



**City of Sacramento
City Council**

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 1/31/2012

Report Type: Consent

Title: Agreement: FDM Software Support and Maintenance Services [2/3 Vote Required]

Report ID: 2012-00069

Location: Citywide

Recommendation: Pass a motion 1) suspending competitive bidding in the best interests of the City for the procurement of software support and maintenance services to the FDM Software; and 2) authorizing the City Manager, or his designee, to execute an agreement, attached hereto as Exhibit A and incorporated by reference, with FDM Software Ltd. for software support and maintenance services, for a total not-to-exceed amount of \$309,445.

Contact: Troy Malaspino, Deputy Fire Chief, (916)808-1602, Fire Department

Presenter: None

Department: Fire

Division: Fire Communications Admin

Dept ID: 12001321

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Agreement with FDM Software, Ltd. (Exhibit A)

City Attorney Review

Approved as to Form
Lan Wang
1/24/2012 9:06:45 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
1/12/2012 3:55:40 PM

Approvals/Acknowledgements

Department Director or Designee: Ray Jones - 1/20/2012 3:11:00 PM

Description/Analysis

Issue: In May of 2005, under Resolution No. 2005-385, Council approved the purchase, maintenance and support of mainframe database software for fire department records from FDM Software, Ltd. The not-to-exceed amount of that resolution has been reached, and the previous agreement with FDM has expired. The Fire Department has need for continued support and maintenance of the software to assure consistency, accuracy and stability of its records system. FDM Software, Ltd. is the sole provider of maintenance and support for its proprietary database.

Policy Considerations: The recommendations in this report are in accordance with provisions of the City Code Section 3.56.230(C), which requires a two-thirds vote by Council to suspend competitive bidding, and City Code section 3.56.090, which requires Council approval of agreements involving an expenditure of \$100,000 or more.

The recommendations are, also, in accordance with Sacramento City Council Resolution No. 2010-346, FDM Software Ltd. is headquartered in Vancouver, BC, Canada. The proposed agreement is consistent with Resolution 2010-346 prohibiting the City from entering into any contract to purchase goods or services from any business or entity headquartered in Arizona.

Environmental Considerations: This recommendation does not constitute a “project” and therefore is exempt from the California Environmental Quality Act (CEQA) according to Section 15061 (b)(3) and 15378(b)(2) of the CEQA guidelines.

Sustainability: There are no sustainability considerations as listed in the Sustainability Master Plan applicable to approving the agreement between the City and FDM Software Ltd.

Commission/Committee Action: None.

Rationale for Recommendation: This action requests that an agreement for continued support and maintenance be executed. The costs and services are reasonable and consistent with industry practices.

Financial Considerations: The costs associated for the Agreement with FDM Software, attached hereto as Exhibit A and incorporated by reference, are funded within the Fire Department’s budget.

The Sacramento Fire Department will utilize this agreement for a not-to-exceed amount of \$309,445 to cover the annual fees as shown below plus for any additional features or functionality requested by the Sacramento Fire Department that fall outside of FDM’s ongoing policy of upgrading the software.

- FY11/12 - \$82,798.40
- FY12/13 - \$93,148.20
- FY13/14 - \$103,498.00

Emerging Small Business Development (ESBD): FDM Software, Ltd. is not a Sacramento certified small business vendor.

Background

In 2005, the purchase of a new Fire Department records database was approved by City Council resolution 2005-385, which specified a maximum limit of \$475,000 including purchase, support and maintenance. Subsequent annual support and maintenance costs were specified within the staff report, but were not intended to be included in the limit amount. The intent was to augment the annual fire budget to cover those costs, but the language in the staff report was ambiguous.

In 2011 an internal audit of fire payment history showed that the total amount paid to purchase, maintain and support FDM exceeded the limits established within Resolution 2005-385. In April 2011, City Council adopted Resolution 2011-226, allowing payment for support and maintenance through 2011, while demanding a new contract for future services separate of the original purchase process.

The Fire Department has need for continued support and maintenance of the FDM software to assure the department can provide the data and reports required by both state and federal regulation, while maintaining the accuracy and stability of its records system. FDM Software, Ltd. is the sole provider of maintenance and support for its proprietary database. The department estimates that replacement and maintenance costs for a new records system of equivalent capability would be prohibitive; likely exceeding \$1,000,000 to specify, bid, procure, implement, train, and maintain. Annual costs for support and maintenance of FDM over the next three years will average \$93,000 with this agreement.

The proposed motion allows initiation of a new support and maintenance agreement with FDM Software, Ltd. for annual support and maintenance services of its proprietary database. The annual fee for support and maintenance are consistent with industry practices and reflect a discount of 20% in 2012 and 10% in 2013 from the base fee of \$103,498. If approved, the Sacramento Fire Department will utilize the new maintenance agreement for a not-to-exceed amount of \$309,445 to cover the annual fees as shown below plus for any additional features or functionality requested by the Sacramento Fire Department that fall outside of FDM's ongoing policy of upgrading the software.

