

**CONTRACT BETWEEN THE CITY OF AUSTIN
And
KNOWLEDGE CAPITAL ALLIANCE, INC
For
VMSG DASHBOARD PERFORMANCE MANAGEMENT SYSTEM ANNUAL LICENSE
MA 5600 NA170000212**

This Contract is between Knowledge Capital Alliance, Inc. at 7373 E Doubletree Ranch Rd, Suite 210, Scottsdale, AZ 85258 and the City, a home-rule municipality incorporated by the State of Texas.

This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 Exhibit A, Supplemental Terms
- 1.1.3 Exhibit B, Knowledge Capital Alliance, Inc. Offer
- 1.1.4 Exhibit C, Software License Agreement
- 1.1.5 Exhibit D, Non-Discrimination Certification
- 1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This Contract
 - 1.2.2 Exhibit A
 - 1.2.3 Exhibit B
 - 1.2.4 Exhibit C
- 1.3 **Quantity.** Quantity of goods or services as described in Exhibit B.
- 1.4 **Term of Contract.** The Contract will be in effect on the date executed by the City (Effective Date) and shall remain in effect for five (5) years or the City terminates the Contract.
- 1.5 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$20,000.00, including all fees and expenses.

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

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

KNOWLEDGE CAPITAL ALLIANCE

Fred Erickson

Printed Name of Authorized Person



Signature

CEO

Title:

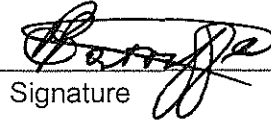
8/10/2017

Date:

CITY OF AUSTIN

Paula Barriffe

Printed Name of Authorized Person



Signature

Procurement Specialist 1

Title:

08/11/2017

Date:

Exhibit Listing

Exhibit A	Supplemental Terms
Exhibit B	Knowledge Capital Alliance, Inc. Offer
Exhibit C	Software License Agreement
Exhibit D	Non Discrimination Certification

Exhibit A
Supplemental Terms

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Andrea Schon, Phone: (480)225-5607, Email: Andrea@kca-inc.com. The City's Contract Manager for the engagement shall be Michael Maddux; Phone: (512)972-5846, Email: Michael.Maddux@austintexas.gov.

2. **Invoices.**

Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management (CTM)
Attention	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov

3. **Travel Expenses.** Travel expenses are not authorized under this Contract.

4. **Equal Opportunity**

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

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

5. **Right To Audit**

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

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

Exhibit C



SOFTWARE as a SERVICE (SaaS) AGREEMENT

VMSG Dashboard Performance Management System

The purpose of this Agreement (hereafter referred to as the "Agreement") is to set forth to define an arrangement under which Certive will provide Software as a Service ("SaaS") for the benefit of the Customer.

The standard SaaS Agreement with Certive is provided below. By purchasing and/or using our SaaS you are explicitly agreeing to all of the following terms and conditions:

DEFINITIONS

"Software" shall mean the Software or Program(s) provided by Certive to Customer under this Agreement.

"Hosting Services" shall mean the services provided by Certive to Customer under this Agreement.

"Support Services" shall mean customer service and technical support provided to SaaS users as detailed under the Specifications.

"SaaS" shall mean the combination of internet-based (cloud) Software, Hosting Services, and Support Services provided by Certive to Customer.

"Source Code" shall mean the readable forms together with make and build files.

"Delivery" shall mean the SaaS transmitted by Certive to Customer electronically and in accordance with security measures agreed upon by both parties as described in the this Agreement.

"Certive Materials" shall mean any software, code, audio files, video files, data, graphics or other materials or resources transmitted to Customer in order to provide any of the services under this Agreement.

Subject to the following terms and conditions of this Agreement, Certive will provide SaaS for Customer:

1. SAAS SPECIFICATIONS

Certive agrees to provide Customer with SaaS according to the following Specifications (the "Specifications"):

Certive provides SaaS in the form of cloud-based Software, Hosting Services, and Support Services.

Software

The VMSG Dashboard Performance Management System enables clients to manage the performance of their organization through the development, implementation and management of their strategic and operational plans.

Hosting Services

Fees for Hosting Services and Support Services are included in the SaaS licensing fees.

