



Amendment No. 6  
of  
Contract No. MA 5600 NS170000032  
for  
Technical Support and Services for Web-Based Work Order Application  
between  
Dude Solutions Inc.  
and the  
City of Austin

1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective July 20, 2021 through July 19, 2022. No options will remain.

2.0 The total Contract amount is increased by \$76,220.00 for this extension option period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Initial Term: 07/20/2017 – 07/19/2018	\$197,414.00	\$197,414.00
Amendment No. 1: Option 1 – Extension 07/20/2018 – 07/19/2019	\$65,842.00	\$263,256.00
Amendment No. 2: Option 2 – Extension 07/20/2019 – 07/19/2020	\$69,134.00	\$332,390.00
Amendment No. 3: Administrative Increase	\$61,000.00	\$393,390.00
Amendment No. 4: Option 3 – Extension 07/20/2020 – 07/19/2021	\$72,591.00	\$465,981.00
Amendment No. 5: Administrative Increase	\$62,000.00	\$527,981.00
Amendment No. 6: Option 4 – Extension 07/20/2021 – 07/19/2022	\$76,220.00	\$604,201.00

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

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

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

**Dude Solutions, Inc.**

DocuSigned by:  
 3/4/2021 | 2:54:41 PM EST  
Signature/Date  
Printed Name: Kevin Kemmerer  
Authorized Representative

Dude Solutions Inc.  
11000 Regency Parkway, Suite 110  
Cary, NC 27518  
[Anna.breeden@dudesolutions.com](mailto:Anna.breeden@dudesolutions.com)

**City of Austin**

Elisa  
Folco

Signature/Date  
Elisa Folco  
Procurement Specialist IV

City of Austin – Purchasing Office  
124 W. 8<sup>th</sup> Street, Suite 310  
Austin, TX 78701

Digitally signed by  
Elisa Folco  
Date: 2021.03.04  
14:07:51 -06'00'



Amendment No. 5  
to  
Contract No. 5600 NS170000032  
for  
Technical Support and Services for Web-Based Work Order Application  
between  
Dude Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises an administrative increase of \$62,000 for the subject contract.
- 2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/20/2017 – 07/19/2018	\$197,414.00	\$197,414.00
Amendment No. 1: Option 1 – Extension 07/20/2018 – 07/19/2019	\$65,842.00	\$263,256.00
Amendment No. 2: Option 2 – Extension 07/20/2019 – 07/19/2020	\$69,134.00	\$332,390.00
Amendment No. 3: Administrative Increase	\$61,000.00	\$393,390.00
Amendment No. 4: Option 3 – Extension 07/20/2020 – 07/19/2021	\$72,591.00	\$465,981.00
Amendment No. 5: Administrative Increase	\$62,000.00	\$527,981.00

- 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.

<p>DocuSigned by: 10A66781CA77436</p> <p>Sign/Date: <u>Drew Peters</u></p> <p>Printed Name: <u>Drew Peters</u> VP of Finance</p> <p>Authorized Representative</p>	<p>10/12/2020   10:50:06 AM PDT</p> <p>Sign/Date: <u>Sai Xoomsai Purcell</u></p> <p>Printed Name: _____</p> <p>Authorized Representative</p>
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Dude Solutions, Inc.  
11000 Regency Parkway, Suite 110  
Cary, NC 27518

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



Amendment No. 4  
to  
Contract No. MA 5600 NS170000032  
for  
Technical Support and Services for Web-Based Work Order Application  
between  
Dude Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective July 20, 2020 to July 19, 2021. One option will remain.
- 2.0 The total contract amount is increased by \$72,591 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/20/2017 – 07/19/2018	\$197,414.00	\$197,414.00
Amendment No. 1: Option 1 – Extension 07/20/2018 – 07/19/2019	\$65,842.00	\$263,256.00
Amendment No. 2: Option 2 – Extension 07/20/2019 – 07/19/2020	\$69,134.00	\$332,390.00
Amendment No. 3: Administrative Increase 11/15/2019	\$61,000.00	\$393,390.00
Amendment No. 4: Option 3 – Extension 07/20/2020 – 07/19/2021	\$72,591.00	\$465,981.00

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

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

DocuSigned by:  
Sign/Date: Brian Benfer 7/1/2020 | 2:03:22 PM RDT  
0DAAD7731FF94E6...

Printed Name: Brian Benfer SVP, Sales  
Authorized Representative  
Dude Solutions, Inc.  
11000 Regency Parkway, Suite 110  
Cary, North Carolina 27518  
[accounting@dudesolutions.com](mailto:accounting@dudesolutions.com)  
866-455-3833

JAMES T  
Sign/Date: HOWARD

Jim Howard  
Procurement Manager  
City of Austin Purchasing Office  
124 West 8<sup>th</sup> Street  
Austin, Texas 78701

Digitally signed by JAMES T HOWARD  
DN: cn=JAMES T HOWARD, o=CITY OF  
AUSTIN, ou=FINANCE,  
email=JIM.HOWARD@AUSTINTEXAS.GOV,  
c=US  
Date: 2020.07.06 11:19:16 -05'00'



Amendment No. 3  
to  
Contract No. 5600 NS170000032  
for  
Technical Support and Services for Web-Based Work Order Application  
between  
Dude Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises an administrative increase of \$61,000 for the subject contract.
- 2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/20/2017 – 07/19/2018	\$197,414.00	\$197,414.00
Amendment No. 1: Option 1 – Extension 07/20/2018 – 07/19/2019	\$65,842.00	\$263,256.00
Amendment No. 2: Option 2 – Extension 07/20/2019 – 07/19/2020	\$69,134.00	\$332,390.00
Amendment No. 3: Administrative Increase	\$61,000.00	\$393,390.00

- 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: Tom Knox 11/6/2019

Printed Name: Tom Knox  
Authorized Representative

Dude Solutions, Inc.  
11000 Regency Parkway, Suite 110  
Cary, NC 27518

Sign/Date: Gil Bilkey 11/15/19  
Printed Name: Gil Bilkey  
Authorized Representative

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



FY20 Total Costs (one-time + annual)  
= **\$120,636.87**

**\*\$51,503.23 increase** from current contract

FY21 = \$110,781.00 annual

Pricing is based on population of about 800,000. This includes transformation costs for the Facilities team

## Solutions - Subscription Transformation

Asset Essentials Enterprise

Asset Essentials Safety

- Pro Facilities/Physical Plant Module

**Subscription Term:** 4 months\*

(June 2019 - September 2019)

**Subtotal:** \$0.00

## Implementation & Services

1 Week (4 days) Onsite Consulting Package\*\*

**Subtotal:** \$30,000.00

## Initial Transformation Investment

**\$30,000.00 USD**

\*4 months included at no additional cost

**Renewal for October 2019 - September 2020: \$68,799.60**

\*\*Onsite consulting package to be billed upon completion of services

**FY20 Annual Costs = \$89,436.87**

**One-time Implementation Costs = \$31,200.00**

## Solutions - Subscription Add-ons

Asset Essential Inventory

Asset Essentials Connector Toolkit

**Subscription Term:** 16 months\*

(June 2019 - October 2020)

**Subtotal:** \$20,637.27

## Implementation & Services

Asset Essentials Connector Toolkit Training

**Subtotal:** \$1,200.00

## Initial Add-on Investment

**\$21,837.27 USD**

\*10 months included at no additional cost





Amendment No. 2  
to  
Contract No. 5600 NS170000032  
for  
Technical Support and Services for Web-Based Work Order Application  
between  
Dude Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 20, 2019 through July 19, 2020. Two (2) options will remain.
- 2.0 The total contract amount is increased by \$69,134.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/20/2017 – 07/21/2018	\$197,414.00	\$197,414.00
Amendment No. 1: Option 1 – Extension 07/20/2018 – 07/21/2019	\$65,842.00	\$263,256.00
Amendment No. 2: Option 2 – Extension 07/20/2019 – 07/21/2020	\$69,134.00	\$332,390.00

- 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.