Year	Discount from Base Fee	Annual Fee for Support and Maintenance
2012	20%	\$ 82,798.40
2013	10%	\$ 93,148.20
2014	0%	\$ 103,498.00



SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT

Between

THE CITY OF SACRAMENTO

And

FDM SOFTWARE LTD.

TABLE OF CONTENTS

1. DEFINITIONS	4
2. SUPPORT AND MAINTENANCE SERVICES.....	6
Definition of Support	6
Statement.....	6
Definition of Maintenance	6
NFIRS 7	
Billable Support Services.....	7
Hours of Support.....	7
New Releases	7
Exceptions.....	7
Adjustments to Terms and Conditions.....	8
3. COST, PAYMENT AND TAXES	8
Annual Fee.....	8
Travel Expenses	8
Payment.....	8
Taxes 8	
4. CUSTOMER’S OBLIGATION.....	9
Access to Data and System.....	9
5. CONFIDENTIALITY	9
Defined.....	9
Recipient’s Responsibilities.....	9
Rights to Confidential Information.....	10
Freedom of Information.....	10
6. LIMITATION OF LIABILITY.....	10
Customer’s Obligations	10
General Limitations	11
7. TERM AND TERMINATION	11
Term 11	
Limitations	11
Termination.....	12
For Breach.....	12
Survival.....	12
8. INSURANCE.....	12
Limits 12	
9. RELATIONSHIP.....	13
Independent Contractor.....	13
FDM Employees	13
Personnel.....	13
FDM Standards of Employment.....	13
10. MISCELLANEOUS	14
Addresses	14
Construction.....	14
Modification.....	14
Force Majeure	14
Required Approvals	14
Applicable Law and Choice of Forum.....	15
Disputes.....	15

Severability of Agreement	16
Headings for Convenience.....	16
Assignment Barred.....	16
Order of Precedence.....	16
Waiver of Rights	16
Successors and Assigns.....	16
SCHEDULE "A"	18
SCHEDULE "B"	20
SCHEDULE "C"	21

SUPPORT AND MAINTENANCE AGREEMENT

between

THE CITY OF SACRAMENTO

and

FDM SOFTWARE LTD.

THIS AGREEMENT for the support and maintenance of a Fire Department Records Management software system is made this _____ day of ____ 2012 between the City of Sacramento, a municipal corporation under the laws of the California State ("Customer") and FDM Software Ltd., an existing British Columbia corporation, whose address is 949 West 3rd Street, Suite 113, North Vancouver, B.C., V7P 3P7 ("FDM").

RECITALS:

A. FDM has licensed to the Customer the use of certain modules of the Fire Department Records Management software system, which modules are listed in Schedule B, and the Customer wishes to retain FDM to provide Support and Maintenance Services for this software system.

1. DEFINITIONS

In addition to the definitions set forth herein and the Schedules attached hereto, the following terms have the following meanings for the purposes of this Agreement (including all Schedules):

- a) **AGREEMENT.** The term "Agreement" means this Agreement and all Schedules attached hereto, as amended, modified or supplemented from time to time.
- a) **BUSINESS DAY.** The term "Business Day" means any day other than a Saturday, a Sunday, a statutory holiday in the Province of British Columbia, or a day on which the administrative offices of the Customer are closed.
- b) **CAD or COMPUTER AIDED DISPATCH.** The term "CAD" or "Computer Aided Dispatch" means that software that is used to manage emergency incidents.
- c) **CERTIFIED SUPPORT STAFF.** The term "Certified Support Staff" means the Customer's staff that has undertaken the training prescribed for the implementation of the Software.
- d) **CLIENT SERVICES REPRESENTATIVE.** The term "Client Services Representative" means a person employed by or contracted by FDM to work on behalf of FDM to provide support and implementation services to the Customer.
- e) **CURRENT RELEASE.** The term "Current Release" means the latest version of the Software offered for general commercial distribution at a given point in time, including all Upgrades.
- f) **CUSTOMIZATIONS.** The term "Customizations" means all newly-developed software relating to the Software created for a separate fee by FDM or its subcontractors for the Customer, including but not

limited to all interfaces between different components of the System and between the System and other systems.

