



Amendment No. 3
to
Contract No. NS160000046
For
Class Software and Support
Between
The Active Network, Inc.
and the
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

| | From | To |
|-------------|--------------------------|--|
| Vendor Name | The Active Network, Inc. | Global Payments, Inc. dba Active Network, LLC |
| Vendor Code | ACT8304523 | GLO8322401 |
| FEIN | [REDACTED] | [REDACTED] |

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 3 is hereby incorporated into and made a part of the Contract.

A handwritten signature in blue ink that reads "Linell Goodin-Brown".

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

4-19-19

Date



Amendment No. 2
to
Contract No. 5600 NS160000046
for
Class Software and Support
between
The Active Network Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 01, 2018, through September 30, 2019. No options remain.
- 2.0 The total contract amount is increased by \$\$3,062.50 by this extension period. The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|--|---------------|-----------------------|
| Initial Term: 10/01/2014 – 09/30/2017 | \$9,187.50 | \$9,187.50 |
| Amendment No. 1: Option 1 – Extension 10/01/2017 – 09/30/2018 | \$3,062.50 | \$12,250.00 |
| Amendment No. 1: Option 2 – Extension 10/01/2018 – 09/30/2019 | \$3,062.50 | \$15,312.50 |

- 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: _____
Authorized Representative

The Active Network, Inc.
10182 Telesis Court Ste 100
San Diego, CA 92121

Sign/Date: _____

Printed
Name: _____
Authorized Representative

Sign/Date: _____

Printed
Name: _____

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



Amendment No. 1
to
Contract No. NS160000046
for
Class Software and Support
between
The Active Network Inc
and the
City of Austin

- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective November 29, 2017 the term for the extension option will be October 1, 2017 through September 30, 2018 with One (1) option remaining.
- 2.0 The total contract amount is increased by \$3,062.50 for the current extension option period. The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|--|---------------|-----------------------|
| Initial Term: 10/01/2014 – 09/30/2017 | \$9,187.50 | \$9,187.50 |
| Amendment No. 1: Option 1 – Extension 10/01/2017 – 09/30/2018 | \$3,062.50 | \$12,250.00 |

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

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

Sign/Date: _____

Printed Name: _____
Authorized Representative

The Active Network Inc.
10182 Telesis Court Ste 100
San Diego, CA 92121

Sign/Date: _____

Paula Barriffe
Procurement Specialist I - IT Procurement
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Active Network, LLC
For
Class Software and Support**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Active Network, LLC ("Contractor"), having offices at 717 North Harwood Street, Suite 2500, Dallas, Texas 75201.

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 accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Sukh Sanghera, Phone: (800) 661-1196 #1207, Email Address: sukh.sanghera@activenetwork.com. The City's Contract Manager for the engagement shall be Michael Maddux, Phone: (512) 972-5846, Email Address: Michael.Maddux@austintexas.gov. The City and the Contractor may meet regarding the necessity of designating any of a party's respective personnel as key personnel. In such event, subject to business requirements and changes, each party shall use commercially reasonable efforts to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for a party 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 regarding a replacement.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide error investigation and repair services for the City owned software licenses defined in Exhibit B (the "Software Licenses") and as set out in the Support and Maintenance Handbook attached as Exhibit B ("Maintenance") in material accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount of \$9,187.50 for the initial term, \$3,062.50 for the first extension, and \$3,062.50 for the second extension, for a total contract amount of \$15,312.50 comprising the software maintenance and support fees. Professional services, if any, shall be in accordance with a mutually agreed to writing arising under this Contract, at Contractor's then current rates.

3.2 The fee for Support and Maintenance services is payable annually in advance and is due in its entirety for each year during the five (5) year period referred to above thirty (30) days from date of Contractor's delivered invoice.