DocuSigned by:  
Sign/Date Brian Carter 7/12/2019  
9FE34C48C8494EF...  
Printed Name: Brian Carter  
Authorized Representative

Dude Solutions, Inc.  
11000 Regency Pkwy, Ste. 110  
Cary, NC 27518

Sign/Date: [Signature] 7/15/19  
Printed Name: Ken Bragdon  
Authorized Representative  
Sign/Date: [Signature] 7/15/19  
Printed Name: [Signature]

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





Amendment No. 1  
to  
Contract No. 5600 NS170000032  
for  
Technical Support and Services for Web-Based Work Order Application  
between  
Dude Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 20, 2018 through July 19, 2019. Three (3) options will remain.
- 2.0 The total contract amount is increased by \$65,842.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/20/2017 – 07/19/2018	\$197,414.00	\$197,414.00
Amendment No. 1: Option 1 – Extension 07/20/2018 – 07/19/2019	\$65,842.00	\$263,256.00

- 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: Brian J. Carter 6/21/18

Printed Name: Brian J. Carter  
Authorized Representative

Sign/Date: James T. Howard

Printed Name: JAMES T. HOWARD  
Authorized Representative

Dude Solutions, Inc.  
11000 Regency Parkway, Suite 110  
Cary, NC 27518

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

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
DUDE SOLUTIONS, INC.  
FOR  
TECHNICAL SUPPORT AND SERVICES FOR WEB-BASED WORK ORDER APPLICATION  
CONTRACT NUMBER: MA 5600 NS170000032**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Dude Solutions, Inc. ("Contractor"), having offices at 11000 Regency Parkway, Suite 110, Cary, NC 27518.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Jolie Medlin, Phone: 866-455-3833 ext.: 8728, Email Address: [jolie.medlin@dudesolutions.com](mailto:jolie.medlin@dudesolutions.com). The City's Contract Manager for the engagement shall be Taylor Youngblood, (512) 974-3519, Email Address: [Taylor.Youngblood@austintexas.gov](mailto:Taylor.Youngblood@austintexas.gov). The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$197,414 for the initial 12 month term, an amount not-to-exceed \$65,842 for Extension Option 1, an amount not-to-exceed \$69,134 for Extension Option 2, an amount no-to-exceed \$72,591 for Extension Option 3, and an amount not-to-exceed \$76,220 for Extension Option 4, for all fees and expenses.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the 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 itemized and transportation



charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

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

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

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

3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

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

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

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover the City's actual damages anticipated due to the delay, subject to the Contractor's Limitation of Liability set forth in Exhibit C;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

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

3.5 **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.

3.5.1 **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.

3.5.2 **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.

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

3.6.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall become effective on the date executed by the City ("Effective Date") and shall be in effect for an initial term of 12 months and may be extended thereafter for up to 4 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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

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

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years.. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, subject to the Contractor's Limitation of Liability set forth in Exhibit C. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirements apply.

### **5.1.1 General Requirements.**

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

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

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

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

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

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

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

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

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

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

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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

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

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

## 5.2 **Equal Opportunity.**

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

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so.

## 5.5 Delays.

5.5.1 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.

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

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to its data as described in §2.2(b) of Exhibit C. The Contractor retains all ownership right, title, and interest in its Intellectual Property as described in §2.2(2) of Exhibit C.

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

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

## SECTION 6. WARRANTIES

### 6.1 Warranty – Price.

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

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

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

DSI warrants that the deliverables are free from defects in workmanship and materials for a period of ninety (90) days from the date the City receives deliverables as prescribed by this Agreement.

The warranties in this limited warranty are the only warranties applicable to the deliverables. There are no other warranties, representations or conditions of any kind, express or implied, statutory or otherwise, with respect to the deliverables supplied hereunder including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

All such warranties are hereby specifically disclaimed and DSI shall not be liable in this respect notwithstanding DSI's actual knowledge of the product's intended use or any advice or representations that



may have been rendered by DSI concerning the design, manufacture, sale, use, installation or provision of the products. No statement, conduct or description by DSI or its representatives, in addition to or beyond this limited warranty, shall constitute a warranty.

In an event of a breach of this limited warranty, DSI may at its discretion replace the defective deliverables with the same type and like quantity of non-defective deliverables, at the original point of delivery.

In no event shall either party be liable to the other for any indirect, special, or consequential damages arising in connection with a breach of this Agreement.

## SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions, except where liability or damages result from the negligence or intentional misconduct of the City.

### 7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; 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 that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify the City from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the 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 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

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

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

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **Audits and Records.**

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

### 7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

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

## 7.7 **Indemnity.**

### 7.7.1 Definitions:

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

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

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

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

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

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

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

To the City:

City of Austin, Purchasing Office

ATTN: Elisa Folco, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Dude Solutions, Inc.

ATTN: Melissa Buchanan, Contracts Administrator

11000 Regency Parkway, Suite 110

Cary, NC 27518

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

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

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

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

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

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

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

7.18 **Modifications.** The Contract can be modified or amended only 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.

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

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. 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.

7.20.2 This section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or injunctive relief. If a lawsuit is filed prior to parties meeting to negotiate in good faith a resolution pursuant to this section, and the lawsuit is seeking more than temporary injunctive relief, the parties agree that the lawsuit will be stayed and all deadlines tolled until the parties have had an opportunity to comply with the requirements of this section. Negotiation may only be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.3 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. Upon completing the mediation as described above, each party retains the right to commence legal action in a court of competent jurisdiction.

#### 7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

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

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

provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24 **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.

7.25 **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.

7.26 **Non-Solicitation.**

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

7.26.2 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's permission.

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

7.28 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf).

7.29 **Order of Precedence.**

7.29.1 The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.



7.29.1.1 any exceptions to the Offer accepted in writing by the City;

7.29.1.2 the Supplemental Purchase Terms and Conditions;

7.29.1.3 the Standard Purchase Terms and Conditions;

7.29.1.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

7.29.2 Any inconsistency or conflict between the Terms and Conditions contained in this Contract and the Contractor's Online Subscription Agreement, attached as Exhibit C, shall be resolved by giving precedence to the Terms and Conditions of this Contract.

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

**DUDE SOLUTIONS, INC.**

DocuSigned by:  
By: Brian Carter  
Signature 7490E243EB46D

Name: Brian Carter  
Printed Name

Title: VP of Sales

Date: 7/13/2017

**CITY OF AUSTIN**

By: Elisa Folco  
Signature

Name: Elisa Folco  
Printed Name

Title: Contract Management Specialist IV

Date: 7/20/2017

**List of Exhibits**

Exhibit A	Dude Solutions, Inc. Offer
Exhibit B	Non Discrimination Certification
Exhibit C	Dude Solutions, Inc. Online Subscription Agreement
Exhibit D	Non Suspension or Debarment Certification

**EXHIBIT A**  
**Dude Solutions, Inc. Offer**

**PREPARED FOR**  
City of Austin

**PREPARED BY**  
Dude Solutions, Inc.

**PUBLISHED ON**  
January 17, 2017

January 17, 2017

Kornie Johnson  
Administrative Specialist  
City of Austin  
301 W 2nd St  
Austin, TX 78701-4652

Dear Kornie,

Thank you for your interest in our affordable suite of powerful, easy-to-use online tools and services that allow you to save money, increase efficiency, and improve services. We are dedicated to providing best in class solutions with top notch support and training. Our additional services are designed to help you maximize the value of your investment.

Pricing is based on 5,000,000 square feet.

#### Pricing for 2017:

Item	Term	Investment
Maintenance Edge	Annual	\$32,303.25
Capital Forecast*	Annual	\$23,403.00
Facility Condition Assessment – Includes 3% TCPN Discount - Contract Number R5133	One-Time	\$116,707.49
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$7,000.00
Investment:		\$197,413.74 USD

#### Pricing for 2018:

Item	Term	Investment
Maintenance Edge	Annual	\$33,918.41
Capital Forecast*	Annual	\$24,573.15
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$7,350.00
Investment:		\$65,841.56 USD

#### Pricing for 2019:

Item	Term	Investment
Maintenance Edge	Annual	\$35,614.33
Capital Forecast*	Annual	\$25,801.81
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$7,717.00
Investment:		\$69,133.64 USD

## Pricing for 2020:

Item	Term	Investment
Maintenance Edge	Annual	\$37,395.05
Capital Forecast*	Annual	\$27,091.90
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$8,103.38
Investment:		\$72,590.33 USD

## Pricing for 2021:

Item	Term	Investment
Maintenance Edge	Annual	\$39,264.80
Capital Forecast*	Annual	\$28,446.50
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$8,508.55
Investment:		\$76,219.85

\*Pricing for Capital Forecast includes a BuyBoard discount



## Support

- A live representative is happy to help Monday to Friday, excluding holidays, 8am - 6pm ET. After hours inquiries will be responded to the next business day.
- Send us an email – we answer 99% of our support emails within 1 hour.
- Reach us instantly through our software with live chat!
- Best practices webinars and podcasts which share new trends, popular reports, and tips.
- Training review webcasts are a great resource for clients who need a refresher after their initial training, or for new employees that could benefit from a training session.

