this Agreement, FM:Systems will provide Client with access and use of certain software (the "**Software**") on a hosted basis over the Internet, as well as related services, all as described in Schedule 1 attached hereto ("**Software and Services**"). The parties may from time to time agree to new Schedules that identify additional software and services provided under the terms of this Agreement. Each Schedule, when executed by authorized personnel of each party, is a separate agreement that incorporates the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any Schedule or Exhibit attached hereto, the terms of the Schedule or Exhibit shall control.

2. License and Hosting

2.1. Subject to the terms and conditions of this Agreement and the applicable Schedule and Exhibits, FM:Systems grants Client, and Client accepts, a nontransferable and nonexclusive license to use in object code form only, and on an application services provider (ASP) basis the Software (including all associated documentation ("**Documentation**")) for the sole purpose of processing information for its own internal business purposes and only in connection with the licensed facilities set forth in Schedule 1, and subject to any limitations set forth in Schedule 1 (but not for any other purposes or in connection with any other facilities). Client may use and access the Software solely through an approved web site or sites identified by FM:Systems in writing from time to time (the "**Site**").

2.2. The Software may be used and accessed only by Client's employees or

contractors ("**Contractors**") using the Software for its intended purpose while doing work for the Client. Contractors may not use the Software for their own business operations or administrative processes. Client acknowledges that access to the Software from outside the United States, or other export of the Software, may violate U.S. export laws. Client will not export or re-export the Software without the appropriate United States and foreign government licenses.

2.3. Client acknowledges that FM:Systems and its licensors are the sole owner of all intellectual property rights in and to the Software and the Site, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated therewith. Except as expressly authorized in this Agreement, Client will not copy, modify, distribute, sublicense, transfer, display, rent or unbundle the Software. In addition, Client will not reverse engineer, decompile or disassemble the Software, and will not otherwise attempt to reconstruct or discover the source code for the Software. Except as stated above, this Agreement does not grant Client any right, title or interest (whether by license, ownership or otherwise) in or to any intellectual property or proprietary rights with respect to the Software or Documentation. Client agrees that any copies of the Software shall contain the same proprietary notices that appear on and in the Software.

2.4. Client shall retain sole ownership of all CAD drawings and other data supplied by Client for use with the Software.

2.5. The terms of the Service Level Agreement attached as Exhibit B shall apply to the services provided hereunder.

2.6. FM:Systems and its licensors reserve all rights in the Software and Documentation not expressly granted to Client and hereunder.

3. Implementation Services

3.1. Section not applicable

4. Term and Termination

4.1. The initial term of this Agreement shall begin on the Effective Date and continue for twelve (12) months thereafter (the "Initial Term"). After the expiration of the Initial Term, this Agreement may be extended thereafter for up to three (3) additional twelve (12) month periods, subject to the approval of FM:Systems and Client's Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, FM:Systems agrees to hold over under the terms and conditions of this Agreement 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 in writing). Client will compensate FM:Systems during any hold-over period according to the terms of compensation specified in the original Agreement.

4.1.2. Upon written notice to FM:Systems from Client's Purchasing Officer or his designee and written acceptance by FM:Systems, the term of this Agreement shall be extended on the same terms and conditions for an additional period as agreed upon by the parties.

4.2 FM:Systems may terminate this Agreement upon thirty (30) days prior written notice if Client fails to pay any payment under this Agreement when due. In addition, either party may, upon giving thirty (30) days written notice identifying specifically the basis for such notice, terminate this Agreement for breach of a material term or condition of this Agreement, provided that the breaching party shall not have cured such breach within the thirty (30) day period.

4.2.1 Termination Without Cause: Client shall have the right to terminate the Agreement, in

whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, FM:Systems shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The Client shall pay FM:Systems, 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, including all remaining obligations under the Initial Term, in accordance with the terms hereof.

4.3 In the event Client terminates this Agreement at any time other than pursuant to Sections 4.1 or 4.2 above, FM:Systems shall be entitled to retain all Fees received by it, and Client shall pay FM: Systems to the extent of fund Appropriated, or otherwise legally available for such purposes, for all goods and services performed and obligations incurred prior to the date of termination including all remaining obligations under the current term in accordance with terms herein.