Support Services

Support Services are included with the SaaS license for licensed system administrator users. Services include:

- SaaS (Software as a Service)
 - Hosting
 - All software updates
 - Daily backups
 - Worldwide access via the Internet
 - NOTE: can be internally hosted by Health Department if desired
- Initial setup
 - Establish Organization
 - Establish Groups and hierarchy
 - Establish Categories & Sub-Categories
 - Establish Users
 - Admin
 - R/W
 - R/O
 - Partner
- Local or Webinar-based User Training
- Technical Support
- NOTE: Does not include Operational Plan development

Certive agrees to provide assistance in using SaaS based on the customer's needs via e-mail, phone, and Certive's web sites.

1.1 SERVICES PROVISIONS

Rights and License Granted.

Except for Customer use of the licensed SaaS, Customer is not granted any rights or license to the Software or Services under this agreement. Customer acknowledges that through its payments to Certive it is granted access to the SaaS. Customer further acknowledges that at no time shall it be entitled to download, distribute, install or otherwise redistribute the Software in any form not explicitly covered by this Agreement. The Customer understands that access to the SaaS ends when one of the following events takes place: 1) Customer payments are unpaid after sixty days (60 days) of the invoice date, or 2) Customer cancels its subscription with an advanced 30-day written notice and Customer's account is paid in full.

Certive reserves the right to remove any content Certive views as harmful or content that could subject Certive or a customer to a penalty.

Limitations to Rights and License.

At no time will Customer hold title to or ownership of any of the SaaS, Certive Data, Source Code or any Materials provided to Customer during the term of this Agreement. Customer access to Customer data records will be withheld at the end of Term until Customer's balance is fully paid. Upon completion of the term of the Agreement and payment in full, Certive will provide the Customer with the Customer's data in electronic format.

U.S. export control laws and other applicable export and import laws govern Customer's use of the SaaS, including technical data. Neither the Certive Materials nor any direct product thereof may be exported, directly or indirectly, in violation of these laws, or may be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation.

1.2 LENGTH OF SERVICE

Customer agrees to an initial term of service ("Term"). The length of contract term required is based on the type of service desired by Customer and shall be determined solely by Certive as defined in the payment option selected by Customer.

1.3 SERVICE START DATE

The first subscription payment plus setup charges, if any, shall be due in advance of any service provided. Service shall begin upon Certive receipt of payment for such first Term of service or upon a mutually agreed upon alternate date.

1.4 RENEWAL BY CUSTOMER

The VMSG Dashboard subscription may be renewed, annually. Certive will notify Customer approximately 60 days prior to the annual renewal date. Customer will have the option to renew the subscription at the current license count, modify the license count or terminate the subscription. Certive will invoice Customer for the selected license count. Renewal prices are subject to change.

1.5 SAAS CUSTOMIZATION

Customer acknowledges that the SaaS is provided "as is" and "as delivered" and cannot be construed as being able to be customized or modified in any way. Customer assumes all responsibility to review all features included in the SaaS prior to signing this agreement. Customization of the VMSG Dashboard system for the Customer can be completed for an additional fee. This fee will be negotiated on a case-by-case basis.

1.6 SAAS SUPPORT

All support for the SaaS shall be conducted as defined in the Specifications.

2. END-USER PRICING AND SERVICES FEES

End-User Pricing and Services Fees are subject to change at the sole discretion of Certive.

3. TERMS OF PAYMENT

Terms of payment are C.O.D. unless credit approval has been granted by Certive. If credit approval has been granted, credit terms are net thirty (30) days upon receipt of invoice. Certive reserves the right to revoke any credit extended and suspend all SaaS if customer's payment is in arrears for more than sixty (60) days.

4. PROPRIETARY INFORMATION

Proprietary information exchanged hereunder shall be treated as such by Customer. This information shall include, but is not limited to, the provisions of this Agreement, product and services information, materials, software, code, pricing, or any other materials transmitted to Customer under this Agreement. Customer agrees not to (a) decompose, disassemble, decode, or otherwise reverse engineer any Certive program, code, or technology installed or delivered to Customer or any portion thereof; (b) transmit or allow to be transmitted any such materials to any third party except as necessary for the fulfillment of this Agreement; (c) use any Certive Materials or SaaS in any way not intended or expressly provided for by this Agreement.

5. CUSTOMER INFORMATION

Certive takes ordinary and customary security measures in protecting customer information passing through software, web sites, e-mail, and the portions of non-public network within Certive's control. Certive accepts no responsibility beyond ordinary and customary responsibilities.

