

Amendment No. 4  
to  
Contract No. NA170000198  
for  
Maintenance and Support of FirstWatch Data Monitoring and Sic-Surveillance System  
between  
FirstWatch Solutions, Inc.  
and the  
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to increase available funding to include additional services per attached Exhibit A in an amount not to exceed \$17,500.00 effective September 6, 2018.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 09/01/2017 – 08/30/2018	\$97,998.36	\$97,998.36
Amendment No. 1: Change invoice address	\$0.00	\$97,998.36
Amendment No. 2: Option 1 -Extension 09/01/2018 - 08/30/2019	\$32,126.00	\$130,124.36
Amendment No. 3: Administrative Increase as follow: 08/20/2018 – 08/30/2019 \$4,270.00 09/01/2019 – 08/30/2020 \$793.00 09/01/2020 – 08/30/2021 \$817.00 09/01/2021 – 08/30/2021 \$841.00	\$4,270.00	\$134,394.36
Amendment No. : Administrative in the amount of \$17,500.00 09/06/2018 – 08/30/2019	\$17,500.00	\$151,894.36

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.

Signature & Date:



Printed Name: Todd Stouf  
Authorized Representative

FirstWatch Solutions, Inc.  
1930 Palomar Point Way, Suite 101  
Carlsbad, CA 92008

Signature & Date:



Sai Purcell, Procurement Specialist IV  
City of Austin Purchasing Office

# Exhibit A



## Data Conversion Zoll ePCR to ESO & FirstPass Rebuild

FirstWatch Solutions, Inc.  
1930 Palomar Point Way, Suite 101  
Carlsbad, California 92009 USA  
Phone: 760-943-9123 Fax: 760-268-0922  
Attn: Carlynn Crampton, Regional Manager (Ph Ext 258)



### Professional Services Quote

#### Customer Information:

Name: Patrick Murphy, Commander  
Organization: Austin Travis County EMS  
Address: PO Box 1088  
City, ST Zip: Austin, TX 78767  
Phone: -  
Email: patrick.murphy@austintexas.gov

#### Quote Information:

Date: 8/21/2018  
Expiration Date: 2/17/2019

Qty	Description	Unit Price	Item Total
1	Data Source 3 (DS3) - Data conversion from Zoll ePCR to ESO (DS3) System License	\$7,500	\$7,500
	Sub-total		\$7,500
1	FirstPASS Module (FP) Rebuild FirstPass Module FirstPASS Module w/Protocol & Reporting Bundle (Requires ePCR data source)	\$10,000	\$10,000
	Sub-total		\$10,000
	Total of Items Above		\$17,500

Professional Services (Payment of All Year One Fees) - Total:	\$17,500
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Amendment No. 3  
to  
Contract No. NA170000198  
for  
Maintenance and Support of FirstWatch Data Monitoring and Sic-Surveillance System  
between  
FirstWatch Solutions, Inc.  
and the  
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to increase available funding to include additional services per attached Exhibit A in an amount not to exceed \$4,270.00 effective August 20, 2018.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 09/01/2017 – 08/30/2018	\$97.998.36	\$97.998.36
Amendment No. 1: Change invoice address	\$0.00	\$97.998.36
Amendment No. 2: Option 1 -Extension 09/01/2018 - 08/30/2019	\$32.126.00	\$130.124.36
Amendment No. 3: Administrative Increase as follow: 08/20/2018 – 08/30/2019 \$4,270.00 09/01/2019 – 08/30/2020 \$793.00 09/01/2020 – 08/30/2021 \$817.00 09/01/2021 – 08/30/2021 \$841.00	\$4,270.00	\$134,394.36

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.