4.4 Client may in its discretion terminate this Agreement if prior thereto it has executed an FM:Systems license agreement for at least substantially the same software. In such event, Client will be entitled to a discount off of FM:Systems' then-current list price for the software being licensed as set forth below:

# of months from Effective Date	Percentage discount
< 12	0%
12 – 24	10%
> 24	20%

4.5The terms provided in Sections 7, 10.2, 10.3, 10.4, 11, and 12 of this Agreement shall survive any termination of this Agreement.

5. Additional Client Obligations

5.1. Client agrees to comply with FM:Systems' procedures and security measures associated with access to the Software and the Site (the "FM:Systems Procedures"), which will be maintained by FM:Systems on the Site and are incorporated by reference in this Agreement.

The FM:Systems Procedures may be revised by FM:Systems from time to time.

5.2. FM:Systems may, in its sole discretion, deny or remove access to any user of the Software or Site ("**User**") who fails to abide by the FM:Systems Procedures or who otherwise tampers with or abuses the Site or the Software.

5.3. Client shall provide FM:Systems with access to Client's technical personnel, facilities, databases, information and security clearance as necessary for FM:Systems to perform its obligations under this Agreement (including but not limited to the establishment of necessary access to Client's databases and systems access to clinical data).

6. Fees and Expenses

6.1. Client shall pay Fees in accordance with the terms and conditions in the applicable Schedule. All payments are due within thirty (30) days after receipt of invoice. Past-due payments will be subject to late payment charges of the lesser of: (a) one and one half percent (1 ½ %) per month, or (b) the maximum rate allowed by Texas law.

6.2. Client shall provide a tax exemption certificate upon request.

7. Confidentiality

7.1. "**Confidential Information**" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by or on behalf of one party (a "**Disclosing Party**") to the other party (a "**Receiving Party**") pursuant to this Agreement. Confidential Information of FM:Systems includes, but is not limited to, the terms of this Agreement; the Software, as well as the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with such Software; the documentation thereto; and FM:Systems' pricing, sales and training materials and procedures. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a Receiving Party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the Receiving Party as shown by its

written records. All materials submitted by FM:Systems to the Client shall become property of the Client upon receipt. Any portions of material claimed by FM:Systems 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.

7.2. A Receiving Party agrees: (a) to hold the Disclosing Party's Confidential Information in strict confidence; and (b) except as expressly authorized by this Agreement (including without limitation Section 12.1), not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information. In addition, without limiting the foregoing, FM:Systems agrees to use, and to require its contractors to use, reasonable procedures and mechanisms to maintain the security of and to prevent the unauthorized access to the computer systems on which Client's Confidential Information resides. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information of the Disclosing Party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.

7.3. Each party acknowledges and agrees that any violation of this Section 7 or of the intellectual property rights of FM:Systems or of any party that has provided Confidential Information to FM:Systems, may cause the Disclosing Party irreparable injury for which the Disclosing Party would have no adequate remedy at law, and that the Disclosing Party shall be entitled to preliminary and other injunctive relief against the Receiving Party for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that Disclosing Party shall have at law or in equity.

7.4. Upon the termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party all the Confidential Information delivered or disclosed to the Receiving Party, together with all copies in existence thereof at any time made by the Receiving Party. The provisions of this Section 7 shall survive any termination of this Agreement.

8. Personnel

8.1. Within fifteen (15) business days after the Effective Date, each party will provide notice to the other party setting forth the designated "Project Manager" for such party. Each Project Manager will be the primary point of contact for this Agreement, and will respond promptly when contacted by the other Project Manager regarding this Agreement. Each party shall notify the other in writing of any replacement of its Project Manager.

8.2. The parties are and intend to be independent contractors with respect to the services contemplated hereunder. FM:Systems agrees that neither it, nor its employees nor its contractors shall be considered as having an employee status with Client. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.

9. **Support.** Following the Installation Date, and thereafter during the term of this Agreement, FM:Systems will provide support and maintenance services in accordance with Exhibit A, attached hereto and incorporated by reference.

10. Warranty.

10.1. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. In addition, FM:Systems warrants that the Software will substantially conform to the documentation provided in connection with the Software. If it does not, at FM:Systems' option, FM:Systems will either make it conform, replace it with conforming Software, or terminate the applicable Schedule and refund any Usage Fees for the Software at issue for the current period. This is the exclusive remedy for breach of the foregoing warranty.