## Facility Condition Assessment with Narrative Report Includes Data Gathering and Import of Data into DSI Software

### Purpose:

The purpose of the partnership facility condition assessment is to assess the facilities based on the following scope, provide narratives that summarize assessment observations and comments, and to import the data into the client's Dude Solutions capital forecasting and maintenance solutions.

All condition assessments will include a bound deliverable containing:

- Narrative report with description of systems and corresponding conditions.
- Digital photos of key components and deficiencies as an Appendix in the narrative.
- 20 year capital Reserve table with systems and component replacement costs and dates.
- Import of systems level detail into client's capital forecasting solution.
- Import major equipment level detail into client's DudeSolutions maintenance solution.

### Field data collection and condition assessment:

The field data collection and condition assessment is meant to capture information of all major building systems to the individual component level, including all components considered capital repair items (as opposed to maintenance level items). This includes site paving, HVAC, roofing, electrical, plumbing, vertical transportation systems, building envelope and structural systems.

A Certified Dude Solutions Partner (DSI Partner) will collect, document, and analyze the facilities assessment data to achieve the following:

- At the start of each building or facility assessment we will interview client's staff to understand what improvements have been made in the last three years, what improvements are planned in the next three years and known problems.
- Inventory all major building equipment including quantity, size, asset tag number, manufacturer, model and serial number.
- Identify deficient conditions in terms of deferred maintenance and building condition.
- Provide a reasonable cost analysis for the above-mentioned efforts.
- For single building projects, provide a report for the property that details the assessment data.
- For multi-building projects, data will be collected from every building in the portfolio. Reports will be prepared as follows:
  - Major buildings (generally defined as 25,000 square feet or greater and approximately 10% of the project portfolio), a separate report will be prepared.
  - Smaller buildings will be grouped into reports by building type, geography or other logical grouping (for example maintenance structures, parks assets, fire stations...)
- Provide individual cost tables and digital photographs to document the deficient conditions at each property.

Based on observations and information obtained from available on-site personnel, The DSI Partner will visually inspect all facilities and properties. Specifically, the assessment will focus on the following components:

#### Heating System

- Identify boilers, furnaces, and major labeled equipment.

#### Ventilation System

- Identify the ventilation systems at the property and assess its overall condition.

#### Air Conditioning System

- Identify the material air-conditioning components, including cooling towers, chillers, and major labeled equipment. Excluded are window units, terminal units, VAV boxes, thermostatic controls.

#### Roofing System

- Identify the material roof systems, including roof type, reported age, slope, drainage, or any unusual roofing conditions. The team will observe for evidence of material repairs, significant ponding, or evidence of material roof leaks.

#### Electrical System

- Identify the electrical service provided and distribution system at the subject property. Observation and evaluation will include switchgear, transformers, emergency generators and main distribution panels. Excluded are step down transformers.

#### Plumbing

- Identify the material plumbing systems at the subject property, including domestic water supply, domestic hot water production over 80 gallons, sanitary sewer, primary backflow preventer or any special or unusual plumbing systems (such as fuel systems, gas systems).

#### Vertical Transportation

- Identify the existing vertical transportation equipment and provide an overall assessment. Detail deficiencies for each elevator and provide an analysis of the remaining useful life, along with budgets for any expected expenditures up to and including modernization or replacement.

#### Building Envelope

- Identify the material elements of the building exterior, to include walls, doors, windows, and fire escapes. This will also include the façade, curtain-wall systems, glazing, exterior sealant, exterior balconies, and stairways. Observations may be subject to grade, accessible balconies, and rooftop vantage points.

#### Structural Components

- Evaluate the footings, foundations, slabs, columns, floor framing system, and roof framing system as part of the structural inspection for soundness. Observations will be subject to grade and visibility of components. This is a visual inspection only and no structural testing of components or materials will be undertaken.

#### Site Paving

- Observe and evaluate the site paving components including paving, curbs, drains and sidewalks.

#### Commercial Kitchen- major equipment (above approximately \$2000 value)

- Walk-in freezer and refrigerator equipment
- Ovens, stoves, broilers, grills
- Reach-in refrigerators and freezers
- Dishwashers
- Fryers

#### Life Safety/Security

- High Level (system level) only for identification to track maintenance
- Alarm Panels
- Emergency generators
- Exhaust hood fire suppression

#### Evaluation-

At the conclusion of the assessment(s), the prepared reports as described above will include:

- A general description of the property and improvements and comment generally on observed conditions.
- Comments for components that are exhibiting deferred maintenance issues and provide estimates for "immediate" and "capital repair" costs based on observed conditions, available maintenance history and industry-standard useful life estimates. If applicable, this analysis will include the review of any available documents pertaining to capital improvements completed within the last three years, or currently under contract. DSI Partner shall also inquire about available maintenance records and procedures and interview current available on-site maintenance staff.
- A schedule for recommended replacement or repairs (schedule of priorities).
- Address critical repairs separately from repairs anticipated over the term of the analysis.
- A PCI index number for each building.
- A twenty year capital plan with an Executive Summary with graphic presentation of results to provide a quick, "user-friendly" summary of the property's observed condition and estimated costs assigned by category.

#### Cost Estimating-

Each single building report will include an estimated cost for each system or component repair or replacement anticipated during the evaluation term. The capital needs analysis will be presented as an Excel-based cost table that includes a summary of the description of each component, the age and estimated remaining useful life, the anticipated year of repair or replacement, quantity, unit cost and total cost for the repair of each line item. A consolidated Capital Needs Analysis will be presented that includes all anticipated capital needs for all buildings.

In addition to the detailed description of the deficiencies, we will provide cost estimates for the deficiencies noted. The cost estimate for capital deficiencies will be based on the estimate for maintenance and repair. Project management costs, construction fees, and design fees will be derived using actual costs from previous projects, if available.

DSI Partners use the Uniformat system and the Whitestone Research model for cost estimating. Dude Solutions also maintains and updates our cost estimating system with information received from the field. Through our construction monitoring work, we have current cost data from hundreds of in-progress construction and rehabilitation projects. This allows us to project costs based on local conditions and to maintain a cost database that in most cases is more current than published models.

#### Building Systems Equipment Inventory – Populating Your DudeSolutions account

An asset survey of major building systems will be conducted for the purpose of noting remaining useful life of major building equipment. A complete equipment inventory for each system will be recorded with information populated to client's account including:

- Building name
- System name (classification)
- Subsystem name (type)
- Component name (description)
- Unit of measure
- Quantity
- Asset tag number
- Manufacturer
- Model
- Serial Number
- Date put in service (if available)
- Condition
- Remaining useful life
- Replacement cost