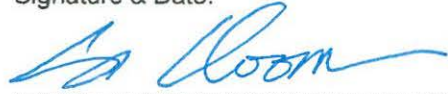
Signature & Date:



Printed Name: Todd Stout  
Authorized Representative

FirstWatch Solutions, Inc.  
1930 Palomar Point Way, Suite 101  
Carlsbad, CA 92008

Signature & Date:



Sai Purcell, Procurement Specialist IV  
City of Austin Purchasing Office

**FirstWatch Solutions, Inc.**

1930 Palomar Point Way, Suite 101  
Carlsbad, California 92008 USA  
Phone: 760-943-9123 Fax: 760-268-0922  
Atten: Carlynn Page, Regional Manager (Ph Ext 258)



## System Enhancement Quote

**Customer Information:**

Name: **Jasper Brown, EMS Division Chief**  
Organization: **Austin Travis County**  
Address: **PO Box 1088**  
City, ST Zip: **Austin, TX 78767**  
Phone: **(512) 978-0441**  
Email: **Jasper.Brown@ci.austin.tx.us**

**Quote Information:**

Date: 5/4/2018  
Expiration Date: 10/31/2018

Qty	Description	Unit Price	Item Total
	<b>LIVE Workload Report</b>		
1	LIVE Workload Report	\$2,500	<b>\$2,500</b>
1	LIVE Workload Report Annual Support & Maintenance	\$550	<b>\$550</b>
1	Historical data add-on to the LIVE Workload Report	\$1,000	<b>\$1,000</b>
1	Historical data add-on Annual Support & Maintenance	\$220	<b>\$220</b>
Sub-total			<b>\$4,270</b>
<b>Total of Items Above</b>			<b>\$4,270</b>

**FirstWatch offers the following payment option for your consideration**

Payment of All Year One Fees

<b>System Enhancement (Payment of All Year One Fees) - Total:</b>	<b>\$4,270</b>
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Estimated Annual Support & Maintenance beyond Year 1 (not applicable to Software as a Service)

<b>Estimated Annual Support &amp; Maintenance for Year 2 (based on a 3% annual increase):</b>	<b>\$793</b>
<b>Estimated Annual Support &amp; Maintenance for Year 3 (based on a 3% annual increase):</b>	<b>\$817</b>
<b>Estimated Annual Support &amp; Maintenance for Year 4 (based on a 3% annual increase):</b>	<b>\$841</b>

Note: Live Workload report plus the Historical add on pricing as presented by Daniel Brown & Michael Burwell.

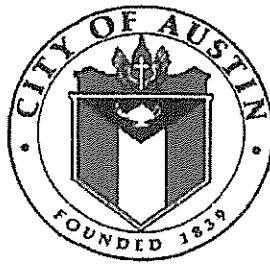
**Please see Page 2 for Additional Information**

**Thank you for the opportunity to present this quote.**

Accepted: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Amendment No. 2  
to  
Contract No. 5600 NA170000198  
for  
Maintenance and Support of FirstWatch Data Monitoring and Bio-Surveillance System  
between  
FirstWatch 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 Sept. 01, 2018, through August 30, 2019. Three (3) options will remain.
- 2.0 The total contract amount is increased by \$32,126.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/01/2017 – 08/30/2018	\$97,998.36	\$97,998.36
Amendment No. 1: Change Invoice Address	\$0.00	\$97,998.36
Amendment No. 2: Option 1 – Extension 09/01/2018 – 08/30/2019	\$32,126.00	\$130,124.36

- 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:

A handwritten signature in black ink, appearing to read "Todd Stout".

Printed Name: TODD STOUT  
Authorized Representative

FirstWatch Solutions, Inc.  
1930 Palomar Point Way, Suite 101  
Carlsbad, CA 92008

Sign/Date:

A handwritten signature in black ink, appearing to read "Bartley Tyler".

Printed Name: Bartley Tyler  
Authorized Representative

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

A handwritten signature in black ink, appearing to read "Bartley Tyler".  
6/27/18



Amendment No. 1  
to  
Contract No. 5600 NA170000198  
for  
Maintenance and Support of FirstWatch Data Monitoring and Bio-Surveillance System  
between  
FirstWatch Solutions, Inc.  
and the  
City of Austin

- 1.0 The above referenced contract is hereby amended to change the invoice address to the following:

	City of Austin
Department	Emergency Medical Services
Attn:	Account Payable
Address	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767

- 2.0 Effective date of this change is 11/14/2017.