10.2. FM:Systems does not warrant that the Software will operate uninterrupted or error-free. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. To the extent that data is being transmitted over the Internet hereunder, Client acknowledges that FM:Systems has

no control over the functioning of the Internet and FM:Systems makes no representations or warranties of any kind regarding the performance of the Internet. The successful operation of the Software is dependent on Client's use of proper procedures and systems and input of correct data.

Client shall be solely responsible for all decisions made using the Software, and that the Software is a tool to be used in conjunction with good and reasonable business judgment by competent personnel. FM:Systems will have no indemnity liability for the gross negligence or willful misconduct of the Client, its other contractors or, any of their employees, agents or representatives under this Contract.

10.3. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. The successful operation of the Software is dependent on Client's use of proper procedures and systems and input of correct data.

10.4. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FM:SYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CUSTOMARY USAGE IN THE TRADE OR BY COURSE OF DEALING.

11. Liability

11.1. With the exception of infringement in accordance with Sect. 12 herein, the limit of FM:Systems' liability (whether in contract, tort, negligence, strict liability in tort, or by statute or otherwise) to Client or to any third party concerning performance or non-performance by FM:Systems, or in any manner related to this Agreement, for any and all claims shall not exceed in the aggregate of two times the Fees paid by Client to FM:Systems hereunder with respect to the Software at issue during the then-current term of license for such Software.

11.2. In no event shall either party be liable for special, consequential, incidental, indirect

or punitive loss, damage or expenses whether arising in contract or tort (including but not limited to lost profits, savings, data, the cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services), even if it has been advised of their possible existence. Any action by either party must be brought within one (1) year after the cause of action arose.

12. INDEMNIFICATION

12.1. If a claim of copyright, trade secret, or other intellectual property rights violation is made against Client relating to the Software, Client agrees to immediately notify FM:Systems, allow FM:Systems to control the litigation or settlement negotiation of such claim, and cooperate with FM:Systems in the investigation, defense, and/or settlement thereof. FM:Systems agrees to take control of the litigation and indemnify Client by paying any settlement approved by FM:Systems and authorized by Client, or any judgment, costs, or attorneys' fees finally awarded against the Client for such claim. Client may participate at Client's own expense. This indemnification obligation does not apply to the extent the claim is based on a combination of FM:Systems Software with other software or a modification to the Software made or suggested by Client if such claim would not have been made but for the combination or modification.

12.2. If such a claim is made or, in FM:Systems' opinion, is likely to be made, FM:Systems, at its option, may modify the Software, obtain rights for the Client to continue using the Software, or terminate the agreement for the Software product at issue.

12.3 Client shall own or otherwise obtain all required permissions from third parties for Client's use of, and FM:Systems' access to for integration and support purposes, all materials, information, content, or software that are integrated with or used in connection with the Software and that are supplied by Client or at Client's request (collectively, "Materials").

FM:Systems will have no indemnity liability for the gross negligence or willful misconduct of the Client, its other contractors or, any of their employees, agents or representatives under this Agreement including but not limited to reasonable attorneys' fees arising out of or resulting from Client's use of or FM:Systems access to any such Materials.

12.4 FM:SYSTEMS SHALL DEFEND (AT THE OPTION OF THE CLIENT), INDEMNIFY, AND HOLD THE CLIENT, 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 FM:SYSTEMS, OR FM:SYSTEMS'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF FM:SYSTEMS OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CLIENT OR FM:SYSTEMS (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM).

13. Miscellaneous

13.1. Client acknowledges that FM:Systems and its licensors may from time to time analyze data from Client's database maintained in the Software solely for purposes of statistical analysis, with the express understanding that FM:Systems will not use such data for any purpose other than maintenance, support and product development.

13.2. Neither party shall be liable for any failure or delay in the performance of its obligations due to causes beyond the reasonable control of the party affected, including but not limited to war, sabotage, insurrection, terrorism, riot or other act of civil disobedience, strikes or other labor shortages, act of any government affecting the terms hereof, accident, fire, explosion, flood, hurricane, severe weather or other act of God.

13.3. This Agreement, including all Schedules and Exhibits, constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral agreements with respect to its subject matter. Except as provided expressly herein, this Agreement shall not be modified, amended, or in any way altered except by a written document executed by both of the parties. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance.