## Terms of Service:

- Proposal has been prepared for City of Austin
- Proposal expires in 60 days
- Initial Term: 12 months
- Payment: Terms are net 30 days
- Automatic invoicing of annual fee will occur at the end of each term unless request for non-renewal is received in writing 30 days prior to renewal date.
- Applicable sales taxes are in addition to the quoted price. If your organization is tax exempt, please email a copy of your Tax Exemption Certificate to [accounting@dudesolutions.com](mailto:accounting@dudesolutions.com) (<mailto:accounting@dudesolutions.com>).
- Please address purchase order to: Dude Solutions, 11000 Regency Parkway, Suite 110, Cary, NC 27518
- Service dates are scheduled Monday-Friday
- Final invoicing for Facility Condition Assessment will occur when draft reports/data files are delivered. For Facility Condition Assessment projects larger than 154,000 square feet, invoicing will occur based on a milestone billing schedule as defined within this scope.
- If a service day is rescheduled or cancelled by City of Austin, then City of Austin is responsible for any cancellation fees incurred by rescheduling or cancelling travel and living fees.
- Onsite service days rescheduled less than 2 weeks before the scheduled delivery date will incur cancellation fees.
- Services will be scheduled upon written acceptance of the terms and conditions working of this proposal.
- We must allow 2 weeks of lead time from the purchase date for booking service for travel and living purposes.
- Dude Solutions, Inc. maintains the necessary liability coverage for their products and services. Proof of insurance can be provided upon request.
- Pricing is based upon Dude Solutions, Inc. [standard online subscription agreement](http://dudesolutions.com/terms) (<http://dudesolutions.com/terms>)
- Although the terms of this document control, all other conditions of use can be found at <http://dudesolutions.com/terms> (<http://dudesolutions.com/terms>)
- During the term, you will be entitled to receive enhancements, revisions & updates of the software subscriptions at no additional fee, provided such updates, revisions, and releases do not constitute a new or separate product, as determined by Dude Solutions



**EXHIBIT B**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, 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 payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 13th day of July, 2017

CONTRACTOR  
Authorized  
Signature

Title

Dude Solutions, Inc.

DocuSigned by:

Brian Carter

867490E243EB46D...

VP of Sales

EXHIBIT C  
DUDE SOLUTIONS, INC.

ONLINE SUBSCRIPTION AGREEMENT

This Online Subscription Agreement (this “Agreement”) shall govern Subscriber’s (as defined below) access and use of the Services (as defined below) provided by Dude Solutions, Inc. (together with its direct and indirect subsidiaries, collectively, “DSI”). BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY OTHERWISE ACCESSING AND USING THE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE ANY SERVICE.

**Section 1.0 Definitions**

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 “Account” means Subscriber’s specific account where Subscriber subscribes to access and use Service(s).

1.2 “Account Users” means individual users specified by the Subscriber to access and use the Subscriber’s Account.

1.3 “Applications” means the software-as-a-service (SaaS) enterprise asset management applications designed, developed, marketed and made available by DSI, which include, without limitation, the following functionality: enterprise workflow, communication, content and business process logic for facilities, technology, business operations, facility scheduling, building automation, safety planning, crisis management, geographic information systems, energy and transportation management.

1.4 “Confidential Information” means any non-public information and/or materials disclosed in writing or orally by a party under this Agreement (the “Disclosing Party”) to the other party (the “Receiving Party”), which (i) is designated in writing as confidential at the time of disclosure, or (ii) with respect to non-public information disclosed orally, the Disclosing Party sends the Receiving Party a written notice to Receiving Party within 15 days after oral disclosure identifying the non-public information that was disclosed as its confidential information, including when, where, how and to whom such non-public information was disclosed. For avoidance of doubt, DSI’s Confidential Information shall include the source code, data structure, algorithms and logic of the Applications and Services. Notwithstanding the foregoing, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a Third Party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

1.5 “Content” means all of the audio and visual information, documents, content, materials, products and/or software contained in, or made available through, the Services.

1.6 “Documentation” means the user documentation relating to the Services, including but not limited to descriptions of the functional, operational and design characteristics of the Services.

1.7 “Highly-Sensitive Personal Information” means an Account User’s (i) government-issued identification number (including social security number, driver’s license number or state-issued identified number), (ii) financial account number, credit card number, debit card number, credit report information, in each case with or without any required security code, access code, personal identification number or password

that would permit access to such Account User's financial account; and/or (iii) biometric data.

1.8 "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) and all regulations promulgated thereunder (45 C.F.R. §§ 160-164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and all regulations promulgated thereunder, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended from time to time.

1.9 "Intellectual Property Rights" means all ideas, concepts, designs, drawings, packages, works of authorship, processes, methodologies, information, developments, materials, inventions, improvements, software, and all intellectual property rights worldwide arising under statutory or common law, including without limitation, all (i) patents and patent applications owned or licensable by a party hereto; (ii) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations; (iii) rights related to protection of trade secrets and Confidential Information; (iv) trademarks, trade names, service marks and logos; (v) any right analogous to those set forth in clauses (i) through (iv); and (vi) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired.

1.10 "Privacy Policy" means the DSI privacy policy, as amended from time-to-time, which can be viewed by clicking the "Privacy" hypertext link located on [www.dudesolutions.com](http://www.dudesolutions.com).

1.11 "Services" means each of the Application(s) subscribed to by Subscriber pursuant to this Agreement. Subscriber shall specify each of the Services that Subscriber shall subscribe to as part of its Account registration process.

1.12 "Subscriber" means the legal entity identified on the Account.

1.13 "Subscriber Data" means all data and information provided by or on behalf of Subscriber to a Service, including that which the Account Users input or upload to a Service.

1.14 "Subscription Fee" means, with respect to each Services subscription, the annual subscription fee invoiced to Subscriber by DSI prior to the Initial Term and each applicable Renewal Term for such Services subscription, which is required to be paid in order for Subscriber to be permitted to access and use the Services in such Services subscription.

1.15 "Third Party" means a party other than Subscriber or DSI.

## **Section 2.0 Use of the Service; Proprietary Rights**

### **2.1 Use of Service.**

(a) *Subscription.* Subject to the terms of this Agreement (including, without limitation, the responsibilities, limitations and restrictions set forth in this Section 2.1 and payment of the Subscription Fees required hereunder), DSI permit Subscriber's Account Users to access and use the Services during the Term, including access and use of all of the Content contained in or made available through the Services. Subscriber agrees that it shall use the Services solely for internal business purposes, and access and use of the Services shall be limited to Account Users.

(b) *Account Setup.* To subscribe to the Services, Subscriber must establish its Account, which may only be accessed and used by its authorized Account Users. To setup an Account User, Subscriber must provide DSI (and agree to maintain, promptly update and keep) true, accurate, current and complete information for such Account User. If Subscriber or any applicable Account User provides any information that is untrue, inaccurate, not current or incomplete, DSI has the right to immediately suspend or terminate Subscriber's Account and usage of the Services and refuse any and all future use. Each Account User must establish and

maintain a personal, non-transferable password, which shall not be shared with, or used by, any other Third Party. Subscriber may transfer an Account User's right to access and use the Services to a new user only if such Account User becomes inactive and is unable to access the Services. Subscriber is also solely responsible for any and all activities that occur under its Account and ensuring that it exits or logs-off from its Account at the end of each session of use. Subscriber shall notify DSI immediately of any unauthorized use of its Account and/or any other breach of security of the Services that it suspects or becomes aware of.

(c) *Subscriber Responsibilities.* Subscriber shall: (i) take appropriate action to ensure that non-Account Users do not access or use the Services; (ii) ensure that all Account Users comply with all of the terms and conditions of this Agreement, including the limitations and restrictions set out in Section 2.1(d); (iii) be solely responsible for the accuracy, integrity, legality, reliability and appropriateness of all Subscriber Data created by Account Users using the Services; (iv) access and use the Services solely in compliance with the Documentation and all applicable local, state, federal, and foreign laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (v) allow e-mail notifications generated by the Services on behalf of Subscriber's Account Users to be delivered to Subscriber's Account Users; and (vi) promptly update and upgrade its system as requested or required in order to ensure continued performance and compatibility with upgrades to the Services. Subscriber shall be responsible for any breach of this Agreement by Account Users and any access or Use of the Services by persons other than Account Users.