Action	Action Amount	Total Contract Amount
Initial Term: 09/01/2017 – 08/30/2018	\$97,998.36	\$97,998.36
Amendment No. 2 : Change invoice address	\$0.00	\$97,998.36

- 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.

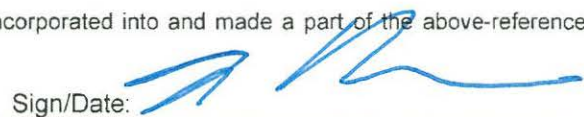
Sign/Date:

 11/14/17

Printed Name: TODD STOUT  
Authorized Representative

FirstWatch Solutions, Inc.  
1930 Palomar Point Way, Suite 101  
Carlsbad, CA 92008

Sign/Date:



Printed Name: Sai Xoomsai Purcell  
Procurement Specialist IV

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



**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND**

**FirstWatch Solutions, Inc.  
For**

**Maintenance and Support of FirstWatch Data Monitoring and Bio-Surveillance System**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and FirstWatch Solutions, Inc. ("Contractor"), having offices at Carlsbad, CA 92008.

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

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

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Jay Bechelli, Phone: 760-658-9846, Email Address: jbechelli@firstwatch.net. The City's Contract Manager for the engagement shall be Sai Xoomsai Purcell, Phone: (512) 974-3058, Email Address: sai.xoomsai@austintexas.gov. The City 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.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks as listed per Quote No. FW041921017.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$230,987 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management
Attn:	Accounts Payable
Email Address	CTMAPinvoices@austintexas.gov

3.2.2 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.

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

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

### 3.3 **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 off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

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

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

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

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

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

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

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

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

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

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **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 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to 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

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

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

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to four 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).

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing



Office Probation, Suspension and Debarment Rules for Vendors” and remove the Contractor from the City’s vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor’s default, including, without limitation, cost of cover, reasonable attorneys’ fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

#### 4.6 **Termination and Suspension of Service.**

4.6.1 In the event of a termination of the contract, the Contractor shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.

4.6.2 During any period of service suspension, the Contractor shall not take any action to intentionally erase any City data.

4.6.3 In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any City data for a period of:

- 10 days after the effective date of termination, if the termination is in accordance with the contract period
- 30 days after the effective date of termination, if the termination is for convenience
- 60 days after the effective date of termination, if the termination is for cause

After such period, the Contractor shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.

4.6.4 The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.

4.6.5 The Contractor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

4.7 **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 **Professional Liability/Technology Errors and Omissions Insurance.** The Contractor shall provide coverage, at a minimum limit of \$3,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of a negligent act, error, omission, or breach of security (including but not limited to confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract

5.1.2.3 **Cyber Liability Insurance:** coverage of not less than \$1,000,000 each claim and \$1,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.1 **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.

5.1.2 **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.

**5.2 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)

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

**5.4 Delays.**

**5.4.1** 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.

**5.4.2** 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.

**5.4.3 Change Control and Advance Notice:** The Contractor shall give advance notice (to be determined at the contract time and included in the SLA) to the City of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

## **SECTION 6. WARRANTIES**

**6.1 Warranty – Performance:** The Contractor represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provide under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any deliverables provided by Provider shall operate in conformance with the terms of this Master Software as a Service Agreement and the applicable SaaS Subscription Schedules and Statements of Work.

**6.2 Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**6.2.4 Service Levels:**

A. **Responsibilities and Uptime Guarantee:** The Contractor shall be responsible for the acquisition and operation of all technology capabilities needed to successfully provide the services to the public Internet. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the Contractor.

B.

C. **Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data on a Contractor portable device in order to accomplish work as defined in the statement of work.