13.4. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

13.5. The Agreement shall be binding upon and enure to the benefit of the Client and FM:Systems and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by FM:Systems without the prior written consent of the Client. Any attempted assignment or delegation by FM:Systems shall be void unless made in conformity with this paragraph. The Agreement 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 Agreement.

13.6 This Agreement shall be interpreted, construed, and governed by the laws of the State of Texas, without regard to conflict of law provisions. The parties agree that in any dispute arising out of this Agreement, jurisdiction and venue shall be in Travis County, Texas.

13.7 All notices required or permitted hereunder shall be in writing, delivered personally or by telephonic facsimile, certified or registered mail, or overnight delivery by an established national delivery service at the respective addresses first set forth above, or as otherwise identified by each party. All notices shall be deemed effective upon personal delivery; or on the day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight delivery.

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

13.8.1 Americans with Disabilities Act (ADA) Compliance: No contractor, or contractors agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

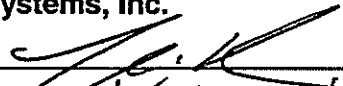
13.9 Right to Audit: FM:Systems agrees that the representatives of the Office of the City Auditor or other authorized representatives of the Client shall have access to, and the right to audit, examine, or reproduce, any and all records of FM:Systems related to the performance under this Agreement. FM:Systems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

13.9.1 FM:Systems shall include this provision in all subcontractor agreements entered into in connection with the Agreement.

13.10 Non-Suspension or Debarment Certification: FM:Systems 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 Client, FM:Systems 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.

FM:Systems, Inc.

By: 
Name: Kurt van Koden
Title: Vice President
Date: 6-17-2015

City of Austin

By: _____
Name: _____
Title: _____
Date: _____

Exhibit C
Software Support and Maintenance Services

SOFTWARE SUPPORT AND MAINTENANCE SERVICES

1. FM:Systems will provide support for the Software (e.g., features of the Software not working, general questions on use) via telephone, e-mail, fax, and web Monday through Friday (excluding FM:Systems business holidays) during 9:00 a.m. – 8:00 p.m. Eastern Time ("**Normal Business Hours**"). FM:Systems will use commercially reasonable efforts to communicate a qualified response or status within two business days for any unresolved problems. FM:Systems' assistance will consist only of providing general advice on the installation, operation and use of the Software and assistance with suspected problems with the Software.

A separate Technical Support telephone number for reporting of IT infrastructure problems (e.g., system-wide failure) will also be manned during Normal Business Hours. Calls to the Technical Support telephone number made outside of Normal Business Hours will be forwarded to FM:Systems' answering service ("**After-Hours Technical Support**"), and an on-call engineer will be paged. Use of After-Hours Technical Support is limited to Severity One and Severity Two problems only, as defined in Exhibit B.

2. For all reported problems, FM:Systems will work to determine the source of the problem. FM:Systems will attempt to correct all documented problems reported to FM:Systems by Client that FM:Systems is able to recreate at FM:Systems' facility, and will deliver any corrections to Client ("**Error Corrections**"). FM:Systems may identify errors as arising from non-FM:Systems hardware or software, or from unauthorized modifications to the Licensed Product. In such a case, FM:Systems reserves the right to charge Client for correcting such errors at its then-current rates for such services.

3. From time to time, FM:Systems will install Updates (designated as a change to the version number to the right of the decimal point, e.g., 6.1 to 6.2, and including minor functional enhancements and error corrections) and Upgrades to Software (designated as a change to the version number to the left of the decimal point, e.g., 6.1 to 7.0, and including major functional enhancements) that FM:Systems generally makes available for no additional charge to Clients paying for maintenance. Upgrades and Updates do not include new modules or products, which port existing Software to new hardware or software platforms, which provide significant new functionality on new hardware or software platforms, or which apply to third-party products, such as Crystal Reports.

4. Client will be entitled to access the FM:Systems User Forum, an online community of users and peers.

5. During the annual term, Client will receive four (4) training credits which may be used for training classes through FM:Systems' Distance Learning Lab or as credit for two (2) days of training held in conjunction to FM:Systems' annual user conference. Credits do not carry over from year to year. Please visit www.fmsystems.com for class schedules, itineraries and registration.

