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**AGENDA DATE: November 3, 2004**

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**To: BOARD OF COUNTY COMMISSIONERS**

**Department: INFORMATION SERVICES**

**Presented by: TONY BLACK, DIRECTOR  
DARA BOUSH, AIRS MANAGER**

**Agenda Item Title: IN THE MATTER OF AWARD OF CONTRACT FOR RFP NO. RIS03/04-01 FOR AN AREA INFORMATION RECORDS SYSTEM (AIRS) PUBLIC SAFETY APPLICATION TO INCLUDE: A RECORDS MANAGEMENT SYSTEM FOR FIRE AND EMERGENCY MEDICAL SERVICES (EMS) ALONG WITH INTEGRATION FUNCTIONS FOR THIS APPLICATION AND THE RECENTLY IMPLEMENTED MOTOROLA COMPUTER AIDED DISPATCH SYSTEM.**

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**I. PROPOSED MOTION:**

**MOVE TO ACCEPT THE FDM SOFTWARE LTD. PROPOSAL FOR RFP NO. RIS03/04-01 AND AUTHORIZE COUNTY ADMINISTRATOR TO EXECUTE CONTRACT DOCUMENTS FOR FIRE AND EMERGENCY MEDICAL SERVICES RECORDS MANAGEMENT SYSTEM SOFTWARE AND SERVICES IN THE AMOUNT OF \$277,481.88, PLUS \$169,861.40 IN MAINTENANCE AND SUPPORT SERVICES DUE WHILE THIS CONTRACT IS IN EFFECT WITH OPTIONAL PRODUCTS AND SERVICES NOT TO EXCEED \$190,846.20 DURING THE CONTRACT PERIOD.**

**II. ISSUE OR PROBLEM:**

Request approval of award of contract for a new Fire and Emergency Medical Services Records Management System that will provide necessary flexibility to support current and future business practices.

### III. SUPPORT OR RELEVANT INFORMATION

#### A. Background

In 1993, a Strategic Plan was adopted, the focus of which was to accomplish a complete transition of the AIRS integrated enterprise to newer technology. The transition is needed because AIRS technology is obsolete. A description of this situation can be found in the Board of County Commissioner's Agenda Cover Memo of May 16, 2001.

The partners in AIRS are Lane County and the Cities of Eugene and Springfield. In preparation for the transition to new technology, the AIRS partner agencies executed an Intergovernmental Agreement in late 2000 that established an AIRS Conversion Project and defined a structured set of committees to provide oversight and management of the project. An AIRS Executive Steering Committee (ESC), AIRS Project Management Team (PMT), and PMT sub-teams referred to as Trusted Teams were formed to:

1. Establish project direction and strategy;
2. Prepare long-term goals and outcomes;
3. Identify budget and funding for conversion;
4. Provide services to agency users; and
5. Manage the procurement and installation project.

The AIRS Executive Steering Committee (ESC) membership is comprised of the chief executive officers and top public safety officials from the AIRS partner agencies. Current members are:

Bill Van Vactor	Lane County Administrator
Dennis Taylor	City of Eugene Manager
Mike Kelly	City of Springfield Manager
Jan Clements	Lane County Sheriff
Robert Lehner	City of Eugene Chief of Police
Jerry Smith	City of Springfield Chief of Police
Thomas Tallon	City of Eugene Fire Chief/Department Director
Dennis Murphy	City of Springfield Fire Chief/Department Director

The AIRS Project Management Team (PMT) membership includes managers and key staff members from the various justice and public safety jurisdictions, plus the information services directors from the three AIRS partner agencies. The Trusted Teams are staffed by PMT members plus additional staff members from the AIRS partner agencies.

The AIRS partner agencies have already embarked on two projects for replacement of the AIRS system using a phased approach starting with two acquisitions:

1. Jail Management system (completed June 2002)
2. Purchase of a Suite of applications which includes: Computer Aided Dispatch (CAD), Mobile computing, Field Reporting, Law Enforcement Records Management and Courts Case Management.

The Request for Proposal for a new Jail Management System was issued in late 2000. Following evaluation of vendor proposals, a contract was awarded in August 2001 to Printrak, a Motorola company, for its jail management application "Offendertrak". The Offendertrak system was implemented and initiated into production use during June 2002.

In December 2001 the AIRS Executive Steering Committee directed the project team to procure, in a single purchase, a suite of applications that would be delivered to complete the AIRS enterprise for public safety. It was intended to supply the remaining AIRS applications as an integrated suite and, further, that the chosen vendor's suite would be integrated with the Offendertrak jail management system. Together, the new suite applications and the Offendertrak system would complete the AIRS Conversion and would constitute the replacement of the mainframe AIRS system with a new enterprise based on current technology.