**D. Security Incident Security Service Level and Remedies**

i.

ii. Provider shall notify The City's currently-designated security manager, Wendi White, [Wendi.White@austintexas.gov](mailto:Wendi.White@austintexas.gov), 512-974-1448, of any new potential security vulnerability within eight hours of discovery and this notification will include the probable risks;

iii. Provider shall implement a security fix across the application within eight hours of approval from Customer;

iv. Provider shall notify the Customer security manager within two hours if it believes that an attack is in process or has occurred;

v. Provider shall shut down ALL access to the application or any component of it associated with the Subscription Services within thirty minutes upon request of the Customer's currently-designated security manager;

vi. Provider shall assist Customer in preparing written responses to audit requirements or findings without additional cost to the City;

vii. Provider warrants that it has successfully passed SAS 70 Type II Audit within the past twelve months, and will provide the documented audit results to Customer upon request.

viii. Remedies may include: termination for cause.

**E. System Performance and Availability Service Level**

i. Transactions processing must be available to the Internet 24x7.

ii.

iii. Provider may have scheduled maintenance time up to six times per year at a mutually-agreeable time of day for a mutually-agreeable duration. Authorized maintenance windows are not counted against the availability.

iv. Customer will receive service credits in the amount of 2% of the fees for the month for each day during which Provider fails to meet the service levels;

v. If Provider's system response time is below the warranted level for two out of three consecutive weeks, Provider will be considered in Default;



- vi. The City may elect to use a third-party monitoring service using synthetic application monitoring from various geographic locations in the United States, and these third-party reports on service level compliance will be considered authoritative.

**6.3 WARRANTY – SOFTWARE:** Unless otherwise expressly provided in this Master Software as a Service Agreement, a SaaS Subscription Schedule or Statement of Work, Provider for itself and for and on behalf of its Contractors, licensors, employees and agents warrants that and (b) the Subscription Services and any Non-subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services. Provider shall be liable for any damages that Client may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Agreement. Without limitation, Provider's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any act by an agent, contractor, subcontractor, consultant, or employee of Provider that results in, or is intended by such agent, contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of Client's systems, data, Client's Confidential Information, or Client's technology.

## **SECTION 7. MISCELLANEOUS**

**7.1 Data Location:** The Contractor shall provide its Services to the City and its end users solely from data centers in the U.S. Storage of City Data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a support in other countries in order to provide round-the-clock support, unless otherwise prohibited in this contract.

**7.2 Import and Export of Data:** The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the City to export data to/from other Contractors.

### **7.3 Data:**

**7.3.1 Data Ownership:** The City will own all right, title and interest in its data that is related to the services provided by this contract. The Contractor shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.

**7.3.2 Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.
- ii. All data obtained by the Contractor in the performance of this contract shall become and remain property of the City.
- iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
- iv. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
- v. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City.

- vi. The Contractor shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

**7.3.3 Compliance with Accessibility Standards:** The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

**7.3.4 Security:** The Contractor shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the Contractor. For example: virus checking and port sniffing – the City and the Contractor shall understand each other's roles and responsibilities.

**7.3.5 Security in Compliance with Chapter 521 of the Texas Business and Commerce Code:** Contractor shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

**7.3.6 Security Incident or Data Breach Notification:** The Contractor shall inform the City of any security incident or data breach.

- i. **Incident Response:** The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
- ii. **Security Incident Reporting Requirements:** The Contractor shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
- iii. **Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

**7.3.7 Breach Responsibilities:** This section only applies when a data breach occurs with respect to personal data within the possession or control of Contractor.

- i. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- ii. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- iii. Unless otherwise stipulated, if a data breach is a direct result of the Contractor's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

7.3.8 **Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the City's recovery time objective (RTO) of two hours is met.

7.4 **Workforce.**

7.4.1 **Subcontractor Disclosure:** The Contractor shall identify all of its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

7.4.2 **Background Checks:** The Contractor shall conduct criminal background checks and not utilize any staff, including Subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the City's information among the Contractor's employees and agents.

7.4.3 **Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.

7.4.4 **Right to Remove Individuals:** The City shall have the right at any time to require that the Contractor remove from interaction with City any Contractor representative who the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the City's consent.