- g) DATABASE. The term “Database” means the software application that is licensed to house the data.
- h) DOCUMENTATION. The term “Documentation” means, without limitation, all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the System or any component thereof, and which are published or provided to the Customer by FDM or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the System.
- i) EFFECTIVE DATE. The term “Effective Date” means the date of this Agreement.
- j) ENHANCEMENTS. The term “Enhancements” means modifications to the Software to change current functionality.
- k) INTELLECTUAL PROPERTY. The term “Intellectual Property” means all right, title, interest and benefit of a party in and to any registered or unregistered worldwide trade-marks, trade or brand names, service marks, copyrights, copyright applications, designs, logos, symbols, patents, patent applications, industrial design rights, circuit topographies or similar rights, rights in and to licences and sub-licences from third parties in any of the foregoing, confidential information, trade secrets, processes, know-how, technology and other intellectual or industrial property.
- l) MAINTENANCE SERVICES or SUPPORT AND MAINTENANCE SERVICES. The term “Maintenance Services” or “Support and Maintenance Services” means the support and maintenance services to be provided by FDM as described in this Agreement.
- m) MODULES. The term “Modules” means the stand-alone units of Software created by FDM to be used with the Software.
- n) RMS or RECORDS MANAGEMENT SYSTEM. The term “RMS” or “Records Management System” means that software that is used to record and report staffing, suppression resources, property, and locations.
- o) SOFTWARE. The term “Software” is used interchangeably to mean all pre-existing software owned by FDM or provided to the Customer by FDM, as set forth in this Agreement and Schedule B, and all Upgrades, Customizations and Enhancements to the foregoing.
- p) SPECIFICATIONS AND REQUIREMENTS. The term “Specifications and Requirements” means all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Software or System.
- q) STATUTORY HOLIDAYS. The term “Statutory Holidays” means those days declared as provincial holidays in British Columbia. These are New Year’s Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, or as amended by Provincial or Federal Statute.
- r) SYSTEM. The term “System” means the Fire Department Records Management software system to be designed, supplied, installed, configured, tested and commissioned by FDM and having the characteristics and specifications defined under the Software License Agreement, including but not limited to all Software.

- s) **THIRD PARTY SOFTWARE.** The term “Third Party Software” means all software included within the System or required for the System to function in full compliance with the Specifications and Requirements and is not owned by FDM.
- t) **UPGRADES.** The term “Upgrades” means program changes to the Software made to enhance the functionality of the Software and related Documentation delivered hereunder, most commonly given a new version number, that are made generally available to FDM’s licensees. The term "Upgrades" does not include separate modules that are separately licensed and priced, or any new product that is developed and marketed as a separate product by FDM.
- u) **WARRANTY PERIOD.** The term “Warranty Period” means the 90 days period following acceptance of each Module.

2. SUPPORT AND MAINTENANCE SERVICES

During the term of this Agreement, FDM shall provide to the Customer Support and Maintenance Services for the Software, as defined below, in accordance with the terms of this Agreement and the response time described in Schedule A attached.

Definition of Support

Support means access to pre-defined Client Services Representative who may assist the Customer with:

- Information
- Access to website/FTP site
- Access to Documentation
- Assisting with changes to the database
- Assisting with reports building
- Troubleshooting errors
- Assisting with configuration and testing problems
- Assisting with problems related to queries, advanced queries, calculated columns
- Supporting the Customer with issues that may arise from database upgrades to latest FDM release
- Access to 24/7/365 Support for System critical issues

Statement

FDM warrants and represents that (1) the level of bugs or errors in the Software will be no greater than the level of bugs or errors that FDM has experienced in previous releases of the Software, (2) FDM has made and will use its best efforts to promptly eliminate Software defects, (3) the Software will operate without unreasonable interruptions (either in number or duration), (4) the Software is compatible with current versions of Microsoft Windows server software and MS SQL Server Database Management software, (5) that all Software will be prepared by FDM in a workmanlike manner and in accordance with the highest professional standards, (6) FDM will perform all work in compliance with applicable law.

Definition of Maintenance

Maintenance means the provision of fixing Software defects, Upgrades that are generally made available without additional charge to other users of the Software with similar support and maintenance agreements relating to the Modules of the Software that the Customer is licensed to use. The parties shall amend Schedule B from time-to-time in the event that the Customer purchases the right to use additional Modules of the Software.

NFIRS

Support and Maintenance will include annual NFIRS reporting updates as issued by the US Fire Administration.

Billable Support Services

The following support services are not included in Support and Maintenance and shall be billed by FDM at its then current rates:

- Creating reports
- Creating new tables and/or columns
- Creating calculated columns
- Creating interfaces between FDM and other data sources or CAD systems
- Creating scripts to fix issues that were not caused by FDM
- Database customization review
- Database clean up
- Converting current database to another database software system
- Upgrading client databases to latest FDM release, either at the Customer's site or at the FDM's location
- Additional training

Hours of Support

FDM shall provide Support Services during the hours as described in Schedule A.