- 3.3 The Support and Maintenance fees identified herein are applicable only upon the date of entry into this Contract, and are subject to change thereafter in accordance with this Contract's terms.
- 3.4 In consideration of the Support and Maintenance provided hereunder, City agrees to pay Contractor the fees described herein, as modified explicitly pursuant to this Contract. In the event City requires Support and Maintenance for additional Software, City agrees to pay Contractor the additional Support and Maintenance fees applicable based upon the fees then in effect.
- 3.5 The fees charged hereunder are applicable to Support and Maintenance of the Licensed Software used with respect to only a single database of City data. If City, after entering this Contract, places in service one or more additional databases to be used in relation to the Licensed Software, then for each such additional database, an additional 25% of all gross Licensed Software fees due, exclusive of such extra database fees, will be payable hereunder for Support and Maintenance. City will notify Contractor as soon as reasonably possible of the installation or use of any such additional database(s).
- 3.6 Contractor may terminate and suspend performance of all Support and Maintenance if City fails to pay any past due Contractor invoice within thirty (30) days of written notice of such failure, in the event of any other material breach by City which remains uncured thirty (30) days after notice thereof or if any of the Licensed Software ceases to be subject of a valid software license contract.
- 3.7 If at any time after City has initially licensed any of the Licensed Software from Contractor, City's right to receive Support and Maintenance, or comparable services, from Contractor under this Contract or a comparable contract has lapsed for any reason whatsoever, voluntarily or otherwise, and City wishes to receive Support and Maintenance from Contractor, City will pay to Contractor, prior to re-instatement of Support and Maintenance services: a reinstatement fee equal to the greater of 50% of the current annual Maintenance and Support fee or the sum of the unpaid Maintenance and Support fees that would have been payable hereunder had this Contract been in force during the time in which Support and Maintenance rights had so lapsed to the date of reinstatement, and at least one additional year of Support and Maintenance from the date of reinstatement.

3.8 **Invoices.**

3.8.1 **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 Contractor'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 mailed to the below address:

| | |
|-----------------------|----------------------------|
| | City of Austin |
| Department | Health and Human Services |
| Attn: | Accounts Payable |
| Address | 7201 Levander Loop, Bldg H |
| City, State, Zip Code | Austin, Texas 78702 |

3.8.2 Invoices for professional services, if any ("Labor"), shall include a copy of all time-sheets with 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.

3.8.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.8.4 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.

3.9 **Payment.**

3.9.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the services or deliverables or of the invoice, whichever is later.

3.9.2 **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.**

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

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

3.10 **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 prompt 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. Notwithstanding anything herein to the contrary, for the period prior to the date of termination, City will pay Contractor for all services rendered, and all non-cancelable commitments entered into by Contractor on behalf of the City.

3.11 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.11.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

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

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

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

3.12 **Final Payment and Close-Out.**

3.12.1 The making and acceptance of final payment will constitute:

3.12.1.1 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 materially 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

3.12.1.2 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 for an initial term of 36 months and may be extended by mutual written agreement thereafter for up to 2 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee in accordance with the provisions of Section 3.1.

4.1.1 Absent the City's then current material breach of this Contract and the Exhibits hereto, 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), available at Contractor's then current rates.

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 **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.

4.4 **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.

4.5 **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 Equal Opportunity.

5.1.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. 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.

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

5.2 Delays.

5.2.1 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.

5.2.2 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.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor certifies that the prices in Exhibit A 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.

6.2 **Warranty Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be 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.

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.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only 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 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; and

7.2.2.2 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 in writing that any worker on the City's property 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 promptly notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the 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 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;

7.4.3 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;

7.5 **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 who have entered into a nondisclosure agreement with Contractor in a form

reasonably acceptable to Contractor with respect to the confidential treatment and restricted use of Contractor's confidential information 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 no more than once in a calendar year and upon no less than thirty (30) days prior written notice for the sole purpose of verifying the accuracy of invoicing under this Contract or Contractor's compliance with its obligations hereunder. The Contractor agrees to refund to the City any overpayments not then under bona fide dispute and that were disclosed by any such audit. All such information examined or obtained in connection with an audit shall constitute Contractor's confidential information and may only be used for the purpose described above. Notwithstanding the foregoing, City shall not be entitled to examine any legally privileged or highly sensitive information of Contractor, such as budgeting models and methodologies, information about compensation to employees and contractors, trade secrets, and information belonging to third parties which Contractor is required to keep confidential.