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

7.6 **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:

7.6.1 disposal of major assets;

7.6.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.6.3 any significant termination or addition of provider contracts;

7.6.4 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;

7.6.5 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;

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

7.6.7 known or anticipated sale, merger, or acquisition;



- 7.6.8 known, planned or anticipated stock sales;
- 7.6.9 any litigation against the Contractor; or
- 7.6.10 significant change in market share or product focus.

## 7.7 **Audits and Records.**

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

### 7.7.2 Records Retention:

7.7.2.1 Contractor is subject to City Code chapter 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.

7.7.2.2 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.

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

7.7.4 **Access to Security Logs and Reports: Upon request and as available**, the Contractor shall provide security logs and reports to the City in plain text comma-delimited file unless otherwise agreed. Logs and reports shall include (but not limited to) date/time, user name/ID, accessing IP address, objects or files accessed, and actions performed on those, for all City files related to this contract.

7.7.5 **Data Center Audit:** The Contractor shall perform an independent audit of its primary data center at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

7.8 **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.

## 7.9 **Indemnity.**

### 7.9.1 Definitions:

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

7.9.1.1.1 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;

7.9.1.1.2 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),

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

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

**7.10 Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 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.

**7.11 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: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

FirstWatch Solutions, Inc.

ATTN: Jay Bechelli, Contract Manager

322 Encinitas Boulevard, # 100

Encinitas, CA 92024-3780

**7.12 Notification of Legal Requests:** The Contractor shall contact the City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the City's data under this contract, or which in any way might reasonably require access to the data of the City. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the City without first notifying the City, unless prohibited by law from providing such notice.

**7.13 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.

7.14 **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.

7.15 **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.

7.16 **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.

7.17 **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.

7.18 **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.

7.19 **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.

7.20 **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.

7.21 **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.

7.22 **Dispute Resolution.**



7.22.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.22.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

## **7.23 Subcontractors.**

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

7.23.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.23.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.23.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

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

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

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

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

7.23.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.24 **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.

7.25 **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.

7.26 **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.

7.27 **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.

7.28 **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.



7.29 **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)

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

7.30.1 the Standard Purchase Terms and Conditions;

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

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

FIRSTWATCH SOLUTIONS, INC.

By:   
Signature

Name: Todd Stout  
Printed Name

Title: President

Date: 8/31/17

CITY OF AUSTIN

By:   
Signature

Name: Gai Purcell  
Printed Name

Title: Procurement Specialist IV

Date: 9/5/17

## List of Exhibits

Exhibit A	FirstWatch Solutions, Inc. System Maintenance Agreement
Exhibit B	Pricing Agreement
Exhibit C	Non-Discrimination Certification, Section 0800

## Exhibit A - FirstWatch Solutions, Inc. System Maintenance Agreement



### FIRSTWATCH SOLUTIONS, INC. SYSTEM MAINTENANCE AGREEMENT

This System Maintenance Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by FirstWatch Solutions, Inc., ("FirstWatch"), a subsidiary of Stout Solutions, LLC, and the undersigned client ("Client").

#### BACKGROUND

FirstWatch provides data monitoring, syndromic surveillance software and other services (the "FirstWatch System") to Client;

Client and FirstWatch have entered into a Software License Agreement dated \_\_\_\_\_ (the "Software License Agreement").

The parties wish to reaffirm the Software License Agreement and continue the Maintenance Services on the terms contained in this Agreement.

#### AGREEMENT

In exchange for the mutual promises contained in this Agreement and other good and valuable consideration, Client and FirstWatch agree to the following:

1. Services to be Provided by FirstWatch. FirstWatch shall perform the maintenance services and upgrades described in this Section 1 and more fully set forth on Exhibit A ("Maintenance Services").