(d) *Limitations and Restrictions.* Subscriber agrees that it shall not, and shall not permit any Third Party to, directly or indirectly: (i) modify, alter, revise, decompile, disassemble, reverse engineer, create derivative works or attempt to derive the source code of any Service; (ii) assign, transfer, lease, rent, sublicense, distribute or otherwise make available any Service, in whole or in part, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) access or use the Services to provide any service bureau services or any services on a similar basis; (iv) use any Service in a way not intended by DSI or for any unlawful purpose; (v) use any Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights; (vi) attempt to tamper with, alter, disable, hinder, by-pass, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Services; (vii) remove, obscure or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Services; (viii) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Services; (ix) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (x) access any Service in order to build a competitive product or service, copy any features, functions or graphics of any Service or monitor the availability and/or functionality of any Service for any benchmarking or competitive purposes; (xi) store, manipulate, analyze, reformat, print, and display the Content for personal use; (xii) upload or insert code, scripts, batch files or any other form of scripting or coding into the Services; and (xiii) store Highly-Sensitive Personal Information. Highly-Sensitive Personal Information should not be entered into the Services, as there are no data fields requesting this type of information. Personal sensitive or identifiable information should not be entered into the Services, as there are no data fields requesting such information. It is the Subscriber's responsibility to enforce this policy for fields beyond DSI's control such as a description or notes field. DSI reserves the right in the future to scan input data and block certain information such as social security numbers or credit card numbers

(e) *Additional Guidelines.* DSI reserves the right to establish or modify general practices and limits concerning use of the Services, including without limitation, the maximum number of days that Subscriber Data shall be retained by the Services and the maximum disk space that shall be allotted on DSI servers on Subscriber's behalf. DSI shall provide at least sixty (60) days' prior notice of any such modification. DSI also reserves the right to block IP addresses originating a Denial of Service (DoS) attack or IP addresses causing excessive amounts of data to be sent to DSI servers. DSI shall notify Subscriber should this condition exist and inform Subscriber of its action. Once blocked, an IP address shall not be able to access the Services and the block may be removed once DSI is satisfied corrective action has taken place to resolve the issue.

(f) Third Party Software. The Services may incorporate and/or embed software and other technology owned and controlled by Third Parties. Any such Third Party software or technology that is incorporated and/or embedded into any Service shall be provided to Subscriber on the license terms set forth in this Agreement, unless additional or separate license terms apply as indicated by DSI. To the extent that the Services link to any Third Party website, application or service, the terms and conditions thereof shall govern Subscriber's rights with respect to such website, application or service, unless otherwise expressly provided DSI. DSI shall have no obligations or liability arising from Subscriber's access and use of such linked Third Party websites, applications and services.

## 2.2 Proprietary Rights.

(a) Subscriber acknowledges and agrees that (as between Subscriber and DSI) DSI retains all ownership right, title, and interest in and to the Applications, the Services, the Documentation and the Content, including without limitation all corrections, enhancements, improvements to, or derivative works thereof (collectively, "Derivative Works"), and in all Intellectual Property Rights therein or thereto. To the extent any Derivative Work is developed by DSI based upon ideas or suggestions submitted by Subscriber to DSI, Subscriber hereby irrevocably assigns all rights to modify or enhance the Applications and the Services using such ideas or suggestions or joint contributions to DSI, together with all Intellectual Property Rights related to such Derivative Works. Nothing contained in this Agreement shall be construed to convey to Subscriber (or to any party claiming through Subscriber) any Intellectual Property Rights in or to the Applications, the Services, the Documentation and the Content, other than the rights expressly set forth in this Agreement.

(b) DSI acknowledges and agrees that (as between Subscriber and DSI) Subscriber retains all ownership right, title, and interest in and to the Subscriber Data, including all Intellectual Property Rights therein or thereto.

## Section 3.0 DSI Responsibilities

3.1 Subscriber Data. DSI shall not edit or disclose any information regarding Subscriber's Account, including any Subscriber Data, without Subscriber's prior permission, except in accordance with this Agreement. Notwithstanding the foregoing, DSI is hereby permitted to provide certain statistical information (*e.g.*, usage, average costs or time values, or user traffic patterns) in aggregated and de-identified form to Third Parties or to other Application subscribers.

3.2 Support. During the Term DSI shall, as part of Subscriber's Subscription Fees, provide telephone and e-mail support ("Support Services") to Subscriber during the hours of 8:00 a.m. (Eastern time) to 6:00 p.m. (Eastern time), Monday through Friday, excluding holidays.

3.3 Availability. DSI shall use commercially reasonable efforts to make the Services available (i) 99.9% of the time during the hours of 6:00 a.m. (Eastern time) to 10:00 p.m. (Eastern time), Monday through Friday, excluding holidays ("Business Hours"), and (ii) 99.5% of the time, determined on a twenty-four (24) hours a day, seven (7) days a week basis. Availability shall be calculated on a monthly basis. For purposes of calculating availability, the Services shall not be deemed unavailable during any period arising from: (i) routine system maintenance that is performed weekly during non-Business Hours; (ii) scheduled downtime for extended system maintenance (of which DSI shall give at least 8 hours' prior notice and which DSI shall schedule to the extent reasonably practicable outside of Business Hours); and (iii) any unavailability caused by circumstances beyond DSI's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, non-DSI software or hardware, or denial of service attack.

3.4 Protection of Subscriber Data. DSI shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Subscriber Data.

## **Section 4.0 Third Party Interactions**

4.1 Relationship to Third Parties. In connection with Subscriber's use of the Services, Subscriber may: (i) enter into correspondence with and/or participate in promotions of advertisers or sponsors showing their goods and/or services through the Services; (ii) purchase goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Subscriber's Account, the Services and a Third Party provider; (iv) be offered additional functionality within the user interface of the Services through use of the Services' application programming interface; and/or (v) be provided content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such activity, shall be solely between Subscriber and the applicable Third Party. DSI shall have no liability, obligation or responsibility for any such correspondence, purchase, promotion, data exchange, integration or interaction between Subscriber and any such Third Party.

4.2 Ownership. Subscriber is the owner of all Third Party content and data loaded into the Subscriber Account. As the owner, it is Subscriber's responsibility to make sure it meets its particular needs. DSI shall not comment, edit or advise Subscriber with respect to such Third Party content and data in any manner.

4.3 No Warranty or Endorsement. DSI does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by DSI as "certified," "validated," "premier" and/or any other designation. DSI does not endorse any sites on the Internet which are linked through the Services. DSI is providing these links to Subscriber only as a matter of convenience, and in no event shall DSI be responsible for any content, products, or other materials on or available from such sites.

4.4 Additional Terms. The Disclaimer of Warranties (Section **Error! Reference source not found.**) and Limitation of Liability (Section 7.2) set forth herein shall apply to all Third Party interactions.

## **Section 5.0 Subscription Fees**

5.1 Subscription Fees. Subscriber shall, on or before the commencement of the Initial Term of a Service subscription, pay to DSI the Subscription Fee for such Service subscription. Thereafter, DSI shall invoice Subscriber for each applicable Subscription Fee at least sixty (60) days prior to the commencement of the applicable Renewal Term. Subscriber is responsible for providing complete and accurate billing and contact information to DSI and notifying DSI of any changes to such information.

5.2 Renewal Charges. DSI maintains the right to increase Subscription Fees and other applicable fees and charges in connection with each Renewal Term.

5.3 Taxes. DSI's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Subscriber is responsible for paying all Taxes associated with its purchases hereunder. If DSI has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this Section 5.3, DSI shall invoice Subscriber and Subscriber shall pay that amount unless Subscriber provides DSI with a valid tax exemption certificate authorized by the appropriate taxing authority. Subscriber agrees to indemnify and hold DSI harmless from any encumbrance, fine, penalty or other expense which DSI may incur as a result of Subscriber's failure to pay any Taxes required hereunder. For clarity, DSI is solely responsible for taxes assessable against DSI based on its income, property and employees.

## **Section 6.0 Term and Termination**

6.1 Termination for Breach. DSI may terminate this Agreement prior to the expiration of the Term if Subscriber commits a material breach of this Agreement and fails to cure such breach within thirty (30) days

after written notice of such breach is given by DSI; provided that if the breach involves a failure of Subscriber to pay any of the fees required under this Agreement, the cure period shall be reduced to ten (10) days. Without limiting the foregoing, in the event of a breach that gives rise to the right by DSI to terminate this Agreement, DSI may elect, as an interim measure, to terminate one or more of Subscriber's Services subscriptions and/or suspend its performance hereunder (including, without limitation, Subscriber's right to access and use the Services and the Account) until the breach is cured. DSI's exercise of its right to elect any interim measure shall be without prejudice to DSI's right to terminate this Agreement upon written notice to Subscriber.