New Releases

FDM shall, from time-to-time issue new releases of the Software (Schedule B), and when it does, it will immediately provide to the Customer a copy of the release documentation, and updated user or system documentation. If any part of the Customer's custom code is not part of the general release delivered by FDM, then FDM will assist and provide guidance for integrating the custom code into the new release. Any time taken to modify or repair unauthorized changes that may require FDM's assistance may be billed at FDM's then current rates.

Exceptions

FDM is not responsible for maintaining unauthorized Customer modified portions of the Software, Customer data files or for maintaining portions of the Software affected by unauthorized Customer modified portions of the Software. The Customer agrees that the equipment on which the Software operates will be operating properly at all times and must have been and continue to be properly maintained by the manufacturer of the equipment or a properly qualified service organization. Corrections for difficulties or defects traceable to the Customer's errors or unauthorized changes, Customer's hardware, or conflicts with other software not identified by FDM as compatible or part of the recommended operating environment may be subject to billing at FDM's current rates. The Customer will be responsible for properly testing and applying routine virus updates and security patches without the need for additional FDM notification. FDM will be responsible for testing FDM Software Upgrades prior to making them available to the Customer. The Customer acknowledges responsibility for testing FDM Software Upgrades before applying them to the Customer's production systems. For servers running FDM Software, the Customer acknowledges responsibility for communicating with FDM prior to installation of non-FDM software service packs, implementation of new releases or versions of non-FDM software, or installation of new non-FDM software products. Except for emergency replacement of a failing server, the Customer acknowledges responsibility for communicating with FDM prior to replacing a server on which FDM Software is being used. For workstations running FDM Software, the Customer acknowledges responsibility to test new workstation

configurations, software service packs, new releases or versions of software, and new software products prior to implementation.

FDM does not provide support for the Customer's Database software application.

Adjustments to Terms and Conditions

For any renewal term of this Agreement, FDM shall provide to the Customer written notice of the annual fee for Support and Maintenance Services for the renewal term and of any changes to the terms and conditions of this Agreement. FDM shall provide such notice prior to September 01 in any year for the annual fee and any changes relating to the subsequent year. If the parties cannot agree to such annual fee or changes, then the parties may terminate this Agreement as provided for herein.

3. COST, PAYMENT AND TAXES

Annual Fee

The Customer shall pay FDM for Support and Maintenance Services in the manner set forth in Schedule C. For any renewal term, the parties shall negotiate the annual fee for Support and Maintenance Services, but such annual fee will not exceed that used by FDM for its other clients in respect to those Modules that the Customer is licensed to use. All requests by the Customer for additional features or functionality that fall outside of FDM's ongoing policy of upgrading the Software will be quoted on separately.

Travel Expenses

The Customer shall reimburse FDM for any out-of-pocket expenses incurred at the Customer's request and authorization, including travel to and from the Customer site, lodgings, meals, telephone and shipping, as may be necessary in connection with the duties performed by FDM under this Agreement.

Payment

FDM shall provide Support and Maintenance Services at no cost to the Customer during the Warranty Period. Support and Maintenance Services will be prorated (if necessary) for the first year after the Warranty Period, and thereafter invoiced annually in advance on December 31st. Payment is due thirty (30) calendar days after invoice.

Taxes

Customer shall pay all federal, state or local sales, or use taxes, or import duties and taxes that may be imposed upon the amount invoiced to Customer under this Agreement, unless Customer has furnished FDM with a certificate of exemption. Customer shall pay all such amounts directly to the taxing authority unless the taxing authority requires that FDM collect and remit payment, in which event Customer shall pay said amounts to FDM and FDM shall remit such amounts to the authority. Customer and FDM shall cooperate in taking all reasonable actions necessary to minimize, or to qualify for exemptions from, any such taxes, duties or liabilities, including the furnishing of certifications that purchases by Customer are for purposes of resale. Customer and FDM shall each have the right to protest or appeal any tax or charge assessed against it by any taxing authority.

4. CUSTOMER'S OBLIGATION

Access to Data and System

The Customer shall provide FDM with data dumps, as requested, access to the Software, and with sufficient test time on the Customer's computer system to duplicate the problem, to certify that the problem is with the Software, and to certify that the problem has been corrected.

The Customer shall install and maintain for the term of this Agreement, a reasonable and satisfactory method of direct computer access to the Software. The Customer shall pay for the installation and maintenance of such access. FDM shall use this access service in connection with error correction, Software updating and user support only, and only upon prior written notice to the Customer.

The Customer shall make reasonable efforts to upgrade the Software in its entirety to a release version that is not more than one (1) release version older than the most recent version of the Software, but will not exceed two (2) release versions older than the most recent version of the Software. FDM is not obligated to provide Support Services for release versions that are more than two (2) release versions older.