6. Notwithstanding anything to the contrary in these Maintenance terms, FM:Systems shall have no responsibility to provide any technical support or assistance, nor any Updates or Upgrades, to any third-party software supplied by FM:Systems, including but not limited to Crystal Reports. It shall be Client's obligation to obtain maintenance and support directly from the manufacturer of such software.

7. FM:Systems will not be obligated to provide any services in addition to those set forth in these Maintenance Services terms ("**Additional Services**"). Unless otherwise agreed, Client shall pay FM:Systems at FM:Systems' then-current hourly rates for Additional Services provided. Additional Services include, but are not limited to, the following: (i) detailed advice or support regarding the use and operation of the Software; (ii) on-site service of any kind; (iii) installation, data conversion, system integration or consulting services; (iv) service or maintenance of third-party software, operating software, hardware, or other equipment; (v) services caused by Client's fault,

misuse, negligence or failure to perform Client's responsibilities, including failure by Client to maintain adequate data back-ups; (vi) services caused by a malfunction of or problem with any product or goods other than those licensed by FM:Systems; and (vii) services caused by the use by Client of any version of the Software other than the current or immediately prior version.

Exhibit C
Service Level Agreement

SERVICE LEVEL AGREEMENT

1. Introduction

The hosting services will generally be available twenty-four hours per day, seven days per week except for periodic system maintenance. However, the Service Levels for Software Availability shall be measured only during the following hours:

Monday – Friday: 6:00 am - 12:00 midnight Eastern Time

Saturday – Sunday: 9:00 am - 10:00 pm Eastern Time

From time to time FM:Systems will be required to do scheduled maintenance. An example of scheduled maintenance would be to perform database maintenance or implement a Software upgrade. When possible, FM:Systems will: (a) schedule maintenance to be performed outside of regular business hours, and (b) give Client prior notice of any scheduled maintenance as specified in the FM:Systems Change Management Service Levels and Procedures Document.

2. Severity Levels

Operational problems will be identified with a Severity Level, using FM:Systems' best judgment and input from the Client.

- "Severity One" means a system-wide failure. The service or software, in a supported configuration, has complete loss of service or resources for which no workaround exists and the Client's work cannot reasonably continue. Service cannot reasonably continue until the system is restored, delivery is totally stopped.
- "Severity Two" means a semi system-wide failure. The Service or Software, in a supported configuration, is causing significant or degraded loss of Client's service or resources. This can be defined as a major product flaw with a workaround, or a minor product flaw without a workaround. The customer's service is seriously impacted but delivery has not totally stopped.
- "Severity Three" means the Service or Software, in a supported configuration, has minor loss of Client's service or resources. This can be defined as a product flaw with a workaround or a problem with a portion of the software's function that does not impact delivery.
- "Severity Four" means the Service or Software is in full working mode. Client's work is not being impeded at this time. Information is requested or reported.

3. Service Levels

FM:Systems will strive to operate at the service levels described as "Goal", and credits will apply as described below if FM:Systems does not perform at or above the "Minimum Service Level". If any service element deteriorates so much as to be measured at the Crisis Trigger level, the situation will be immediately escalated to the Chief Technology Officer of FM:Systems, and payment of monthly Fees will be suspended until the situation is resolved.

Performance Category	Service Level Description	Goal	Minimum Service Level	Crisis Trigger
Software Availability	Availability of hosted Software	99.9%	99.5%	98.0%
Response Time for Severity One Problems	Time by which FM:Systems will respond to Severity One. Customer's notification must be by phone per the procedures set forth above. FM:Systems' response may be by phone or e-mail.	30 Minutes	1 Hour	2 Hours

Performance Category	Service Level Description	Goal	Minimum Service Level	Crisis Trigger
Response Time for Severity Two, Three, and Four Problems	Time by which FM:Systems will respond to Severity Two, Severity Three, and Severity Four Problems. FM:Systems' response may be by phone or e-mail.	2 Business Hours	4 Business Hours	24 Business Hours

"Availability" or "Available" refers to the ability of an Internet user being able to establish a TCP connection to the appropriate FM:Systems-hosted server.

"Availability Percentage" shall be calculated as follows: $x = [100(n - y)/n]$ percent, where "x" is the Availability Percentage, "n" is the total number of hours in a given calendar month, and "y" is the total number of hours service is not Available (as defined above) in a given calendar month. The calculation of "x" shall be prorated in any month in which services commence on any day other than the first day of the month.