7.6 Stop Work Notice. On City property, 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.

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

| | |
|-----------------------------------|-----------------------------|
| To the City: | To the Contractor: |
| City of Austin, Purchasing Office | Active Network, LLC |
| ATTN: Contract Administrator | ATTN: Legal Department |
| P O Box 1088 | 717 N. Harwood St, Ste 2500 |
| Austin, TX 78767 | Dallas, TX 75201 |

7.8 Confidentiality. In order to provide the services 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 identified as 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. Regarding Contractor, "Contractor's Confidential Information" as used in this Contract shall mean any and all technical and non-technical information, including without limitation the Licensed Software, Professional Services, Maintenance services and any and all modifications, enhancements, materials and derivative works thereto, other patent, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes,

apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of Contractor, and includes, without limitation, its respective information concerning product and feature plans, research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information. City agrees that it shall disclose Contractor Confidential Information only to those employees of City and any others performing for City under this Contract or other third party who need to know such information and who have previously agreed, either as a condition to employment or service or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Contract. City agrees that it shall treat all Contractor Confidential Information with the same degree of care as it accords to its own Confidential Information. Exclusions. The obligations under this paragraph will not apply to any: (i) use or disclosure of any information pursuant to the exercise of the receiving party's rights under this Contract; (ii) information that is now or later becomes publicly available through no fault of the receiving party; (iii) information that is obtained by the receiving party from a third party authorized to make such disclosure (other than in connection with this Contract) without any obligation of secrecy or confidentiality; (iv) information that is independently developed by the receiving party (e.g., without reference to any Confidential Information or Contractor Confidential Information); and (v) any disclosure with the consent of the disclosing party.

7.9 **Advertising.** Each party shall not advertise or publish, without the other party's prior consent, the fact that a party has entered into the Contract, except to the extent required by law.

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

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

7.12 **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.

7.13 **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.

7.14 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City; provided, however, that such consent shall not be required in connection with an assignment to Contractor's affiliated-entities, subsequent owner, or entity having a controlling interest in the business of Contractor. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph.

The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

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

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

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

7.18 **Dispute Resolution.**

7.18.1 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.

7.18.2 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.

7.19 **Subcontractors.**

7.19.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as

approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.19.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract, subject to Contractor's ability to modify such written agreements or apply such provisions to any such Subcontractor, shall then contain provisions that:

7.19.2.1 require that all services to be provided by the Subcontractor be provided in material accordance with the provisions, specifications and terms of the Contract.

7.19.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor;

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

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

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

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

7.19.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor in accordance with the applicable payment provisions within each such Subcontractor agreement.

7.19.5 For purposes of this Contract, the term Subcontractors does not include those subcontractors who provide general services or utilities which are also provided to Contractor's other customers as well as the City.

7.20 **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 either party to seek and secure injunctive relief from any competent authority as contemplated herein.

7.21 **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.

7.22 **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.

7.23 **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.

7.24 **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, Contractor 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.

7.25 **Indemnity.** Contractor shall defend, indemnify, and hold harmless City, its officers, appointed or elected officials, employees, agents, representatives, successors and assigns (Indemnified Parties), against all costs, liabilities, damages, claims, suits, actions, and causes of actions (Claims), to the extent arising, directly or indirectly, out of a breach of this Agreement or violation of law by Contractor, its officers, agents, employees, contractors, subcontractors, successors or assigns, (Contractor Parties), a false representation or warranty made by the Contractor Parties in this Agreement or in Contractor's Proposal, the negligence, willful misconduct, or breach of a standard of strict liability by the Contractor Parties in connection with this Agreement. Claims to be indemnified under this Article include Claims for bodily injury or death, occupational illness or disease, loss of services wages or income, damage destruction or loss of use of property, and workers' compensation claims. Contractor's obligations under this Article are not excused in the event a Claim is caused in part by the alleged negligence or willful misconduct of the Indemnified Parties.

City shall give Contractor written notice of a Claim asserted against an Indemnified Party. Contractor shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Contractor

of any obligations in this agreement. In no event may Contractor admit liability on the part of an Indemnified Party without the written consent of City Attorney.