The Customer, subject to and in accordance with the Customer's internal policies and guidelines, will upgrade the computer operating software, hardware and underlying database engines of the Software as necessary to meet the changing requirements of the Software as specified by FDM as part of a current release of the Software, or as the parties mutually agree. The parties agree that FDM is not obligated to ensure that its new release of the Software is compatible with outdated (namely, exceeding three (3) years from date of initial release) hardware, computer operating software or database engines.

5. CONFIDENTIALITY

Defined

Confidential information includes, without limitation, any tangible and intangible material such as written or printed documents specifically identified to be confidential, samples, data structures, links, architecture, implementations of the Software, software, information obtained through access to an electronic database, and any oral disclosures. All confidential information submitted by either party to the other is subject to the terms of this Agreement, provided that the confidential nature of the information has been clearly marked, or when disclosed orally has been identified as confidential information at the time. The receiving party has no obligation or restriction with respect to confidential information which is in the public domain through no wrongful act or omission of the receiving party, has been lawfully received from a third party without obligations of confidentiality, or is independently developed in good faith by the receiving party (with the burden of proof being on the receiving party).

Recipient's Responsibilities

All information disclosed to a receiving party shall be protected and kept in confidence forever by the receiving party, who agrees to use the degree of care and employ safeguards as are reasonable for such information. The receiving party can disclose the confidential information only to persons within the receiving party's organization on a need-to-know basis. Such persons shall be informed of the confidential nature of the information, and if necessary shall be required to sign a similar agreement of non-disclosure. The receiving party shall segregate all confidential information from other material in order to prevent comingling, and the receiving party shall not use the confidential information in whole or in part for any purpose other than the purposes of this Agreement. The receiving party shall not reverse engineer,

decompile, translate, modify or disassemble any Software disclosed to it. All confidential information shall be returned to the disclosing party upon the termination or expiration of this Agreement, unless it is reasonably required with respect to the ongoing use by Customer of the Software.

Rights to Confidential Information

It is expressly understood and agreed by the parties that the disclosure of confidential information under this Agreement will not be construed as granting to the receiving party any rights or interest whether express or implied by license or otherwise to the matters or inventions to which such confidential information pertains or to any patent, industrial design, copyright, trade-mark or trade secret rights beyond the rights expressly granted by this Agreement. The receiving party may only use confidential information disclosed under this Agreement in furtherance of this Agreement.

Freedom of Information

FDM acknowledges and agrees that the Customer may be subject to laws providing for free access to government information, commonly referred to as Freedom of Information statutes, with respect to information under its custody and control. Accordingly all documents and information provided by FDM to the Customer under and pursuant to this Agreement may potentially be available to the public by operation of law. Customer acknowledges that FDM has requested that all confidential information not be disclosed to the public. Customer agrees to use reasonable efforts to notify FDM of any request to access confidential information.

6. LIMITATION OF LIABILITY

Customer's Obligations

Customer represents and agrees that it shall ensure that all persons operating the hardware and software during times when life or property are at risk are properly qualified, supervised, trained, and have demonstrated effectively that the operator is proficient in the use of the hardware and software and the System. Customer warrants that its operators will not rely solely upon recommendations presented by the System when making decisions in situations where life or property is at risk. Customer acknowledges that the System may not operate totally without interruption and warrants that it shall maintain a manual or mechanical system adequate to backup the equipment and software should they become unavailable for use, either planned or unplanned.

The Customer is responsible for the installation and maintenance, and regular replacement of all hardware (network cabling, switches, hubs, servers and workstations, backup power supplies and all other matters commonly the responsibility of the Customer) and for ensuring that all major operating system and database service packs are kept current after FDM has recommended their installation.

The Customer is responsible for ensuring that all workstations and servers are kept free of viruses, worms or other non FDM approved software which may affect the operation of the supplied software.

If the Customer purchases FDM CAD, the Customer is responsible for all the equipment and cabling necessary to get the incoming Telco 911 feed from the phone company's termination point to the server or workstation where the ANI/ALI interpreter resides.

The Customer is responsible for ensuring the accuracy and integrity of the data which supports the functioning of the system. This data includes, but is not limited to:

- a. Accurate and correct department information.

- b. Accurate and correct resource information (departmental vehicles and station locations)
- c. Accurate and valid GIS data (where available).
- d. Accurate and correct location (property) information.

The Customer is responsible for performing and testing the integrity of regular database backups and redundancy process.

The Customer is responsible for database administration functions and for ensuring the proper maintenance of the database (as per the database supplier's instructions).

General Limitations

Neither party will be liable to the other party for (i) any indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss or revenues, profits, goodwill, use, data, failure to realize expected savings, or (ii) other losses resulting from error, omission, or negligence of the other party with respect to the use of the Software, including but not limited to, in the case of the Customer, the data entered by the Customer and/or dispatched by the Customer pursuant to the data entered by the Customer. FDM disclaims all warranties including without limitation warranties of merchantability and fitness for a particular purpose.

