

**INTEGRATION AGREEMENT FOR
THE CITY OF SAN ANTONIO QUARTERMASTER SYSTEM FOR THE
SAN ANTONIO FIRE DEPARTMENT (SAFD)**

**REQUEST FOR PROPOSAL
NO.: 18-085**

**BETWEEN THE CITY OF SAN ANTONIO, TEXAS
AND
FILEONQ, INC.**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation (City), and FileOnQ, Inc (“FoQ”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

1.0 CONTRACT DOCUMENTS

The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:

- a. This Integration Agreement;
- b. City’s Request for Competitive Sealed Proposal (RFCSP) 18-085, including all attachments, addendums, best and final offers, and clarification statements thereto (if any) (Exhibit A);
- c. Statement of Work (Exhibit B);
- d. FoQ Response to RFCSP 18-085 (Exhibit D, incorporated in the form signed and submitted by FoQ);

2.0 TERM

The term of the Agreement will be for a three (3) year period. The City shall have the option to renew for up to two (2) additional one-year periods without additional City Council approval.

3.0 INSURANCE

Prior to the commencement of any work under this Agreement, FoQ shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, Purchasing Division, which shall be clearly labeled "QuarterMaster Systems for SAFD" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate should be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Finance Department, Purchasing Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

FoQ's financial integrity is of interest to the City; therefore, subject to FoQ's right to maintain reasonable deductibles in such amounts as are approved by the City, FoQ shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at FoQ's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Cyber Liability – Designed to help an organization mitigate risk exposure by offsetting costs involved with recovery after a cyber-related security breach or similar event.	\$1,000,000 per claim

FoQ agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of FoQ herein, and provide a certificate of insurance and endorsement that names the FoQ and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of FoQ. FoQ shall provide

the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. FoQ shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. FoQ shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

FoQ agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, FoQ shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend FoQ's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon FoQ's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order FoQ to stop work hereunder, and/or withhold any payment(s) which become due to FoQ hereunder until FoQ demonstrates compliance with the requirements hereof.

It is agreed that FoQ's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

FoQ and any Subcontractors are responsible for all damage to their own equipment and/or property.

4.0 INDEMNIFICATION, LIMITATION OF LIABILITY, AND FORCE MAJEURE

4.1 FoQ covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to FoQ'S activities under this Agreement, including any negligent acts or omissions of FoQ, any agent, officer, director, representative, employee, consultant or subcontractor of FoQ, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT FoQ AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. FoQ shall advise the CITY in writing within five (5) business days of any claim or demand against the CITY or FoQ known to FoQ related to or arising out of FoQ's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at FoQ's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving FoQ of any of its obligations under this paragraph.

Defense Counsel – Unless circumstances dictate otherwise, such as insurance carrier provided defense counsel, CITY shall have the right to approve defense counsel to be retained by FoQ in fulfilling its obligation hereunder to defend and indemnify CITY. FoQ shall retain defense counsel within ten (10) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If FoQ fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and FoQ shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

4.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; AND (B)

THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT DAMAGES, SHALL NOT EXCEED THE AMOUNT OF THE TOTAL FEES DUE TO, OR ALREADY PAID TO, CONTRACTOR FOR THE PRECEDING TWELVE (12) MONTHS.

4.3 **FORCE MAJEURE.** FoQ shall have no liability for any failure or delay in performing any of its obligations pursuant to this Agreement due to, or arising out of, any act not within its control, including, without limitation, acts of God, strikes, lockouts, war, riots, lightning, fire, storm, flood, explosion, interruption or delay in power supply, computer virus, governmental laws or regulations.

5.0 LAW APPLICABLE

5.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

5.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

6.0 TERMINATION

Should FoQ fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this contract, or violate any of the material terms of this contract, City shall have the right to immediately terminate the contract in whole or in part. Notice of termination shall be provided in writing to the FoQ, effective upon the date set forth in the notice. City may, in City's sole discretion, provide an opportunity for FoQ to cure the default. If City elects to offer an opportunity to cure, City shall provide notice to FoQ specifying the matters in default and the cure period. If FoQ fails to cure the default within the cure period, City shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve FoQ of any liability to the City for damages sustained by virtue of any breach by FoQ.

6.2 Termination-Without Cause. City may terminate this contract, in whole or in part, without cause. City shall be required to give FoQ notice ten days prior to the date of termination of the contract without cause.

6.3 Termination-Non-Appropriation. City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

6.4 Termination by City may be effected by Director, without further action by the San Antonio City Council.

6.5 Regardless of how this Agreement is terminated, FoQ shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by FoQ, or provided to FoQ, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by FoQ. Payment of compensation due or to become due to FoQ is conditioned upon delivery of all such documents, if requested.

6.6 Termination not sole remedy. In no event shall City's action of terminating this Agreement, for cause be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue FoQ for any default hereunder or other action.

7.0 INTELLECTUAL PROPERTY RIGHTS

7.1 The City acknowledges that FoQ alone (and its licensors, interest in and to FoQ's software, website or technology, the course content, and the Services provided by FoQ, as well as any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the City, and this Agreement does not convey to the City any rights of ownership to the same. The FoQ name and logo are trademarks of FoQ, and no right or license is granted to the City to use them.

7.2 Except as otherwise agreed in writing or to the extent necessary for the City to use the Services in accordance with this Agreement, the City and its users shall not: (i) copy the course content in whole or in part; (ii) display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, transfer or in any way exploit the course content in whole or in part; (iii) embed the course content into other products; (iv) use any trademarks, service marks, domain names, logos, or other identifiers of FoQ or any of its third party suppliers; or (v) reverse engineer, decompile, disassemble, or access the source code of any FoQ software.

8.0 ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY OF SAN ANTONIO

FileOnQ, Inc.

Troy Elliott, CPA

Date: _____

Approved as to Form:

Assistant City Attorney

Shannon Turner

Print Name: *Shannon Turner*

Title: *Evidence Specialist/Project Mng*

Date: *Sept 14 2018*