The suite of applications to be purchased included: a records management system for law enforcement, a records management system for fire and emergency medical services, field reporting systems for law enforcement and fire, a computer aided dispatch system, a mobile computing system, a courts case management system, along with integration functions for these and the Offendertrak jail management system already in use. In the same manner as was done for the Jail effort an RFP (RIS01/02-05) was prepared and issued in April 2003. During evaluation of proposals it was determined that the Fire and EMS Records Management system offering was deficient in functionality needed to meet the needs of the AIRS Consortium. In June 2003 Lane County contract #0000212834 was awarded for the suite of applications, excluding the Fire and EMS Records Management System.

In November 2003 a Request for Proposal for Fire and Emergency Medical Services Records Management System was issued. As specified in the AIRS Conversion intergovernmental agreement, the AIRS PMT used Trusted Teams to exercise RFP oversight for the application components of the RFP.

The Trusted Team current members are:

<b>Fire/EMS Business:</b>	Linda DeLange, Al Gerard, Lynn Reeves, Mike Thrapp
<b>Fire/EMS Technology:</b>	Kathy Bibbee, Steve Chipman, Ted Glick, Daniel Haight, Byron Vanderpool

AIRS staff members who have played primary support roles during the evaluation include:

Wendi Larson	RFP Project Lead
Dara Boush	AIRS Manager
Dan Seltzer	AIRS Technical Supervisor
Rod Lathrop	Interim AIRS Manager

An AIRS Contract Negotiation Team was formed with the following members:

Byron Vanderpool	RIO Regional Technology Services Coordinator
Paul White	RIS Director/Chief Technology Officer
Wendi Larson	RFP Project Lead
Al Gerard	Springfield Fire Marshal
Mike Thrapp	Eugene Fire Marshal

## **B. Analysis**

### **Phase 1 Evaluation:**

Four proposals were received from four vendors and opened on January 21, 2004. The RFP specified that there would be three evaluation phases. The first phase applied to all proposals and stated:

“Proposal responses to the AIRS budget requirement in *PART V, Section 2.2.1, Fire/EMS RMS Purchase Budget* will be reviewed for compliance. The cost proposal submitted according to instructions in Appendix A will then be reviewed. If either shows that the vendor’s response is not in compliance with the not-to-exceed \$250,000 budget requirement of this RFP, the proposal will be rejected.”

The AIRS Fire/EMS Trusted Team participated in this review. All AIRS partner agencies affected by the proposed applications were represented. It was determined that all four proposals met the Phase 1 requirement and were advanced to Phase 2.

### **Phase 2 Evaluation:**

Evaluation of vendor proposals was based on the following evaluation criteria and relative weighting agreed to by the AIRS Executive Steering Committee:

Criteria	Weight as a Percent
Business functionality	25%
Multi-agency support	18%
Cost	15%
Demonstrated ability to meet commitments	12%
Solution is built, installed and proven	10%
Integration and Interfaces	10%
Technical design quality of software and hardware	5%
Other	5%

A description of each evaluation factor is included as an attachment to this Cover Memo. An explanation of the evaluation process can be found in RFP RIS03/04-01, Part VI, Evaluation Methodology, which can be reviewed electronically at:

\\Aisrv002\CONVPUBL\Fire\Fire Contract\Contract

or by contacting Zoe Gilstrap in Lane County Administration (541-682-3690) to review a printed copy.

Eleven people from Lane County, Eugene, Springfield, and LCOG participated in this review. All AIRS partner agencies and all business areas affected by the proposed application were represented. The evaluators were involved in activities to rate each of the proposals, check references at a high-level, and compare costs, also at a high-level. Each of these activities was assigned points within the evaluation criterion category. Three of the proposals received weighted points of 623, 635, and 696, and the fourth proposal, from Emergency Reporting,

received a score of 450. The AIRS Executive Steering Committee was presented with the results of the Phase 2 Evaluation, and on March 1, 2004 the ESC was asked to approve the AIRS Project Management Team recommendation to:

Advance the proposals from Emergency Technologies, Inc., 90 Degrees, Inc., and FDM Software Ltd. to the Phase 3 Evaluation.

The AIRS Executive Steering Committee approved the recommendation on March 1, 2004.