1.1. Server Hosting. Subject to the terms set forth in this Agreement, FirstWatch queries and exports or otherwise receives data from Client, or Client-affiliated organization(s), and securely aggregates that data into the FirstWatch Data Center(s) database(s). FirstWatch implements and maintains a data monitoring system, and monitors records for user-defined criteria, and sends automatic notifications that such criteria have been met. FirstWatch also maintains an Internet site for FirstWatch Clients and Client-authorized subscribers to enable authorized online viewing of Client's records, criteria, notifications, etc., all collectively known as "Triggers".

1.2. Software Bug Fixes, Upgrades and Enhancements. During the Term of this Agreement, FirstWatch will maintain and, in some cases, enhance the FirstWatch

infrastructure and software feature set that comprises section 1.1 of this Agreement. Maintenance will include up to two major rewrites of each FirstWatch Trigger per year, as well as software bug fixes and system upgrades as they become available. Additionally, from time-to-time, FirstWatch may offer Client access to optional enhancements and/or add-ons at additional cost, not covered by Fees associated with this Agreement. Further, while FirstWatch will make every reasonable effort to assist Client with trouble-shooting, Maintenance Services do not cover repairs, re-installations, re-configuration, or other work relating to Client's third party software, hardware, networking, etc., or resulting from failures or errors of such components. Also, Maintenance Services will not cover other changes by non-FirstWatch personnel or processes, which result in problems providing the Maintenance Services. Examples include, but are not limited to, changes in the underlying data structure, data feed, code files, client networking or security changes, data entry procedures, etc.

1.3. Training and Technical Support. FirstWatch will provide training for Client personnel and make available training materials to persons whom Client identified as authorized users in accordance with the standards set forth on Exhibit A. FirstWatch may at any time amend Exhibit A to reflect changes in its business model or Maintenance Service offerings without notice to Client, provided, however, that the Maintenance Services provided to Client shall be substantially similar or superior to those offered on the Effective Date.

2. Term. The initial term of this Agreement (the "Term") begins as of the Effective Date and will continue, unless renewed pursuant to Section 3, until the close of business on the first (1st) anniversary of the Effective Date.

3. Renewal. The Term will automatically renew for additional one (1) year periods, (each such additional period being referred to in this Agreement as a "Renewal Term") unless, at least thirty (30) days prior to the expiration of the Term, or any Renewal Term, as the case may be, Client provides notice to FirstWatch of its intention to allow the Term or Renewal Term to expire without renewal.

www.FirstWatch.com

372 Eastman Blvd, Suite 300 - Encinitas, CA 92024 • Phone 760.943.9121 • Fax 760.943.8129

4. **Payment Terms.** On or before the Effective Date, Client will pay to FirstWatch an annual maintenance fee as set forth on the invoice that accompanies this Agreement. FirstWatch reserves the right to change its fees effective as of the end of the Term or Renewal Term, as the case may be, and will provide Client notice at least sixty (60) days prior to the end of any Term or Renewal Term of any proposed amendment to the Fee Schedule.

5. **Termination.** Either party may terminate this Agreement if there is a material breach by the other party that is not cured within thirty (30) days after receipt of written notice of such breach. Upon termination of this Agreement, Client shall discontinue use of the FirstWatch System and the Software and return to FirstWatch or, at FirstWatch's option, certify in writing, the destruction of all Software, documentation and FirstWatch training materials.

#### 6. Miscellaneous.

6.1. **Effectiveness of the Software License Agreement.** Each party hereby affirms that the Software License Agreement remains in full force and effect and agrees to continue to comply with its terms.

6.2. **Independent Contractors.** The parties and their respective personnel, are and will be independent contractors and neither party by virtue of this Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

6.3. **Waiver.** No waiver of any provision hereof or of any right or remedy hereunder will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder will constitute a waiver of any other right or remedy, or future exercise thereof.

6.4. **Severability.** If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement will remain enforceable.

6.5. **Notice.** All notices will be in writing and will be deemed to be delivered when received by certified mail, postage prepaid, return receipt requested, or when sent by facsimile or e-mail

confirmed by call back. All notices will be directed to the Authorized Representatives of the parties specified in the Software License Agreement, at the respective addresses as either party may, from time to time, designate by notice to the other party.