6.2 Termination for Convenience. Subscriber may terminate this Agreement at any time for convenience by providing DSI forty-five (45) days' prior written notice to the following email address: [clientsuccess@dudesolutions.com](mailto:clientsuccess@dudesolutions.com). Upon termination by Subscriber pursuant to this Section 6.2, Subscriber may request in writing and be granted a refund in an amount equal to: (i) the Subscription Fee prepaid by Subscriber for the one-year term during which such termination is effective, *multiplied by* (ii) the number of full months remaining in the applicable one-year term (determined based upon the effective date of termination) *divided by* twelve; provided, however, that if DSI receives Subscriber's written notice of termination pursuant to this Section 6.2 within the first sixty (60) days after the commencement of the Initial Term, DSI shall refund to Subscriber the entire Subscription Fee for the Initial Term. For avoidance of doubt, no refund shall be granted with respect to fees for training, import or project management, and/or other professional services. Upon termination of its Account, Subscriber's right to access its Account and use the Services immediately ceases.

6.3 Effect of Termination. Upon termination of this Agreement, (i) Subscriber's access and use of the Services shall automatically cease, and (ii) DSI shall have no obligation to maintain the Subscriber Data or to forward the Subscriber Data to Subscriber or any Third Party after sixty (60) days from the termination date. Upon termination of this Agreement and upon receipt of a written request from the Subscriber within thirty (30) days of the termination date, DSI shall return all of Subscriber's data, including work order and transaction data, in CSV or XLS file format.

6.4 Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 2.1(d), 2.2, 6.3, 7, 8 and 9. Termination of this Agreement, or any of the obligations hereunder, by either party shall be in addition to any other legal or equitable remedies available to such party, except to the extent that remedies are otherwise limited hereunder.

## Section 7.0 Disclaimers and Indemnification

### 7.1 Indemnification.

(a) Indemnity by DSI. DSI shall defend, indemnify and hold harmless Subscriber from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Subscriber, in connection with any Third Party claim (each, a "Claim") alleging that Subscriber's use of the Services as expressly permitted hereunder infringes upon any United States patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Subscriber (x) promptly gives DSI written notice of the Claim; (y) gives DSI sole control of the defense and settlement of the Claim; and (z) provides to DSI all reasonable assistance, at DSI's expense. If DSI receives information about an infringement or misappropriation claim related to the Services, DSI may in its sole discretion and at no cost to Subscriber: (i) modify the applicable Service(s) so that it no longer infringes or misappropriates, (ii) obtain a license for Subscriber's continued use of the applicable Service(s), or (iii) terminate the Subscriber's Account subscriptions for the applicable Service(s) upon prior written notice and refund to Subscriber any prepaid Subscription Fees covering the remainder of the term of the terminated Account subscriptions. Notwithstanding the foregoing, DSI shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the applicable Service(s) in combination with any software or hardware not expressly authorized by DSI, (B) any modifications or configurations made to the applicable Service(s) by Subscriber without the prior written consent of DSI, and/or (C) any action taken by Subscriber relating to use of the applicable Service(s) that is not permitted under the terms of this Agreement. This Section



7.1(a) states Subscriber's exclusive remedy against DSI for any Claim of infringement of misappropriation of a Third Party's Intellectual Property Rights related to or arising from Subscriber's use of the Services.

(b)

## 7.2 Limitation of Liability.

EXCEPT FOR DAMAGES ARISING OUT OF DSI'S NEGLIGENCE OR WILLFUL MISCONDUCT RESULTING IN PERSONAL INJURY OR PROPERTY DAMAGE, IN NO EVENT SHALL DSI, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF TWO (2) TIMES THE ACTUAL CONTRACT FEES PAID BY THE SUBSCRIBER PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE LAST ACT OR OMISSION GIVING RISE TO THE LIABILITY. NEITHER PARTY SHALL BE LIABLE. SUBSCRIBER AGREES THAT DSI'S CRISISMANAGER AND SAFETY CENTER APPLICATIONS (COLLECTIVELY, "SAFETY APPS") IS A DOCUMENTATION TOOL ONLY, AND THAT EACH OF THE SAFETY APPS IS NOT INTENDED TO PROVIDE EMERGENCY SERVICES OR PROTOCOLS, PROCEDURES OR ACTION PLANS IN THE EVENT OF A CRISIS OR EMERGENCY. SUBSCRIBER FURTHER AGREES THAT IT SHALL BE SOLELY RESPONSIBLE FOR: (1) CREATING AND MAINTAINING ITS EMERGENCY ACTION PLAN WITHIN EACH RESPECTIVE SAFETY APP, (2) ENSURING THAT SUBSCRIBER'S EMPLOYEES, CONTRACTORS AND OTHER PERSONNEL ARE PROVIDED ACCESS TO ITS EMERGENCY ACTION PLAN WITHIN THE SAFETY APPS, AND (3) CONTACTING (E.G., CALLING 911) EMERGENCY SERVICES IN THE EVENT OF AN ACTUAL CRISIS OR EMERGENCY. DSI SHALL HAVE NO RESPONSIBILITY OR LIABILITY AS A RESULT OF THIS AGREEMENT AND/OR SUBSCRIBER'S USE OF THE SAFETY APPS FOR DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN IN THE EVENT OF A CRISIS OR EMERGENCY.

## Section 8.0 Confidentiality

8.1 Protection of Confidential Information. The Receiving Party agrees that it shall (i) hold the Disclosing Party's Confidential Information in strict confidence and shall use the same degree of care in protecting the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own Confidential Information, but in no event less than reasonable care, (ii) not use the Confidential Information of the Disclosing Party for any purpose not permitted by this Agreement; (iii) not copy any part of the Disclosing Party's Confidential Information except as expressly permitted by this Agreement, (iv) limit access to the Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

8.2 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8.3 Remedies. Recipient acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

## Section 9.0 Miscellaneous

9.1 Authority. Subscriber represents and warrants that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Subscriber,

enforceable against it in accordance with its terms.

9.2 Acceptance of Privacy Policy. All data and information provided by Subscriber through its use of the Services is subject to the Privacy Policy. By using the Services, Subscriber accepts and agrees to be bound and abide by the Privacy Policy.

9.3 Relationship of the Parties. DSI is performing pursuant to this Agreement only as an independent contractor. DSI has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between DSI and Subscriber. DSI shall not act or attempt to act or represent itself, directly or by implication, as an agent of Subscriber or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Subscriber or its affiliates.

9.4 Waiver. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.

9.5 Assignment. Subscriber shall have no right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void. DSI shall have the full ability to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement.

9.6 Force Majeure. Subject to the limitations set forth below and except with respect to any payment obligations of Subscriber, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such party (each, a "Force Majeure Event"). The occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

9.7 Interpretation of Agreement. The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.8 No Third Party Beneficiaries. No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof.

9.9 Severability. The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

9.10 Children Under the Age of 13. Websites and/or online applications and services that are collecting information from children under the age of 13 are required to comply with Federal Trade Commission (FTC) Children's Online Privacy Protection Act (COPPA). Subscriber shall not submit, and shall ensure that its Account Users shall not submit, any information from children under the age of 13. DSI does not knowingly collect personal information from children under 13. If Subscriber believes DSI might have any information from or about a child under 13, please contact DSI at: [notice@dudesolutions.com](mailto:notice@dudesolutions.com) or by mail at the following address: Dude Solutions, Inc., 11000 Regency Parkway, Suite 110, Cary, NC 27518 Attn: Operations. If DSI learns it has

collected or received personal information for a child under 13 without verification of parental consent, DSI shall delete such information.

9.11 Modifications. DSI may revise the terms of this Agreement from time-to-time and shall post the most current version of this Agreement on its website. If a revision meaningfully reduces Subscriber's rights, DSI shall notify Subscriber.

**Exhibit D**  
**City of Austin, Texas**  
**Section 0805**  
**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. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: Dude Solutions, Inc.

Signature of Officer or  
Authorized  
Representative:

DocuSigned by:  
*Brian Carter*  
867490E243EB46D...

Date: 7/13/2017

Printed Name: Brian J. Carter

Title: Sr. Vice President of Sales

**PREPARED FOR**

City of Austin

**PREPARED BY**

Dude Solutions, Inc.