Maintenance of the insurance required under this Agreement shall not limit Contractor's obligations under this Article.

7.26 This Contract supersedes all previous contracts and agreements as between the parties hereto.

SECTION 8. LIMITATION OF LIABILITY

8.1 NO INDIRECT DAMAGES. IN NO EVENT WILL CONTRACTOR BE LIABLE TO THE CITY OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

8.2 LIMITS ON LIABILITY. IF, FOR ANY REASON, CONTRACTOR BECOMES LIABLE TO THE CITY OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN: THE TOTAL AGGREGATE LIABILITY OF CONTRACTOR TO THE CITY AND ALL OTHER PARTIES IN CONNECTION WITH THIS CONTRACT WILL BE LIMITED TO THE AMOUNT OF SUPPORT AND MAINTENANCE FEES ACTUALLY PAID BY THE CITY TO CONTRACTOR AS CONSIDERATION FOR THE SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE; AND IN ANY CASE THE CITY MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST CONTRACTOR ARISING OUT OF THIS CONTRACT OR RELATING TO ANY SERVICES PROVIDED HEREUNDER MORE THAN TWO YEARS AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN.

For the purposes of this Section 8, reference to Contractor shall also include its suppliers and licensors.

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

Active Network, LLC

By: Sheryl D. Hoskins

Signature

Name: Sheryl D. Hoskins

Printed Name

Title: General Manager

Date: 5/13/2016 | 8:20 AM CT

CITY OF AUSTIN

By: Gil Bilkhan

Signature

Name: Gil Bilkhan

Printed Name

Title: Contract Administrator

Date: 5/13/16

List of Exhibits

| | |
|-----------|--|
| Exhibit A | Pricing Agreement |
| Exhibit B | Licensed Software/Support and Maintenance Handbook |
| Exhibit C | Non Discrimination Certification |

EXHIBIT A Pricing Agreement



Schedule

| | |
|---|--|
| Company Address 10182 Telesis Ct., Suite 100 San Diego, CA 92121 US | Created Date 7/23/2014 Quote Number 00038480 Currency USD |
| Prepared By Sukh Sanghera Phone 1 (800) 661-1196 #1207 E-mail sukh.sanghera@activenetwork.com | Contact Name Michael Maddux Phone (512) 972-5846 |
| Bill To Name City of Austin Bill To Contact HHSD Accounts Payable Bill To Address City of Austin - Office of Vital Records PO Box 1088 Austin, TX 78767 United States | Ship To Contact Michael Maddux Ship To Address 7201 Levander Loop Austin, TX 78702 United States |

| Product | Product Type | Quantity | UOM | Sales Price | Total Price |
|---|--------------|----------|-----|-------------|-------------|
| Class - Maintenance & Support - Point of Sale including POS Touch Screen (per user/per workstation) | Maintenance | 5 | Yr | 437.50 | 2,187.50 |
| Class - Maintenance & Support - Report Inquiry | Maintenance | 5 | Yr | 125.00 | 625.00 |
| Payment Manager - Maintenance & Support - Department Connector | Maintenance | 5 | Yr | 2,500.00 | 12,500.00 |

Total Price USD 15,312.50

Maintenance Total 15,312.50

All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User.

*Sales Tax not included in total price. Sales tax, where applicable, will be added to your invoice.

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PO# (if applicable): _____

EXHIBIT B

LICENSED SOFTWARE/SUPPORT AND MAINTENANCE HANDBOOK

Licensed Software

Licensed Software

Core Module

POS Plus 10

Report Inquiry 1

Department Connector 1`



SUPPORT AND MAINTENANCE HANDBOOK

SUPPORT AND MAINTENANCE

The following supplies and services are included in Support and Maintenance:

- Unlimited technical support between 5:00am and 6:00pm Pacific Time, Monday through Friday via telephone (800.663.4991), email or web portal (<http://support.theactivenetwork.com>)
- Unlimited phone support for System Down issues on a **24 hours x 7 days a week** basis, provided that:
 - If self-hosted, the site must have remote access and Internet email capability for extended support hours
 - Support calls placed during extended support hours must be placed by an authorized contact person
 - The type of support call is an urgent issue that includes site down, revenue impacting, or customer facing issues that have no reasonable work-around
- Access to Active's secure customer care web portal, discussion forums, knowledgebase and online training materials
- Regular documentation and communication
- **Support also includes, if such assistance can be provided in 15 minutes or less:**
 - Assistance troubleshooting Third Party Products (e.g., Crystal Reports, Citrix client)
 - Assistance to isolate and/or troubleshoot difficulties resulting from sources other than Active Network products and services, such as:
 - General network/internet support (e.g., network access, printing, internet access)
 - PC hardware troubleshooting
 - PC setup, configuration and optimization
 - Network operating system configuration and functionality
 - Basic Microsoft Windows functionality (i.e. Windows Explorer or Internet Explorer)
 - Loss of supervisor or other password

ANNUAL SUPPORT AND MAINTENANCE FOR NON-HOSTED CUSTOMERS

The following supplies and services are included in Support and Maintenance for non-hosted customers:

- New releases and version of the Software and free assistance in planning upgrades

SUPPORT AND MAINTENANCE FOR HOSTED CUSTOMERS

The following supplies and services are included in Support and Maintenance:

- Installation of new Software releases
- Monitoring of connectivity and critical functionality at all times (24hr x 365 days/year) by skilled personnel using an extensive series of automated probes from multiple locations
- Response to site-down/critical issues within one hour, with reasonable efforts to advise your organization of the current status and expected resolution time
- Service agreements between Active and critical vendors essential to the continuing successful operation of the hosted environment
- Scheduled maintenance to increase performance, fix defects or update applications, with reasonable efforts to notify your organization of scheduled maintenance times and potential impacts to service
- Urgent maintenance (done to correct network, hardware or Software issues that are likely to cause significant service disruption and that require immediate action), which may temporarily degrade service or cause outages. Active may undertake urgent maintenance at any time deemed necessary and shall provide status updates to your organization as soon as possible.

SUPPORT ISSUE PRIORITIES AND TIMELINES

TICKET RESOLUTION TARGETS

- New support incidents are assigned one of the following levels, each with its respective standard ticket resolution target:

| Call Priority Level | Description | Standard Completion Target |
|--|---|-------------------------------|
| Priority 1 – System Outage | Fatal issues that result in the customer's inability to fulfill critical business functions (i.e., those pertaining to core functionality such as processing registrations, memberships, rentals) and that have no reasonable work-around | 1 business Day |
| Priority 2 – High Business Impact | Serious issues significantly impacting use of the system but do not prevent core functions from being fulfilled (i.e., Customer cannot perform critical business functions; Customer experiences severe site degradation) | 2 business day |
| Priority 3 – Medium Business Impact | All other issues, except those classified as low; (e.g., how-to questions, reporting/reconciliation issues, general questions, work around options) | 3 business days |
| Priority 4 – Low Business Impact | Issues that are not time-sensitive or may be undertaken as customer service initiatives outside the scope of this Agreement (i.e., feature requests or low priority questions) | None |
| Guaranteed Uptime | For clients licensing Hosted Software | 99% |

SERVICES NOT INCLUDED

The following supplies and services are excluded from Support and Maintenance:

- Services required to remedy problems that stem from changes to or defects in system configuration upon which the Software was originally installed
- Services required to remedy problems which do not stem from any defect in the Software
- Services required to remedy problems caused by lack of training of Client's personnel
- Improper treatment or use of the Software
- Onsite or remote training services
- Full report customization service
- Database-specific services or assistance

RESTRICTIONS

The following actions will void Active's obligations under this Support and Maintenance Handbook:

- The use of any other application that modifies data in the database, whether created by you or otherwise
- The use or creation of third party applications that work in connection with Active's application or application database without prior written notification and consent from Active

| HOLIDAY HOURS (US AND CANADA) | | |
|--|-------------------------|--------|
| Holiday | Open with reduced staff | Closed |
| New Year's Day (January 1st) | | ✓ |
| Martin Luther King Day (3rd Monday in January) | ✓ | |
| President's Day (3rd Monday in February) | ✓ | |
| Good Friday (Friday before Easter) | ✓ | |
| Victoria Day (3rd Monday in May) | ✓ | |
| Memorial Day (Last Monday in May) | ✓ | |
| Canada Day (July 1st) | ✓ | |

EXHIBIT C
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 _____ day of _____, 5/13/2016 | 8:20 AM CT

CONTRACTOR

Authorized
Signature

Title

ACTIVE Network, LLC

DocuSigned by:

Sheryl D. Hoskins

16AD861BFBF94FA...