Specifically excluded from "n" and "y" in this calculation and defined as exceptions to the levels of Availability provided herein are (a) scheduled maintenance windows and (b) reasons of Force Majeure.

Specifically excluded from "y" are failures of Availability to the extent caused by or related to downtime (a) due to failures of access circuits to the Software, unless such failure is caused solely by FM:Systems' equipment, software or personnel; (b) scheduled and emergency maintenance; (c) emergency upgrades; (d) DNS issues beyond the control of FM:Systems; (e) "false-positive" service breaches reported as a result of outages or errors of any FM:Systems measurement system; (f) any negligence, willful misconduct, or use of the Software or FM:Systems services in breach of this Agreement or FM:Systems' Acceptable Use Policy by Customer or by others engaged or authorized by the customer; or (f) issues associated with Customer's LANs, Customer's ISPs or other Customer Internet connections.

Also specifically excluded from "y" are outages resulting from network service provider outages or Internet outages resulting from failures outside the control of FM:Systems or its hosting provider. Examples of these types of outages include:

- Corruption in Internet route information within a Tier 1 Internet route server environment;
- Major connectivity failures within or between Tier 1 Internet service providers;
- Corruption in Internet route information at any public or private exchange point;
- Corruption of root level DNS services.

No credits will apply unless Client specifically requests a credit in writing within fifteen (15) days of the failure to meet a Minimum Service Level, subject to confirmation of such service failure by FM:Systems. For each Minimum Service Level that FM:Systems fails to meet during a calendar month within a specified threshold, FM:Systems will grant a performance credit to Client for that Service Level failure at the rate of one (1) days' worth of the base fee times the number of hours (or business hours, as applicable) the Minimum Service Level is not met (rounded up to the next whole hour). The performance credit will be applied to Client's invoice within two (2) billing cycles after receipt of Client's written request for credit, reducing the amount to be paid by Client. The maximum credit for any given month will be 50% of the Base Fee paid for such month that the service failure occurred.

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:

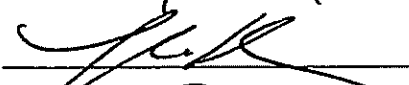
The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration 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 17th day of June, _____

CONTRACTOR

Authorized
Signature

Title

FM: Systems, Inc.

Vice President



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 05/19/2015

DEPT: Building Services

TO: Purchasing Officer or Designee

FROM: Roger Stricklin

BUYER: Sai Xoomsai

PHONE: 974-1727

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The IWMS online database utilizes software from FM: Systems called FM:Interact. The data captured in that database was gathered through the Building Services Department's (BSD) Facilities Assessment Project, collecting information on over 250 City of Austin (COA) facilities. The database tracks COA facilities' space usage/layouts, permitting improved strategic planning and asset management.

The database includes a specialized graphics interface, allowing users to drill down to reach specific information. Facilities assets are linked to the relevant Computer Aided Design (CAD) blueprint. Facilities reports can also be run through FM:Interact.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

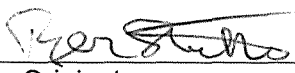
FM:interact IWMS (Integrated Workplace Management System) is the only IWMS that will interface with COA's current work order system (IBM Maximo); BSD may need this interface in the future to access upgraded Maximo applications. Currently the vendor hosts the only Web-based database that contains data on over 250 COA facilities; that database is BSD's system of record. The database can be accessed online and through a graphic interface.

During BSD's Facilities Assessment Project all facilities data from the project was stored in the FM:Interact online database. The data is dynamic in nature and is always changing (i.e. office space layout reconfiguration due to remodels). The database also tracks deferred maintenance and capital improvement cost within each COA facility. BSD needs to interface daily with FM: Interact to run reports and update facilities data as changes occur.

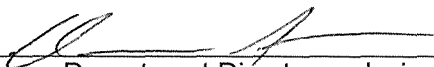
Amount for contract shown below covers a 12-month initial term plus three 12-month extension options.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with FM:Systems, Inc. which will cost approximately \$ 117,467.28 (Provide estimate and/or breakdown of cost).

Recommended
Certification

 5-19-15
Originator Date

Approved
Certification

 5/19/15
Department Director or designee Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013