**PUBLISHED ON**

January 17, 2017

January 17, 2017

Korrie Johnson  
Administrative Specialist  
City of Austin  
301 W 2nd St  
Austin, TX 78701-4652

Dear Korrie,

Thank you for your interest in our affordable suite of powerful, easy-to-use online tools and services that allow you to save money, increase efficiency, and improve services. We are dedicated to providing best in class solutions with top notch support and training. Our additional services are designed to help you maximize the value of your investment.

Pricing is based on 5,000,000 square feet.

**Pricing for 2017:**

Item	Term	Investment
Maintenance Edge	Annual	\$32,303.25
Capital Forecast*	Annual	\$23,403.00
Facility Condition Assessment – Includes 3% TCPN Discount - Contract Number R5133	One-Time	\$116,707.49
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$7,000.00
<b>Investment:</b>		<b>\$197,413.74 USD</b>

**Pricing for 2018:**

Item	Term	Investment
Maintenance Edge	Annual	\$33,918.41
Capital Forecast*	Annual	\$24,573.15
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$7,350.00
<b>Investment:</b>		<b>\$65,841.56 USD</b>

**Pricing for 2019:**

Item	Term	Investment
Maintenance Edge	Annual	\$35,614.33
Capital Forecast*	Annual	\$25,801.81
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$7,717.00
<b>Investment:</b>		<b>\$69,133.64 USD</b>

Pricing for 2020:

Item	Term	Investment
Maintenance Edge	Annual	\$37,395.05
Capital Forecast*	Annual	\$27,091.90
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$8,103.38
Investment:		<b>\$72,590.33 USD</b>

Pricing for 2021:

Item	Term	Investment
Maintenance Edge	Annual	\$39,264.80
Capital Forecast*	Annual	\$28,446.50
Capital Forecast Data Mart	Annual	\$0.00
Maintenance Edge Data Mart	Annual	\$8,508.55
Investment:		<b>\$76,219.85</b>

\*Pricing for Capital Forecast includes a BuyBoard discount

# Support

- A live representative is happy to help Monday to Friday, excluding holidays, 8am - 6pm ET. After hours inquiries will be responded to the next business day.
- Send us an email – we answer 99% of our support emails within 1 hour.
- Reach us instantly through our software with live chat!
- Best practices webinars and podcasts which share new trends, popular reports, and tips.
- Training review webcasts are a great resource for clients who need a refresher after their initial training , or for new employees that could benefit from a training session.

## **Facility Condition Assessment with Narrative Report Includes Data Gathering and Import of Data into DSI Software**

### **Purpose:**

The purpose of the partnership facility condition assessment is to assess the facilities based on the following scope, provide narratives that summarize assessment observations and comments, and to import the data into the client's Dude Solutions capital forecasting and maintenance solutions.

All condition assessments will include a bound deliverable containing:

- Narrative report with description of systems and corresponding conditions.
- Digital photos of key components and deficiencies as an Appendix in the narrative.
- 20 year capital Reserve table with systems and component replacement costs and dates.
- Import of systems level detail into client's capital forecasting solution.
- Import major equipment level detail into client's DudeSolutions maintenance solution.

### **Field data collection and condition assessment:**

The field data collection and condition assessment is meant to capture information of all major building systems to the individual component level, including all components considered capital repair items (as opposed to maintenance level items). This includes site paving, HVAC, roofing, electrical, plumbing, vertical transportation systems, building envelope and structural systems.

A Certified Dude Solutions Partner (DSI Partner) will collect, document, and analyze the facilities assessment data to achieve the following:

- At the start of each building or facility assessment we will interview client's staff to understand what improvements have been made in the last three years, what improvements are planned in the next three years and known problems.
- Inventory all major building equipment including quantity, size, asset tag number, manufacturer, model and serial number.
- Identify deficient conditions in terms of deferred maintenance and building condition.
- Provide a reasonable cost analysis for the above-mentioned efforts.
- For single building projects, provide a report for the property that details the assessment data.
- For multi-building projects, data will be collected from every building in the portfolio. Reports will be prepared as follows:
  - Major buildings (generally defined as 25,000 square feet or greater and approximately 10% of the project portfolio), a separate report will be prepared.
  - Smaller buildings will be grouped into reports by building type, geography or other logical grouping (for example maintenance structures, parks assets, fire stations...)
- Provide individual cost tables and digital photographs to document the deficient conditions at each property.

Based on observations and information obtained from available on-site personnel, The DSI Partner will visually inspect all facilities and properties. Specifically, the assessment will focus on the following components:

#### **Heating System**

- Identify boilers, furnaces, and major labeled equipment.

#### **Ventilation System**



- Identify the ventilation systems at the property and assess its overall condition.

#### Air Conditioning System

- Identify the material air-conditioning components, including cooling towers, chillers, and major labeled equipment. Excluded are window units, terminal units, VAV boxes, thermostatic controls.

#### Roofing System

- Identify the material roof systems, including roof type, reported age, slope, drainage, or any unusual roofing conditions. The team will observe for evidence of material repairs, significant ponding, or evidence of material roof leaks.

#### Electrical System

- Identify the electrical service provided and distribution system at the subject property. Observation and evaluation will include switchgear, transformers, emergency generators and main distribution panels. Excluded are step down transformers.

#### Plumbing

- Identify the material plumbing systems at the subject property, including domestic water supply, domestic hot water production over 80 gallons, sanitary sewer, primary backflow preventer or any special or unusual plumbing systems (such as fuel systems, gas systems).

#### Vertical Transportation

- Identify the existing vertical transportation equipment and provide an overall assessment. Detail deficiencies for each elevator and provide an analysis of the remaining useful life, along with budgets for any expected expenditures up to and including modernization or replacement.

#### Building Envelope

- Identify the material elements of the building exterior, to include walls, doors, windows, and fire escapes. This will also include the façade, curtain-wall systems, glazing, exterior sealant, exterior balconies, and stairways. Observations may be subject to grade, accessible balconies, and rooftop vantage points.

#### Structural Components

- Evaluate the footings, foundations, slabs, columns, floor framing system, and roof framing system as part of the structural inspection for soundness. Observations will be subject to grade and visibility of components. This is a visual inspection only and no structural testing of components or materials will be undertaking.

#### Site Paving

- Observe and evaluate the site paving components including paving, curbs, drains and sidewalks.

#### Commercial Kitchen- major equipment (above approximately \$2000 value)

- Walk-in freezer and refrigerator equipment
- Ovens, stoves, broilers, grills
- Reach-in refrigerators and freezers
- Dishwashers
- Fryers

## Life Safety/Security

- High Level (system level) only-for identification to track maintenance
- Alarm Panels
- Emergency generators
- Exhaust hood fire suppression

## Evaluation–

At the conclusion of the assessment(s), the prepared reports as described above will include:

- A general description of the property and improvements and comment generally on observed conditions.
- Comments for components that are exhibiting deferred maintenance issues and provide estimates for "immediate" and "capital repair" costs based on observed conditions, available maintenance history and industry-standard useful life estimates. If applicable, this analysis will include the review of any available documents pertaining to capital improvements completed within the last three years, or currently under contract. DSI Partner shall also inquire about available maintenance records and procedures and interview current available on-site maintenance staff.
- A schedule for recommended replacement or repairs (schedule of priorities).
- Address critical repairs separately from repairs anticipated over the term of the analysis.
- A FCI index number for each building.
- A twenty year capital plan with an Executive Summary with graphic presentation of results to provide a quick, "user-friendly" summary of the property's observed condition and estimated costs assigned by category.

## Cost Estimating–

Each single building report will include an estimated cost for each system or component repair or replacement anticipated during the evaluation term. The capital needs analysis will be presented as an Excel-based cost table that includes a summary of the description of each component, the age and estimated remaining useful life, the anticipated year of repair or replacement, quantity, unit cost and total cost for the repair of each line item. A consolidated Capital Needs Analysis will be presented that includes all anticipated capital needs for all buildings.

In addition to the detailed description of the deficiencies, we will provide cost estimates for the deficiencies noted. The cost estimate for capital deficiencies will be based on the estimate for maintenance and repair. Project management costs, construction fees, and design fees will be derived using actual costs from previous projects, if available.