### Phase 3 Evaluation:

Following the ESC approval of the selection of proposals to receive further evaluation, the three vendors were notified that they had been selected to advance to the third evaluation phase and asked to prepare for the demonstrations, tests, reference checks, and site visits that would occur during the third phase. The RFP described the third evaluation phase as:

“A final set of Vendors will be chosen for a second stage of evaluation that will be done to further develop and validate specifications of the proposed solution for the Evaluation Committee. This phase will consist of activities designed for specific information gathering which may include a Demonstration and Live Test of the software proposed, direct interviews, additional reference checks, responses to additional follow-up questions, information gathered from supporting documentation, and client site visits. The criteria for evaluation of the outcomes of these Phase 3 activities are the same as that listed earlier in this section.

The score of the Live Tests is part of the evaluation process and demonstrating vendor will be provided with the results of their own tests. Information gathering during this phase of evaluation will require the Vendor to be prepared to:

- Provide technical staff for interviews;
- Provide additional technical documentation;
- Accommodate and/or assist to coordinate site visits by representatives of the Consortium; and
- Conduct a demonstration and/or live test of proposed software, for which specifications will be provided in advance.”

“The Vendor shall be responsible for all costs for preparation and presentation in this regard.”

“The final successful Vendor will be chosen based on scores and results of the entire evaluation process. The COUNTY reserves the right to reject any proposal not in compliance with the proposal documents or all prescribed public bidding procedures and requirements and may, for good cause, reject any or all proposals when it is in the public interest to do so.”

The major activities in the Phase 3 evaluation were:

Demonstrations  
Live Tests  
Vendor Question & Answer Sessions  
Reference Checks  
Site Visits

A strong representation from all AIRS agencies and relevant areas of public safety business participated in these evaluation activities. Three days of on-site interviews, presentations, and demonstrations were scheduled for each vendor. RFP evaluation team representatives traveled to perform customer site visits and research for each vendor. Question and answer sessions for both business and technical aspects of the offerings were held during the on-site visits and by conference telephone calls afterwards. Partner agency staff member conducted in-depth reference checking. All results were recorded.

Live Tests were conducted with each vendor. These tests required vendors to prove their system through a series of Business Scenarios and technical requirements. Each vendor was scored on each test.

In addition to the evaluation activities aforementioned, a cost comparison of the vendor offerings was done by analysis of each of their price proposals. Where elements were missing or inconsistent among the vendors, line items were added or adjusted to make an even comparison possible. Analysis was done for the purchase price and was also done for a projected annual ongoing cost of operational support for the enterprise.

Of the three proposals, those submitted by Emergency Technologies, Inc. with a score of 55% and FDM Software Ltd. with a score of 62% were determined to be the top contenders as the best application for the Fire/EMS Records Management system. The 90 Degrees, Inc. proposal with a score of 37% was deficient in meeting AIRS agency requirements in that it does not currently have a product ready for productive use and it has no plans for multi-agency capability. Due to these issues, the AIRS Project Management Team concluded that the 90 Degrees, Inc. product would not adequately support functional use in the manner required. The AIRS Project Management Team therefore recommended that the 90 Degrees, Inc. proposal be rejected because implementing it would lead to increased liability, increased staffing within the AIRS Consortium agencies, higher overall cost, and a reduced service level.

#### Executive Steering Committee Deliberation:

On June 7, 2004 the ESC met and reviewed the evaluation results. It was recommended that:

1. Further consideration of the proposal from 90 Degrees, Inc. be eliminated.
2. FDM Software Ltd. be declared the preferred vendor and contract negotiations be initiated with FDM Software Ltd. to procure the Fire/EMS Records Management System.
3. The proposal of Emergency Technologies Inc. be considered a viable alternative to the preferred vendor if contract negotiations are unsuccessful.

The ESC approved the recommendations and the negotiations with FDM Software Ltd. were begun.

#### Negotiations with FDM Software Ltd.:

An oversight committee was established comprised of the AIRS Contract Negotiation Team plus the president of FDM Software, Edward Colin. Contract negotiations with FDM Software Ltd. commenced with a meeting on July 12, 2004 to determine the contract elements and the process for finalizing a contract. A set of desired system components was agreed upon, at an estimated

purchase cost of \$279,732. On August 2, 2004 the ESC unanimously approved the purchase of the Fire/EMS Record Management System, including the components and estimated purchase cost recommended by the AIRS Contract Negotiation Team.

Negotiations with FDM Software continued and concentrated on three interrelated matters. These matters and the results of the negotiations are described below:

**Schedule:** In order for both FDM Software and AIRS to be successful in negotiating a cost and a contract it was necessary to identify the options and enhancements that were included in the proposal and set a schedule for the work that both parties need to do in order to set a high level work plan and a series of milestones. The implementation period will be approximately 18 months with sequential module by module implementation.