6. WARRANTIES

Certive makes no warranties or representations of any kind, whether expressed or implied, for the SaaS Certive is providing. Certive and any suppliers of content materials also disclaim any warranty of merchantability or fitness for any particular purpose. Use of any information obtained by way of Certive is at Customer's own risk, and Certive specifically denies any responsibility for the accuracy or quality of information obtained through its Services.

Connection speed represents the speed of an end-to-end connection. Certive does not represent guarantees of speed or availability of end-to-end connections. Certive expressly limits its damages to Customer for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. Certive specifically denies any responsibilities for any damages, direct or indirect, arising as a consequence of such unavailability.

6.1 SERVICE LEVEL AGREEMENT

Certive shall use commercially reasonable efforts to make the service available for use 24 hours a day, 7 days per week with the exception of maintenance downtime. All regular maintenance, updates and upgrades will be performed during non-business hours. Business hours, for this purpose, are defined as 6:00 AM – 6:00 PM local time. Certive expressly limits its obligation for any non-accessibility time or other down time during normal business hours to the pro-rata charge during the system unavailability. Any requested and verified pro-rata charges for downtime will be credited to the customer's license agreement fees for the next billing cycle.

The service level agreement does not apply in the following cases:

- Client system and infrastructure issues
- Systemic Internet issues
- Data issues resulting from client errors

6.2 NO DUTY TO CUSTOMER'S USERS NOT DIRECTLY CONTRACTED WITH CERTIVE

Certive shall have no obligation to support, train or troubleshoot issues for any third-party user due to problems arising out of the use of the SaaS provided to Customer by Certive. Third parties shall include, but are not limited to: vendors, contractors, Customer's customers, Customer's clients or any third party not directly contracted with Certive for SaaS and SaaS Support.

7. COPYRIGHTS AND TRADEMARKS

Customer warrants that Customer has the right to use any applicable trademarks or materials that Customer installs, integrates or uses in connection with this SaaS.

8. TRANSFER OF AGREEMENT

Customer may not assign or transfer this Agreement, in whole or in part, without the prior written consent of Certive. In the event that Customer contemplates whole or partial sale of Customer's business, ownership change, or change in jurisdiction, Customer shall notify Certive by mail, facsimile, or email no less than sixty (60) days prior to the effective date of the event.

9. TERMINATION

Certive may terminate this Agreement at its sole discretion upon the occurrence of one or more of the following events: 1) Customer's failure to comply with any provisions of the Agreement upon receipt of written notice from Certive of said failure, 2) appointment of receiver or the filing of any application by Customer seeking relief from creditors, or 3) upon mutual agreement in writing by Certive and Customer.

Certive agrees, upon termination of this agreement, to provide the Customer with their system data in a mutually agreeable format.

10. DISPUTES

If legal proceedings are commenced to resolve a dispute arising out of or relating to this Agreement, each party shall be responsible for their costs, legal fees, and expert witness fees as well as any costs or legal fees in connection with any appeals.

11. LIMITATION OF LIABILITIES

- A. Notwithstanding any damages that customer might incur for any reason whatsoever (including, without limitation, all direct or general damages), the entire liability of Certive and any of its suppliers under any provision of this agreement and customer's exclusive remedy for all of the foregoing shall be limited to actual damages incurred by customer based on reasonable reliance up to the amount actually paid by customer for the product. Additionally, Certive shall not have any liability with respect to any incident or damages arising out of or related to any third-party services. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.
- B. To the maximum extent permitted by applicable law, in no event shall Certive or its suppliers be liable for any direct, special, incidental, indirect, punitive, consequential or other damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of

privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the product or support services, the provision of or failure to provide support services, or otherwise under or in connection with any provision of this agreement, even in the event of the fault, tort (including negligence), strict liability, breach of contract, and even if Certive or any supplier has been advised of the possibility of such damages.

12. GENERAL

If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement and any disputes arising hereunder shall be governed by the laws of State of _____. A failure by any party to exercise or any delay in exercising a right or power conferred upon it in this Agreement shall not operate as a waiver of any such right or power.

The parties represent and warrant that, on start of service Term, they are authorized to enter into this Agreement in its entirety and duly bind their respective principals by their use of the SaaS provided by Certive.