6.6. **Amendment.** No amendment, change, waiver or discharge hereof will be valid unless in writing and signed by both parties.

6.7. **Assignment.** Neither party shall assign any of its rights or obligations under this Agreement whether voluntarily or by operation of law without the written consent of the other party, provided however, that either party will have the right to assign its obligations hereunder without consent to any acquirer by merger, sale of substantially all of a party's assets, or majority of its stock or otherwise.

6.8. **Entire Agreement.** This Agreement, together with Exhibit A which is hereby incorporated in this Agreement by reference, together with the Software License, represents the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous proposals, communications and understandings, oral or written. If there is a conflict between the terms of the Software License Agreement and this Agreement, the terms of this Agreement shall govern. If there is a conflict between this Agreement and the specifications set forth on Exhibit A to this Agreement, then the terms of Exhibit A will govern.

IN WITNESS WHEREOF, the parties have signed and delivered this Agreement with the intention of being bound effective as of the Effective Date.

FirstWatch Solutions, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Client: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



# Exhibit B - Pricing Agreement



1930 Palomar Point Way, Suite 101  
 Carlsbad, California 92008  
 Phone: 760-943-9123 Fax: 760-268-0022  
 Email: mmancuso@firstwatch.net

Quote No.  
 FW04192017

FEIN: 050544884

REVISED

Customer Information  
 Organization: City of Austin

Attn: \_\_\_\_\_  
 Address: Austin-Travis County Emergency Services  
 P.O. Box 1088  
 Austin, TX 78767

Invoice Information  
 Date: 4/28/2017  
 Other Info: \_\_\_\_\_  
 Terms: \_\_\_\_\_

Item	Description	Unit Price	Item Total
FirstPass Implementation and 5 year System Annual Support & Maintenance Quote			
Year 1	09/01/2017 - 08/30/2018		
	FirstWatch		
1	DS1 - VisiCAD	\$ 12,917.56	\$ 12,917.56
2	Module - Performance Plus	\$ 1,100.00	\$ 1,100.00
3	DS2 - ProQA	\$ 1,081.80	\$ 1,081.80
4	Reports - ProQA Dashboard (Included w/DS2 - ProQA)		
	FirstWatch SubTotal		\$ 15,099.36
	FirstPass Implementation		
5	Data Source 3 (DS3) - ZOLL RescueNet ePCR	\$ 46,299.00	\$ 46,299.00
6	FirstPass Module (FP)	\$ 36,600.00	\$ 36,600.00
	FirstPass SubTotal		\$ 82,899.00
	Year 1 Total		\$ 97,998.36
Year 2	09/01/2018 - 08/30/2019		
	FirstWatch		
1	DS1 - VisiCAD	\$ 13,305.09	\$ 13,305.09
2	Module - Performance Plus	\$ 1,100.00	\$ 1,100.00
3	DS2 - ProQA	\$ 1,114.25	\$ 1,114.25
4	Reports - ProQA Dashboard (Included w/DS2 - ProQA)		
	FirstWatch SubTotal		\$ 15,519.34
	FirstPass		
5	DS3 - ZOLL RescueNet ePCR	\$ 10,006.45	\$ 10,006.45
	Estimated Annual Support & Maintenance for Year 2 (based on a 3% annual increase)		
6	FirstPass Module (FP)	\$ 6,600.00	\$ 6,600.00
	FirstPass SubTotal		\$ 16,606.45
	Year 2 Total		\$ 32,125.79
Year 3	09/01/2019 - 08/30/2020		
	FirstWatch		
1	DS1 - VisiCAD	\$ 13,704.24	\$ 13,704.24
2	Module - Performance Plus	\$ 1,100.00	\$ 1,100.00
3	DS2 - ProQA	\$ 1,147.68	\$ 1,147.68
4	Reports - ProQA Dashboard (Included w/DS2 - ProQA)		
	FirstWatch SubTotal		\$ 15,951.92
	FirstPass		
5	DS3 - ZOLL RescueNet ePCR	\$ 10,306.64	\$ 10,306.64
	Estimated Annual Support & Maintenance for Year 3 (based on a 3% annual increase)		
6	FirstPass Module (FP)	\$ 6,600.00	\$ 6,600.00
	FirstPass SubTotal		\$ 16,906.64