**System Costs:** At the end of Evaluation Phase 3 and through initial contract discussions with FDM we were able to clarify the products and services to be included with the system. After working with FDM to delineate the solution we agreed to a total purchase cost of \$277,481.88, consistent with the ESC approval received on August 2, 2004. The Bill of Materials, which is included in the attachments to this Cover Memo, gives a complete breakdown of the costs for items to be provided by FDM Software Ltd. In addition, necessary FDM maintenance and support services at an annual cost of \$33,972.28 were specified in a Maintenance Agreement, for a 5 year cost of \$169,861.40, and optional products and services available from FDM were included in the contract at a total cost not to exceed \$190,846.20 during the contract period.

**Contract Language:** Contract terms were negotiated with FDM that included a 12 month warranty period for each module following successful implementation, and no increases in FDM annual maintenance fees through December 31, 2011.

ESC final approval of the Schedule, System Costs, and Contract Language is scheduled to occur November 1, 2004, at the monthly ESC meeting. Contract execution will occur following ESC approval and Lane County Board of Commissioners authorization for the County Administrator to sign the contract with FDM Software Ltd. for Fire and Emergency Medical Services Records Management System Software and Services.

### **C. Alternatives/Options**

1. Proceed with execution of a contract with FDM Software Ltd., in substantial conformity with the attached.

This recognizes that the product will meet anticipated needs of Lane County and the other AIRS partner agencies, that the vendor is prepared to provide enhancements to meet future needs, that the system costs are within the budget established under the Intergovernmental Agreement covering the AIRS Conversion Project, that the system can be delivered in a timeframe acceptable to the AIRS Executive Steering Committee, and that the contract is one that Lane County Assistant Legal Counsel has reviewed and finds acceptable.

2. Negotiate an agreement with the “runner up” vendor.

This alternative recognizes the strength of the Emergency Technology, Inc. (ETI) proposal, but would lead to a delay of at least three months to begin implementation. Additionally, there would be substantially increased expenses and serious issues of business functionality for the ETI purchase. There is also the risk that ETI will not commit to their original proposal, since the six month time period in which they must honor it was passed on July 21, 2004.

3. Issue a new RFP.

This alternative would delay the Fire/EMS implementation by a substantial time period with no assurance that we would find a product that would be less expensive or meet our needs any better than does FDM Software Ltd. The budget available for acquiring a product would be significantly reduced because of the expense of a new procurement effort.

4. Continue using the current agency developed systems and manual procedures.

#### **D. Recommendation**

It is recommended that award of a contract based on their proposal to RFP RIS03/04-01 be made to FDM Software Ltd., and that the County Administrator be authorized to execute contract documents.

#### **IV. IMPLEMENTATION/FOLLOW-UP:**

Following ESC and BCC approval of the contract award, contract documents will be signed by the vendor and delivered to the County Administrator for execution.

The AIRS Executive Steering Committee will provide oversight for implementation of the products and services to be provided by award of the RFP.



## **V. ATTACHMENTS:**

- A. Board Order
- B. Evaluation Methodology
- C. Purchase Contract that is in substantial conformity with the Agreement that will be executed with FDM Software Ltd., upon award of contract. Also included are the following selected Exhibits to the Purchase Contract:

- Exhibit B. Bill of Materials
- Exhibit C. Payment Milestones
- Exhibit J. Software License Agreement
- Exhibit K. Maintenance Agreement
- Exhibit L. Mutual Non-Disclosure Agreement (NDA)

Note: A complete copy of all Exhibits to the Lane County Purchase Contract can be reviewed electronically at:

[\\Aisrv002\CONVPUBL\Fire\Fire Contract\Contract](#)

Contact Zoe Gilstrap in Lane County Administration (541-682-3690) to review a complete printed copy of the Lane County Purchase Contract and all Exhibits.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 04-11-3-\_\_\_\_

IN THE MATTER OF AWARD OF A CONTRACT FOR RFP NO. RIS03/04-01 FOR AN AREA INFORMATION RECORDS SYSTEM (AIRS) FIRE AND EMERGENCY MEDICAL SERVICES RECORDS MANAGEMENT SYSTEM TO INCLUDE: A RECORDS MANAGEMENT SYSTEM FOR FIRE AND EMERGENCY MEDICAL SERVICES (EMS) ALONG WITH INTEGRATION FUNCTIONS FOR THIS APPLICATION AND THE RECENTLY IMPLEMENTED MOTOROLA COMPUTER AIDED DISPATCH SYSTEM.