To the extent permitted by law, neither party's liability to the other party in connection with any cause of action (excluding copyright infringement by either party or non-payment by Customer), whether in contract, tort, or under statute, relating to this Agreement shall in no event exceed:

(1) for actions accruing prior to the end of either Warranty Period, the total price paid for the Software under this Agreement, or

(2) for actions accruing after either Warranty Period, the total price paid for Maintenance and Support under this Agreement in the twelve month period preceding the event giving rise to the claim.

Notwithstanding any other provision herein, FDM shall defend, hold harmless and indemnify Customer (including its elected officials, officers, representatives, agents, employees, volunteers and affiliates) against all claims, demands, losses, suits, damages, fees, fines, royalties, liability and expenses (including reasonable lawyer's fees) arising out of any suit, claim or action relating to FDM's actual or alleged direct or contributory infringement of, or inducement to infringe, any Intellectual Property right relating to the Software or the Documentation.

7. TERM AND TERMINATION

Term

The term of this Agreement commences on the Effective Date and ends on December 31 of each year. This Agreement will automatically renew for additional periods of one (1) year provided that either party has not given the other written notice, on or before October 31st in that year, of its intention to terminate the Agreement at the expiration of the then current term.

Limitations

FDM may at its sole discretion limit or suspend Customer's access to Support, pursuant to this Agreement, where (1) Customer is in material default under the terms of this Agreement (non-payment is deemed to be a material default), or (2) it appears that the need for Support is based upon the failure of Customer to provide Certified Support Staff to administer the Software. Prior to doing so, FDM will give

the Customer forty-five (45) calendar days written notice of its intention to do so and will work with the Customer to reduce the demand for telephone support.

Termination

The Customer may terminate this Agreement at any time and for any reason upon thirty (30) calendar days prior written notice to FDM.

For Breach

If either party fails to fulfill one or more of its material obligations under this Agreement, the other party may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by providing not less than one (1) month's written notice specifying any such breach, unless within the period of such notice all breaches specified therein will have been remedied or all reasonable steps are being taken to remedy such breaches.

Survival

Expiration or termination of this Agreement for any reason will not affect any obligations which, within the context of this Agreement, are intended to survive expiration or the sooner termination of this Agreement, including but not limited to Sections 1 (Definitions), 3 (Cost, Payment and Taxes), 5 (Confidentiality), 6 (Limitations of Liability), and 10.7 (Disputes).

8. INSURANCE

Limits

FDM shall comply with the following conditions and procure and keep in force during the term of this Agreement, at its own cost and expense.

- (a) Workers' Compensation Insurance or such insurance of a similar type as required by British Columbia law. If the Customer authorizes work by any subcontractors, FDM will require each subcontractor to provide Workers' Compensation Insurance or such insurance of a similar type for its employees, unless FDM covers such employees.
- (b) Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$1,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
- (c) Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

The Customer shall be named as an additional insured under the FDM's Commercial General Liability Insurance coverage. FDM shall provide certificates of insurance to the Customer indicating compliance with this paragraph.

The above liability policies shall contain a provision that the policy will not be cancelled or materially changed without thirty (30) calendar days prior written notice to the Customer. No cancellation provision in any insurance policy will be construed in derogation of the continuous duty of FDM to furnish the required insurance during the term of this Agreement.

In case of the breach of any provision of this section, the Customer may, at its option and with no obligation to do so, provide and maintain at the expense of FDM, such types of insurance in the name of FDM, and with such insurers, as the Customer may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to FDM under this Agreement or may demand FDM to promptly reimburse the Customer for such cost.

9. RELATIONSHIP

Independent Contractor

The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. FDM's services are those of an independent contractor.

FDM Employees

Any and all employees of FDM, while engaged in the performance of any services hereunder, will be considered employees of FDM only and not of the Customer. FDM's employees are not entitled to any of the employment benefits of the Customer as a result of their performance of any obligations under this Agreement. Any and all claims that may or might arise under the worker's compensation legislation on behalf of said employees or FDM, while so engaged, and any and all claims made by a third party as a consequence of any negligent act or omission on the part of FDM's employees, while so engaged, will be the sole obligation and responsibility of FDM.

Personnel

The Customer may review, approve, or request a change of FDM's employees or subcontractors who provide services under this Agreement.

A party must not directly or indirectly induce an employee of the other party to terminate his/her employment with the other party.

This section remains in force for six (6) months after the end of the expiration or termination of this Agreement.

FDM Standards of Employment

FDM warrants that it has not employed or retained any company or person, other than a bona fide employee, agent or contractor working for FDM, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for FDM, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Customer may terminate this Agreement without liability or, in its discretion, may deduct from the project price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

FDM, with regard to the Support and Maintenance Services performed by it, will not discriminate on the grounds of race, religion, colour, national origin, or sex in the selection and retention of employees or independent contractors, including procurements of materials and leases of hardware.