	<b>Year 3 Total</b>		<b>\$ 32,858.56</b>
<b>Year 4</b>	<b>09/01/2020 - 08/30/2021</b>		
	<b>FirstWatch</b>		
1	DS1 - VisiCAD	\$ 14,115.37	\$ 14,115.37
2	Module - Performance Plus	\$ 1,100.00	\$ 1,100.00
3	DS2 - ProQA	\$ 1,182.11	\$ 1,182.11
4	Reports - ProQA Dashboard (Included w/DS2 - ProQA)		
	<b>FirstWatch SubTotal</b>	<b>\$ 16,397.48</b>	<b>\$ 16,397.48</b>
	<b>FirstPass</b>		
5	DS3 - ZOLL RescueNet ePCR	\$ 10,615.84	\$ 10,615.84
	Estimated Annual Support & Maintenance for Year 2 (based on a 3% annual increase)		
6	FirstPass Module (FP)	\$ 6,600.00	\$ 6,600.00
	<b>FirstPass SubTotal</b>		<b>\$ 17,215.84</b>
	<b>Year 4 Total</b>		<b>\$ 33,613.32</b>
<b>Year 5</b>	<b>09/01/2021 - 08/30/2022</b>		
	<b>FirstWatch</b>		
1	DS1 - VisiCAD	\$ 14,538.83	\$ 14,538.83
2	Module - Performance Plus	\$ 1,100.00	\$ 1,100.00
3	DS2 - ProQA	\$ 1,217.58	\$ 1,217.58
4	Reports - ProQA Dashboard (Included w/DS2 - ProQA)		
	<b>FirstWatch SubTotal</b>	<b>\$16,856.41</b>	<b>\$16,856.41</b>
	<b>FirstPass</b>		
5	DS3 - ZOLL RescueNet ePCR	\$ 10,934.32	\$ 10,934.32
	Estimated Annual Support & Maintenance for Year 2 (based on a 3% annual increase)		
6	FirstPass Module (FP)	\$ 6,600.00	\$ 6,600.00
	<b>FirstPass SubTotal</b>		<b>\$ 17,534.32</b>
	<b>Year 5 Total</b>		<b>\$34,390.73</b>
		<b>Total:</b>	<b>\$230,986.76</b>

**Payment Terms & Information**

Please make checks payable to: FirstWatch

Payment due within 90 days of original invoice date.

Late payments may be subject to additional charges.

*If you have any questions about this quote, please contact FirstWatch immediately.*

**Thank You!**

**EXHIBIT C**  
**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 31 day of AUGUST, 2017

CONTRACTOR  
Authorized  
Signature

Title

FIRST WATCH  
  
PRESIDENT



# 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.

FirstWatch Solutions, Inc.  
Carlsbad, CA United States

Certificate Number:  
2017-247117

Date Filed:  
08/08/2017

Date Acknowledged:

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

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.

NA170000198  
Public Safety Software

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Stout, Todd	Carlsbad, CA 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.

"SEE ATTACHED"

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

## CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF SAN DIEGO )

Subscribed and sworn to (or affirmed) before me on this 31st day of August, 2017  
Date Month Year

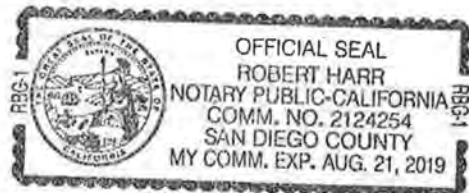
by TODD LEONARD STOUT

Name of Signers

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: Robert Harr

Signature of Notary Public



Seal

Place Notary Seal Above

### OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent attachment of this form to an unintended document.

#### Description of Attached Document

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