WHEREAS, Lane County has entered into an intergovernmental agreement with the cities of Eugene and Springfield for the purpose of replacing the mainframe justice and public safety systems with vendor supported software based on current technology; and

WHEREAS, the regional partners have procured and are implementing Printrak/Motorola Public Safety and Justice systems as the first steps in this replacement; and

WHEREAS, the regional partners prepared and published a Request for Proposal (RFP) for the purpose of implementing a Fire and Emergency Medical Services Records Management system; and

WHEREAS, at the duly authorized time and place on January 21, 2004, Dara Boush, AIRS Project Manager, under authority of Lane Manual Chapter 21, opened proposals on the following:

**RFP NO. RIS03/04-01, PROPOSAL AND SPECIFICATIONS FOR AREA INFORMATION RECORDS SYSTEM (AIRS) FIRE AND EMERGENCY MEDICAL SERVICES (EMS) RECORDS MANAGEMENT SYSTEM**

WHEREAS, all proposals were evaluated by an RFP evaluation committee comprised of representatives of the AIRS partner agencies for conformance to RFP specifications; and

WHEREAS, the proposal submitted by FDM Software Ltd. was rated as the highest scoring proposal; and

WHEREAS, there are sufficient funds budgeted for this portion of the AIRS Conversion Project; and

**WHEREAS**, the regional AIRS Executive Steering Committee will oversee contract execution and implementation of the recommended Fire and Emergency Medical Services Records Management System; it is hereby

**ORDERED** that a contract be awarded to FDM Software Ltd., for purchase of AREA INFORMATION RECORDS SYSTEM FIRE AND EMERGENCY MEDICAL SERVICES RECORDS MANAGEMENT SYSTEM in accordance with RFP specifications in substantial conformity with Attachment C in the amount of \$277,481.88 plus appropriations for \$169,861.40 for maintenance and support services while this contract is in effect with optional products and services not to exceed \$190,846.20 during the contract period; and it is further

**ORDERED** that the County Administrator be delegated the authority to sign and execute the contract documents.

**DATED** this 3<sup>rd</sup> day of November, 2004

**BOBBY GREEN, Chair**  
**Board of County Commissioners**

APPROVED AS TO FORM  
Date 10/27/04 lane county  
[Signature]  
OFFICE OF LEGAL COUNSEL

## EVALUATION METHODOLOGY

An Evaluation Committee comprised of representatives of Lane County's Regional Information System, the AIRS Consortium agencies, and the AIRS Staff will conduct the evaluation process. Committee members will evaluate proposals that appear to satisfy the requirements using evaluation factors with assigned weights. The Committee may divide into subgroups at times to manage and score specific evaluation activities throughout all of the evaluation phases described below. Scores and results from all activities may be summarized, combined, accumulated or otherwise organized to accomplish the overall scoring of the evaluation that will support the Evaluation Committee's final recommendation. The Evaluation Committee's final recommendation will be subject to AIRS executive approval. Such executive approval may require additional review of results, extension or addition of evaluation activities or additional deliberation of proposal materials before it is granted.

The Evaluation Committee will include representatives who are managers of public entity programs including computer information services and Public Safety agencies, system end users, business area experts, and information systems technical experts.

### 1.1 Budget Compliance

Proposals will be evaluated first on the Vendor response to *PART V, TECHNICAL SPECIFICATIONS, Section 2.2.1, Fire/EMS RMS Purchase Budget*. Proposals will be rejected if they do not comply with the stated budget requirement that states the cost of the solution must not exceed \$250,000.

### 1.2 Evaluation Criteria - Weighted Point Scale

Remaining proposed solutions will be evaluated against a set of weighted criteria. The proposals will be evaluated through assignment of points to each "*Vendor Response*". The weighted point scale will represent the priority and percentage weights shown in the table below. Descriptions of the evaluation criteria follow the table.

Criteria	Weight as a Percent
Business functionality	25%
Multi-agency support	18%
Cost	15%
Demonstrated ability to meet commitments	12%
Solution is built, installed and proven	10%
Integration and Interfaces	10%
Technical design quality of software and hardware	5%
Other	5%

### 1.2.1 Evaluation Criteria Definitions

**Business Functionality:** The extent to which functions and features of the proposed solution meets the needs of the Consortium's agencies as stated in *PART V TECHNICAL SPECIFICATIONS*.