10. MISCELLANEOUS

Addresses

Any statement, notice, request or other communication hereunder will be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made three (3) calendar day after delivery or fax (with receipt confirmation) to the following addresses:

To the Customer:

Troy Malaspino, Deputy Chief
Sacramento Fire Department
5770 Freeport Bl., Suite 200
Sacramento, CA. 95822
Fax number: (916) 808-1629

To FDM:

Edward Colin, President
FDM Software, Ltd.
949 West 3rd Street, Ste. 113
North Vancouver, BC, Canada V7P 3P7
Fax number: 604-986-7130

or to such other address as the party may specify from time to time by notice given in accordance with this section.

Construction

Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Each party acknowledges that the Agreement should not be strictly construed against one party or the other, but interpreted reasonably and fairly so as to give effect to the manifest intentions of the parties.

Modification

This Agreement may not be modified except by a written instrument duly executed by the parties hereto. The Customer may, from time to time, require changes in the scope of this Agreement. Such changes, including any increase or decrease in the amount of FDM's compensation, or services, will: (a) be made only in writing and signed by an authorized representative of the Customer, (b) be explicitly identified as a change to this Agreement, (c) be approved by FDM and (d) become a part of this Agreement.

Force Majeure

Each party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause or effect of such delay or failure to the extent the party is able. In the event of such delays, the timetables shall be extended by as many calendar days as the delay caused by forces outside the reasonable control of the parties.

Required Approvals

Unless otherwise instructed by the Customer in writing, FDM will continue to perform its obligations pursuant to this Agreement during any mediation or litigation, unless the dispute is for material non-payment.

Severability of Agreement

In the event that any provision of this Agreement is held invalid, void, illegal or unenforceable, the remainder of this Agreement will not be impaired or affected thereby, and each term, provision, and part will continue in full force and effect and will be interpreted in a manner consistent with the intent of the parties.

Headings for Convenience.

The section and subsection headings used herein are for referral and convenience only, and will not enter into interpretation hereof. The exhibits referred to herein and attached, and to be attached hereto, are incorporated herein to the same extent as if set forth in full herein.

Assignment Barred

Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld. This provision does not prevent FDM from engaging appropriate independent contractors to complete its work provided that Customer approves of such independent contractors, and such approval will not be unreasonably withheld or delayed. In such event, FDM will remain fully liable and responsible for such independent contractors and will not be relieved of any of its obligations hereunder.

Order of Precedence

In the event of any conflict between the clauses of this Agreement, its exhibits, and any of the documents incorporated by reference, the following order of precedence applies: (a) this Agreement; (b) exhibits to this Agreement; (c) FDM's proposal and any changes thereto in reverse chronological order, (i.e., most recent modifies the earliest); and (d) any other documents incorporated by reference. Notwithstanding the foregoing, a specific reference in a clause takes precedence over a general reference, regardless of the order of precedence of the Agreement, exhibit or document that the clause is contained in.

Waiver of Rights

The waiver by either party of any term or condition of this Agreement will not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

Successors and Assigns

This Agreement is binding on the parties, their successors and permitted assigns.

Entire Agreement

Except as expressly provided otherwise herein, this Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

Time of the Essence

Time is of the essence of this Agreement and of every part hereof, and no extension or variation of this Agreement will operate as a waiver of this provision.

Contra Proferentum

The parties understand, agree, and acknowledge that: (a) this Agreement has been freely negotiated by both parties; and (b) in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there will be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

IN WITNESS to this Agreement the parties have caused this Agreement to be executed and delivered without condition by their duly authorized representatives.

FDM SOFTWARE LTD.

CITY OF SACRAMENTO

(Authorized signing officer)

(Authorized signing officer)

Name and Title:

Name and Title:

Ed Colin, President

John F. Shirey, City Manager

Date:

Date:

CITY OF SACRAMENTO

(Authorized signing officer)

Name and Title:

Ray J. Jones, Fire Chief

Date:

SCHEDULE “A”

FDM Hours of Support and Maintenance Service are as follows:

Regular Hours of Service (pacific time)	After Hours of Service (pacific time)
6:00am to 4:30 pm Monday to Friday	4:30 pm to 6:00 am Monday to Friday
	Saturdays & Sunday
	Statutory holidays in BC
Call received by: FDM staff	Call received by: Answering Service

Incident/Request for Service Priority

All Support and Maintenance incidents/ requests for service will be prioritized on the following basis:

Priority A (High)	Priority B (Medium)	Priority C (Low)
Work Outage		
The Software System has failed and causes the users to be unable to work or perform some significant portion of their job. Examples could include such things as the system is down and cannot be restarted, File System Corruption.	Priority B issues are software faults where normal system operation is affected to some degree and a workaround is not available, but users are still able to complete most other tasks. Examples could include such things as a user cannot extract data using a report, calculated column is not functioning as expected.	Priority C issues are for software faults where a fault was detected, but normal operation is not affected. Priority C calls also include enhancement requests for potential modification to system software. Examples could include “how to” reset passwords, changing default colours, etc.
<i>Response Time During Regular Hours of Service</i>		
Within 30 minutes after receiving call from Client Administrator or designate.	Within three business days of FDM’s receipt of verbal, written or electronic notice from Client Administrator or designate. FDM will work with the Client to come to a mutually agreed upon resolution date. .	For software related issues, this priority allows for work to be scheduled as part of a planned maintenance update.
<i>Response Time During After Hours of Service</i>		
Within 2 hours after receiving call from answering service	Not Available	Not Available

Incident/Request for Service Reporting Procedure

All problems, queries or requests for assistance must be made to the FDM Client Service Department by phone at 800 986 9941 or by electronic mail at clientservices@fdmsoft.com .

When reporting an issue, be prepared to provide your name, phone number, workstations affected, where you can be reached, a description of the problem/service, and the impact of the problem.

FDM will deal with problem/incident according to the priority assigned. In the case that a problem cannot be readily resolved, FDM will attempt to identify a work around.

As soon as FDM corrects an Issue, FDM will notify the Customer that the Issue has been corrected by sending an electronic mail.

For all Priority A calls:

FDM will provide an update to the Customer regarding the status of the problem incident along with the action plan and anticipated resolution time within 2 hours after responding to the call and every 2 hours thereafter until the system has been made operational or the issue is downgraded to a Priority B or Priority C call. FDM will provide resolution to the problem if the hardware, operating system, network connectivity, SQL server software is functional and software and database backups are available. FDM is not responsible for hardware, operating system, SQL server or network connectivity related problems.

Escalation Process

- a) If problem incident remains unresolved within 6 hours the Manager of Support or their designate at FDM will contact the Customer's Administrator to provide a verbal update and action plan.
- b) If problem incident remains unresolved within 12 hours after responding to the call the President or CTO of FDM will contact the Fire Chief or the Director of ITS of the Customer to provide a verbal update and action plan. This process will continue every 12 hours thereafter.
- c) If the problem incident remains unresolved within 48 hours after responding to the call then FDM agrees to provide an on-site staff resource until the problem is resolved or downgraded to a Priority B or Priority C call. All travel meal and lodging costs will be at the expense of FDM. If the Priority A issue is the result of a condition that is in the Customer's control (hardware, OS / database software, network connectivity or unauthorized changes to the database) FDM will be entitled for reimbursement of all expenses.
- d) Upon resolution of the problem incident, a debriefing meeting will be held to discuss process for resolution, proposed improvements, and follow-up actions required.

Where temporary solutions are provided, FDM will provide a permanent fix within 30 calendar days or as mutually agreed but the application of the permanent fix will not exceed 6 months.

For Priority B and Priority C calls:

FDM shall provide, at the Customer's request, a report of call history and the status of any active Priority B and C calls including the anticipated resolution date.

SCHEDULE “B”

FDMWin4 Licensed Modules:

- RMS Modules:
 - Properties
 - Personnel
 - Station Log
 - Hydrants
 - Incident Reporting (Fire & EMS)
 - Training
 - Inspection
 - Permits
 - Asset Management
 - Preventative Maintenance
 - GISA

- FDM Administrator Tools and Utilities:
 - FDM Tools Administrator Utility
 - FDM Security Utility
 - FDM ezScript Utility
 - FDM eSync Utility
 - FDM eBiz Communications Service
 - FDM Report Writer and Report Builder (FDMrb)
 - PRC Interface
 - Telestaff Interface

Third Party Software:

- ESRI® Arc Engine

SCHEDULE "C"

Annual Support and Maintenance Pricing

RMS Modules: (70 Users)	List Price	Annual Fee
Properties	Included	Included
Personnel	Included	Included
Incident Reporting (Fire & EMS)	\$ 120,935.00	24,187.00
Training	\$ 63,650.00	12,730.00
Inspections	\$ 76,380.00	15,276.00
Permit	\$ 19,035.00	3,807.00
Asset Management	\$ 62,650.00	12,730.00
Preventive Maintenance	\$ 63,650.00	12,730.00
GIS Analyst (4)	\$ 60,000.00	12,000.00
ESRI Arc Engine for GISA		400.00
PRC Interface	\$ 10,000.00	2,000.00
Telestaff Interface	\$ 38,190.00	7,638.00
Total Support		103,498.00

Year	Discount	Annual Support and Maintenance Fee
2012	20%	\$ 82,798.40
2013	10%	\$ 93,148.20
2014	0%	\$ 103,498.00