General Manager

March 5, 2014

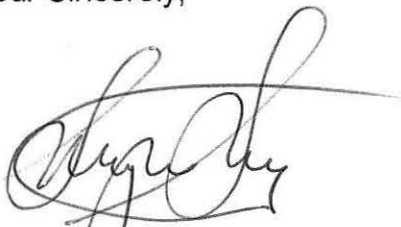
Michael Maddux
City of Austin
200 S Lamar
Austin, TX 78704

Dear Michael,

This letter is confirmation that Class Software can only be purchased and supported by ACTIVE Network. ACTIVE is the sole developing resource, sales agent, technical support provider and professional services executor for Class Software. Additionally, Class is a product of ACTIVE Network and not distributed through any other entity.

Should there be additional information required, please contact me at 800.661.1196 ext. 1207 or by email at Sukh.Sanghera@ACTIVENetwork.com.

Your Sincerely,



Sukh Sanghera
Sr. Strategic Sales Executive

Directions for Completing

FSD Purchasing Office Certification of Exemption Form

(The following steps must be completed prior to forwarding form to Purchasing)

- A. Check the box of the exemption that applies to this procurement.
- B. Complete the Exemption Form providing any additional information required for the chosen exemption.
- C. Obtain signature of :
 - 1. Person requesting exemption (Originator)
 - 2. Department Director or designee
 - 3. Assistant City Manager, General Manager or designee (if purchase > \$50,000)
- D. Forward completed form to Purchasing.

**CITY OF AUSTIN
FSD - PURCHASING OFFICE**

| |
|-----------------------------------|
| CERTIFICATION OF EXEMPTION |
|-----------------------------------|

| | |
|--------------------------------------|-----------------------------------|
| DATE: July 23, 2014 | DEPT: Health and Human Services |
| TO: Purchasing Officer or Designee | FROM: Michael Maddux, HIT Manager |
| BUYER: Jonathan Harris, Senior Buyer | PHONE: 512-972-5846 |

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.

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)

- | | |
|--|---|
| <ul style="list-style-type: none"><input type="checkbox"/> 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<input type="checkbox"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents<input type="checkbox"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property<input type="checkbox"/> a procurement for personal, professional, or planning services<input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses<input type="checkbox"/> a purchase of land or right-of-way<input checked="" type="checkbox"/> 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 | <ul style="list-style-type: none">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<input type="checkbox"/> a purchase of rare books, papers, and other library materials for a public library<input type="checkbox"/> 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<input type="checkbox"/> 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<input type="checkbox"/> a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212 |
|--|---|

- | | |
|---|---|
| <input type="checkbox"/> 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 | <input type="checkbox"/> regional planning commission established under Chapter 391 <input type="checkbox"/> services performed by blind or severely disabled persons <input type="checkbox"/> goods purchased by a municipality for subsequent retail sale by the municipality electricity advertising, other than legal notices <input type="checkbox"/> 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 the Health and Human Services Department.

The HHSD Office of Vital Records has used Class POS since 2005. The Class POS software is heavily integrated with other City of Austin accounting and records management applications. Without support for the Point of Sale system, The Office of Vital Records could not receive payments for services.

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.

ACTIVE Network is the exclusive distributor of the Class Point of Sale software and is the only source for maintenance and support. Previous support agreements were purchased through Texas State DIR, but the vendor account is no longer active.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to establish a three-year contract with 2 one-year extension options with ACTIVE Network which will cost approximately \$15,312.50 over the life of the contract.

Recommended Certification

Originator

Date

Approved Certification

Department Director or designee

Date

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

Date

Purchasing Review
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

11/14/12