**Multi-Agency Support:** The extent to which the proposed solution serves multiple Fire and EMS agencies as stated in *PART V TECHNICAL SPECIFICATIONS*.

**Cost (Total Cost Of Ownership):** Economic feasibility based on AIRS analysis of all costs, both initial and on-going, whether they are vendor-proposed or they are in-house costs resulting from the Vendor's proposal.

**Demonstrated Ability to Meet Commitments & General Company Behavior and Responsiveness:**

- Confirmation of work quality;
- Demonstrated ability to meet deadlines and stay within a fixed price budget;
- Level of service and responsiveness from vendor;
- Financial stability and resources of the vendor;
- Qualifications, experience, and technical expertise of Vendor's staff; and
- Other vendor/customer relationship factors that can be established through Q&A, site visits, and reference checking.

**Solution is Built, Installed, and Proven - Commercial Off-the-Shelf (COTS):** The extent to which the vendor's solution includes proven and installed products.

**Integration and Interfaces:** The extent to which the proposed solution provides seamless operation with the Consortium's existing Public Safety enterprise, as well as provides specific interfaces to other systems.

**Technical Design Quality of Software and Hardware:** The extent to which the design, capability, and functionality of the proposed application software and the proposed hardware are consistent with current industry technology concepts and practices. The Consortium is looking for a solution that is technically astute and shows evidence of attention to ongoing technological growth and improvement.

**Other:** Criteria include the quality of the implementation and regional compatibility as defined below:

**Quality of Implementation Proposal** - The extent to which the proposed implementation plan shows:

- The suitability and quality of the Vendor's approach as an indication the vendor understands the Consortium's purpose, scope and objectives;
- Feasibility, timeliness, and quality of the implementation schedule proposed;
- Level of assistance to be provided to the Consortium by the vendor during the implementation process;
- An appropriate amount and extent of user training; and
- An appropriate quality and detailed content of documentation proposed.

**Regional Compatibility (Fits into infrastructure now used in the region)** -  
The extent to which the proposed hardware and software configurations are compatible with the technology infrastructure, standards and skills concentration in this region.

### **1.3 General Evaluation Procedure**

Proposals will be evaluated and scored according to the evaluation criteria in three phases, described below.

As evaluation activities are coordinated with participating vendors, specifications and logistics will be provided for each activity. Deadlines will be set for these activities, including deadlines for Vendors to deliver additional requested materials. COUNTY reserves the right to extend any related deadline no less than two (2) days prior to such deadline in the interests of encouraging and assuring appropriate expenditure of public funds, and without prejudice.

In addition to information submitted by each Vendor in this competitive process, COUNTY reserves the right to review and utilize information which any of the Consortium members may have related to prior contacts or experience with any Vendor, including information from trade shows, conferences, Requests for Information (RFI), etc.

#### **1.3.1 Phase 1**

Proposal responses to the AIRS budget requirement in *PART V, Section 2.2.1, Fire/EMS RMS Purchase Budget* will be reviewed for compliance. The cost proposal submitted according to instructions in Appendix A will then be reviewed. If either shows that the vendor's response is not in compliance with the not-to-exceed \$250,000 budget requirement of this RFP, the proposal will be rejected.

#### **1.3.2 Phase 2**

All qualifying proposals following Phase 1 will be reviewed and assigned points by the evaluating committee. Additionally, vendor references may be checked and the Evaluation Committee may develop and distribute written follow-up questions to solicit greater detail on the information provided. The Evaluation Committee will then consider whether points have been appropriately assigned in light of the responses to questions and reference checks. They will make any necessary adjustments to assigned points, and recommend the Vendors who will be included in the final group for which the second phase of evaluation will take place.

#### **1.3.3 Phase 3**

A final set of Vendors will be chosen for a second stage of evaluation that will be done to further develop and validate specifications of the proposed solution for the Evaluation Committee. This phase will consist of activities designed for specific information gathering which may include a Demonstration and Live Test of the software proposed, direct interviews, additional reference checks, responses to additional follow-up questions, information gathered from supporting documentation, and client site visits. The criteria for evaluation of the outcomes of these Phase 3 activities are the same as that listed earlier in this section.

The score of the Live Tests is part of the evaluation process and demonstrating vendor will be provided with the results of their own tests. Information gathering during this phase of evaluation will require the Vendor to be prepared to:

- Provide technical staff for interviews;
- Provide additional technical documentation;
- Accommodate and/or assist to coordinate site visits by representatives of the Consortium; and
- Conduct a demonstration and/or live test of proposed software, for which specifications will be provided in advance.