DSI Partners use the Unifomat system and the Whitestone Research model for cost estimating. Dude Solutions also maintains and updates our cost estimating system with information received from the field. Through our construction monitoring work, we have current cost data from hundreds of in-progress construction and rehabilitation projects. This allows us to project costs based on local conditions and to maintain a cost database that in most cases is more current than published models.

## Building Systems Equipment Inventory – Populating Your DudeSolutions account

An asset survey of major building systems will be conducted for the purpose of noting remaining useful life of major building equipment. A complete equipment inventory for each system will be recorded with information populated to client's account including:

- Building name
- System name (classification)
- Subsystem name (type)
- Component name (description)
- Unit of measure
- Quantity
- Asset tag number
- Manufacturer
- Model
- Serial Number
- Date put in service (if available)
- Condition
- Remaining useful life
- Replacement cost

# Terms of Service:

- Proposal has been prepared for City of Austin
- Proposal expires in 60 days
- Initial Term: 12 months
- Payment: Terms are net 30 days
- Automatic invoicing of annual fee will occur at the end of each term unless request for non-renewal is received in writing 30 days prior to renewal date.
- Applicable sales taxes are in addition to the quoted price. If your organization is tax exempt, please email a copy of your Tax Exemption Certificate to [accounting@dudesolutions.com](mailto:accounting@dudesolutions.com) (<mailto:accounting@dudesolutions.com>).
- Please address purchase order to: Dude Solutions, 11000 Regency Parkway, Suite 110, Cary, NC 27518
- Service dates are scheduled Monday-Friday
- Final invoicing for Facility Condition Assessment will occur when draft reports/data files are delivered. For Facility Condition Assessment projects larger than 154,000 square feet, invoicing will occur based on a milestone billing schedule as defined within this scope.
- If a service day is rescheduled or cancelled by City of Austin, then City of Austin is responsible for any cancellation fees incurred by rescheduling or cancelling travel and living fees.
- Onsite service days rescheduled less than 2 weeks before the scheduled delivery date will incur cancellation fees.
- Services will be scheduled upon written acceptance of the terms and conditions working of this proposal.
- We must allow 2 weeks of lead time from the purchase date for booking service for travel and living purposes.
- Dude Solutions, Inc. maintains the necessary liability coverage for their products and services. Proof of insurance can be provided upon request.
- Pricing is based upon Dude Solutions, Inc. [standard online subscription agreement](http://dudesolutions.com/terms) (<http://dudesolutions.com/terms>)
- Although the terms of this document control, all other conditions of use can be found at: <http://dudesolutions.com/terms> (<http://dudesolutions.com/terms>)
- During the term, you will be entitled to receive enhancements, revisions & updates of the software subscriptions at no additional fee, provided such updates, revisions, and releases do not constitute a new or separate product, as determined by Dude Solutions

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Dude Solutions, Inc.  
Cary, NC United States

Certificate Number:  
2017-235726

Date Filed:  
07/12/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

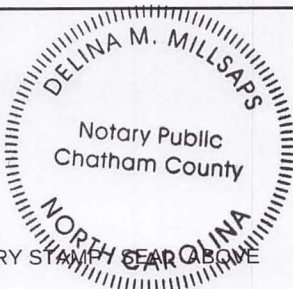
MA 5600 NS170000032  
operations software and facility condition assessment service


4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Dude Solutions Intermediate Holdings	Cary, NC United States	X	
	Bertaux, Karen	Cary, NC United States	X	
	Prevost, Lee	Cary, NC United States	X	
	Hudson, Kent	Cary, NC United States	X	

5 Check only if there is NO Interested Party. ☐

### 6 AFFIDAVIT

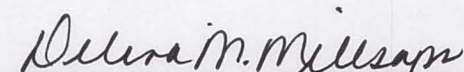
I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP HERE

Sworn to and subscribed before me, by the said Brian J. Carter, this the 13th day of July, 2017, to certify which, witness my hand and seal of office.

  
Signature of officer administering oath  
Notary

Delina M. Millsaps  
Printed name of officer administering oath  
Notary

Notary Public  
Title of officer administering oath  
Notary



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 11/09/2016

DEPT: Building Services Department

TO: Purchasing Officer or Designee

FROM: Taylor Youngblood

BUYER: Jane Neal

PHONE: (512) 974-3519

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

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

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

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

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

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

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



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

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

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

Building Services Department (BSD) is currently using a software application called MaintenanceEdge aka FacilityDude (software owned by the vendor, SchoolDude.com, Inc.) as the basis of its work order system. Several City of Austin databases were loaded into the vendor's proprietary system. BSD has an ongoing need for the vendor's services for technical assistance as well as for continued online access to databases and files (MaintenanceEdge is a Web-based work order application). Retention of access is critical for continuing operations and pending BSD's development of program requirements/scope of work for any future procurement of a successor work order application.

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

FacilityDude, as the proprietor of MaintenanceEdge including the Capital Forecast module, is the only company that can input data tables into their system automatically and that can provide ongoing support for this application. No other company has access to the software. The addition of Facility Condition Assessments will provide BSD with a detailed condition analysis of building systems and major related equipment. BSD is collaborating with AFD therefore these assessments will be performed on 55 properties which will include all Fire Stations as well as BSD's core COA shared sites. The results will be input into the Capital Forecast module to maximize the accuracy and impact of BSD's capital planning. This will help BSD identify where repairs, renovations and replacements are required, allowing the department to accurately calculate costs and prioritize projects.

BSD has had a successful relationship with this vendor and their performance for four years.

A CT is being requested for service for \$116,707.49.

*\$197,414 (initial term)*

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with SchoolDude.com, Inc. (V00000908621)

which will cost approximately \$ 116,707.49 (Provide estimate and/or breakdown of cost).

*197,414*

*Option 1 @ \$65,842 Option 3 @ \$7259  
Option 2 @ \$69,134 Option 4 @ \$76,22*

Recommended  
Certification

*[Signature]*  
Originator

Date

Approved  
Certification

*[Signature]*  
Department Director or designee

*11/15/16*  
Date

*[Signature]*  
Assistant City Manager / General Manager  
or designee (if applicable)

*12/5/16*  
Date

Purchasing Review  
(if applicable)

*[Signature]*  
Buyer

Date

Manager Initials

Exemption Authorized  
(if applicable)

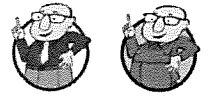
*[Signature]*  
Purchasing Officer or designee

Date

*1/31/17*

02/26/2013





11000 Regency Parkway, Suite 110 Cary, NC 27518  
O (877) 868-3833 or (919) 816-8237 • F (919) 459-3101

October 26, 2016

Korrie Johnson  
City of Austin  
301 W 2<sup>nd</sup> Street  
Austin, TX 78701

**Subject: Sole Source Status of FacilityDude Applications**

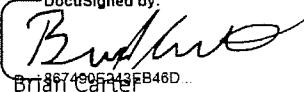
FacilityDude, a division of Dude Solutions, Inc., a North Carolina corporation based in Cary, North Carolina, develops and markets the following products & services:

1. MaintenanceEdge – a suite of three (3) applications including Work Order, Work Order Wireless, Planned Maintenance.
2. Capital Forecast
3. Critical Alarm Automation
4. InventoryEdge
5. FacilitySchedule
6. UtilityTrac
7. Utility Bill Automation Service
8. Safety Center
9. Facility Condition Assessment
10. Mobile311
11. ConnectGIS
12. Insight
13. Incident
14. MDM

FacilityDude uses a direct sales force to sell these products. The products and services related to such, as defined above, can only be acquired through the FacilityDude direct sales force and are not offered for resale by any other corporation; therefore, FacilityDude is the sole source for these products. FacilityDude is the only company certified to deliver, train, either online or onsite, and support these products and there is no other certified company at this time. FacilityDude is the only company that offers a full service Facility Condition Assessment that automatically populates the equipment and condition assessment data into the FacilityDude suite of solutions.

FacilityDude research indicates that no other company in North America builds, delivers and supports a suite of products which are identically, or reasonably identical, to the product suite stated above. These products were designed exclusively for the unique needs of facility and energy managers and incorporate the latest Internet design technology and remain a truly unique suite in the North American market.

Sincerely,  
DocuSigned by:



Brian Carter

Vice President, Sales