13. SIGNATURE

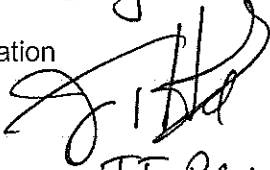
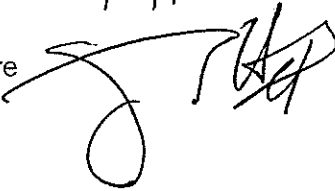
City of Arsenault TX,
Organization
Name  JAMES T. HOWARD
Title IT Project Mgr
Date 8/11/17
Signature 

Exhibit D
Non Discrimination Certification

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

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

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

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

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

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

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

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

Sanctions:

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

Term:

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

Dated this _____ day of _____, _____

CONTRACTOR _____

Authorized Signature _____

Title _____



Quote

KNOWLEDGE CAPITAL ALLIANCE (a Certive company)

7373 E Doubletree Ranch Rd
Suite 210
Scottsdale, AZ 85258
Phone (480) 225-5607

Austin/Travis County Health and Human Services
2006 East 4th Street
Austin, Texas 78702

DATE: 7/17/2017
Number: 071717-01

Product/Services
VMSG Dashboard Cloud-based
Performance Management System

Michael Maddux

DESCRIPTION	QTY	RATE	AMOUNT
VMSG Dashboard Performance Management System Annual License Including up to 40 Active Users Annual License fee Includes: SaaS (Software as a Service) Hosting All software updates Daily backups Worldwide access via the Internet Initial setup Establish Organization Establish Groups and hierarchy Customize Categories & Sub-Categories Establish Users Admin Users Read/Write Users Read/Only Users Partner Users Unlimited Video and/or Webinar-based User Training Unlimited Technical Support Initial Operational Plan Development Assistance	40	\$ 100.00 Per User per Year	\$4,000.00
SUBTOTAL			\$4,000.00
TAX RATE			0.00%
SALES TAX			-
OTHER			-
TOTAL			\$ 4,000.00

KCA accepts credit and debit cards for VMSG Dashboard licenses. Please call with your card information. (480) 225-5607

If you have any questions, please contact Andrea Schon, (480) 225-5607 or Andrea@kca-inc.com

Thank You for Your Consideration



Purchase Order - Vendor Single

Page: 1 / 1

Reference Number	P.O. Date	Price Agreement #	Requestor	Buyer
DO 5600 17080814640 - 1	08/08/17	MA 5600 NA170000212	Paula Barriffe, 512-974-2981	See Solicitation, 512-974-2500

VENDOR	SHIP TO	BILL TO
Fred Erickson V00000945378 Knowledge Capital Alliance, Inc. 7373 E Doubletree Ranch Rd Suite 210 Scottsdale, AZ 85258	CTM Main Location City of Austin 1124 S. IH-35, Suite 300 Austin, TX 78704-2614	City Of Austin CTM Accounts Payable PO BOX 1088 Austin, TX 78767

The City's standard purchase terms and conditions are hereby incorporated into this order by reference, with the same force and effect as if they were incorporated in full text. The full versions are available at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS or call the Purchasing Office at (512) 974-2500. Please include above reference number on all packages, deliveries, and invoices.

Line	Quantity	Unit	Comm Code	Commodity Line Description	Unit Price	Extended Amount
1	0.00		2082037	SOFTWARE, MICROCOMPUTER, EMPLOYMENT/PERFORMANCE TR	0.000000	\$4,000.00

Extended Description

Qty: 40 Unit Price: \$100.00

VMSG Dashboard Performance Management System Annual License

26246 - Quote #: 071717-01

Order Total: \$ 4,000.00

VENDOR INSTRUCTIONS:

1. SEND ORIGINAL INVOICE WITH DUPLICATE COPY TO THE CITY DEPARTMENT TO WHICH THE GOOD(S) WERE DELIVERED
2. SHIPPING INSTRUCTIONS: F.O.B. DESTINATION UNLESS OTHERWISE SPECIFIED.
3. NO FEDERAL OR STATE SALES TAX SHALL BE INCLUDED IN PRICES BILLED. LIMITED SALES TAX #74-6000085.


Authorized Agent for City Manager

By acceptance of this purchase order, you agree to comply with the terms and conditions incorporated herein by reference and made a part of this order.

08/08/17
Date