The Vendor shall be responsible for all costs for preparation and presentation in this regard.

The final successful Vendor will be chosen based on scores and results of the entire evaluation process. The COUNTY reserves the right to reject any proposal not in compliance with the proposal documents or all prescribed public bidding procedures and requirements and may, for good cause, reject any or all proposals when it is in the public interest to do so.

## **Purchase Contract plus Selected Contract Exhibits**

This attachment includes a copy of a Lane County Purchase Contract that is in substantial conformity with the Agreement that will be executed with FDM Software Ltd., upon award of contract. Also included are the following Exhibits to the Purchase Contract:

- Exhibit B. Bill of Materials
- Exhibit C. Payment Milestones
- Exhibit J. Software License Agreement
- Exhibit K. Maintenance and Support Agreement
- Exhibit L. Mutual Non-Disclosure Agreement (NDA)

Note: A complete copy of all Exhibits to the Lane County Purchase Contract can be reviewed electronically at:

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Contact Zoe Gilstrap in Lane County Administration (541-682-3690) to review a complete printed copy of the Lane County Purchase Contract and all Exhibits.



## LANE COUNTY

### PURCHASE CONTRACT No. 218265

#### PLEASE PUT THIS NUMBER ON ALL INVOICES

In consideration of the covenants set forth below, FDM Software Ltd., hereinafter referred to as Vendor (or "FDM"), and Lane County, a political subdivision of the State of Oregon, acting through the Area Information Records System (AIRS) Division of its Information Services department, hereinafter referred to as COUNTY, mutually contract as follows:

- C-1. Agreement:** Vendor agrees and covenants with COUNTY to furnish: an Area Information Records System (AIRS) Fire and Emergency Medical System (EMS) Records Management System, providing all requisite equipment, software, documentation and services, in accordance with the attached specifications identified as RFP RIS03/04-01 as modified by addenda, as modified by supporting Exhibits, and the Vendor's Proposal. All of the attached specifications together with this Contract and applicable provisions of *Exhibit I, Lane Manual, Chapter 21.130, Standard Provisions*, constitute the contract documents.
- C-2. Order of Precedence:** In the event of conflict or discrepancies among the contract documents, interpretations will be based on the following order of priority:
- a. The purchase contract and applicable *Exhibit I, Lane Manual 21.130 Standard Provisions*;
  - b. The COUNTY'S Request for Proposal;
  - c. The VENDORS'S Proposal in response to the Request for Proposal.
- C-3. General:** The COUNTY certifies that it is purchasing this product for public agency use by the Regional Executive Group, a group of government entities who by agreement operate a regional system. The COUNTY certifies that the acquisition is not for remarketing, and that it will not assign the on-order product to any party other than Vendor or a Vendor affiliate without written consent of the Vendor, which shall not unreasonably be withheld. The COUNTY reserves the right to sign any agreement that is deemed to be beneficial to the COUNTY.
- C-4. Contract Period:** Contract period shall be the date this Contract is signed to the last day of any applicable warranty period. For COUNTY's internal purposes only, the contract period shall be for three years from the contract execution date. However, Vendor shall agree to extend this period as necessary for completion of the entire implementation and all applicable warranty periods.
- C-5. Cost and Payments:** The Vendor's payment is based on a firm fixed price as reflected in the cost section of the proposal.

The contract payment schedule will be dependent upon approved completion and acceptance for firm fixed price deliverables, Invoices must be specific to defined deliverables, and must be submitted with backup that confirms the deliverable, its acceptance and its contract value.

Regardless of the number of deliverables defined, COUNTY will apply a payment schedule such that

- Fifteen percent (15%) of the contract amount is paid upon signing of the contract.
- An additional seventy percent (70%) will be paid according to the payment schedule for deliverables, as defined deliverables are completed through successful acceptance test.
- The remaining fifteen percent (15%) balance will be paid when the system performance period is successfully completed.

#### **C-6. Performance Period - Acceptance Test**

##### **A. Definitions**

1. "Performance Period" means the use of the System or a Subsystem for operational purposes for a period of 30 (thirty) calendar days after System or Subsystem Acceptance in accordance with the following: Severity Level 1 defects, as defined in the Maintenance and Support Agreement, will cause the Performance Period to stop and be restarted at day 1 upon resolution of the Level 1 defect. Severity Level 2 defects, as defined in the Maintenance and Support Agreement, will cause the Performance Period to stop until the defect is corrected, at which time the Performance Period will resume as of the day it was stopped. In the event a Level 2 defect occurs with 10 or fewer calendar days remaining in the Performance Period, the Performance Period will continue for 10 calendar days. All other noted defects that deviate from the System or Subsystem specifications will be added to a "punch list" and resolved in a time frame to be mutually agreed upon.
2. "Subsystem Acceptance" means the appropriate Acceptance Test as identified in Exhibit F, Acceptance Test Plan, has been successfully completed for a Subsystem.
3. "Final Subsystem Acceptance" for a Subsystem or product means the performance period for an individual Subsystem has been successfully completed.
4. "Final System Acceptance" means the successful completion of the performance period for all Subsystems.

5. "Beneficial Use" means when COUNTY first uses the System or a Subsystem for operational purposes (excluding training, testing, or Performance Period).
6. Subsystems and Products are those Subsystems and products identified in Exhibit C, Payment Milestones, of this Agreement as being installed and implemented during the applicable corresponding phase of the project. A Subsystem consists of one or more FDM software modules.

**B. Subsystem Acceptance (Each Subsystem)**

1. Acceptance testing shall be completed within 30 days of the date Vendor and County agree Subsystem is ready for use per the functional specifications described in Exhibit A.
2. Subsystem Acceptance shall occur upon successful completion of the appropriate Acceptance Test as identified in Exhibit F, Acceptance Test Plan, or upon Beneficial Use, whichever occurs first. Upon the occurrence of Final Subsystem Acceptance, a payment milestone, as identified in Exhibit C, Payment Milestones, shall be due and payable.
3. If some items on an Acceptance Test do not pass their respective tests, COUNTY and Vendor may jointly develop a "punch list" consisting of such items, and a plan of corrective action including a time frame for their resolution. Upon mutual consent of COUNTY and Vendor, if such a punch list is developed, the items on it shall not prevent the Subsystem from being accepted.
4. If an Acceptance Test is not successfully completed as per the specifications of the applicable Acceptance Test, Vendor shall have thirty (30) calendar days to present a plan to cure any material omissions in the Acceptance Test Plan that are not otherwise addressed in a punch-list. COUNTY shall have up to ten (10) days to review and accept or reject the plan. In the event COUNTY rejects the plan, or the COUNTY accepts the plan and the Vendor fails to complete acceptance as per the provisions and specifications of the cure plan, COUNTY may terminate only that portion of this Agreement that is directly applicable to the Subsystem that failed to pass the Acceptance Test and exercise any applicable termination remedies provided for in this Agreement. Prior to terminating any portion(s) of this Agreement not directly related to the Subsystem that failed, COUNTY agrees to consider, at that time, the needs and best interests of the agencies and entities being supported by AIRS, and alternatives to replace the failed Subsystem.

**C. Final System Acceptance**

1. Following Subsystem Acceptance, a 30 calendar day Performance Period will commence on the System.

2. Final System Acceptance shall occur upon the completion of the Performance Period for the System or upon Beneficial Use, whichever occurs first. Upon the occurrence of Final System Acceptance, a payment milestone, as identified in Exhibit C, Payment Milestones, shall be due and payable, and the Warranty Period (described below) shall begin.
3. If a System Performance Period is not successfully completed within ninety (90) calendar days from commencement, Vendor shall have thirty (30) calendar days to present a plan to cure to complete the Performance Period. COUNTY shall have up to ten (10) days to review and accept or reject the plan. In the event COUNTY rejects the plan, or the COUNTY accepts the plan and the Vendor fails to complete the cure plan, COUNTY may terminate this Agreement in whole or in part and exercise any remedies provided for in this Agreement.

**C-7. Vendor's Personnel:** Vendor shall exercise due care to choose and manage its personnel so that only suitably responsible and professionally competent representatives shall be operating in agency areas, many of which have sensitive and critical activities. The AIRS consortium hosts an integrated criminal justice and public safety computer system. Both parties recognize the County's obligation to comply with US federal Criminal Justice Information System (CJIS) requirements. Any Vendor's personnel who could have access to sensitive information, as defined by CJIS requirements, whether or not they are working on COUNTY premises, shall successfully complete a criminal records check including fingerprint-based identification, conducted by COUNTY or its designee at the COUNTY'S sole expense. Vendor must supply biographical information as required and requested by the COUNTY for criminal records checks initially and throughout the entire contract, warranty, and maintenance periods, whether such person is engaged by the Vendor, any sub-contractor, or any supplier under the contract. County and Vendor shall take reasonable steps to minimize potential vendor access to sensitive data and systems covered by CJIS restrictions, but Vendor employees having full on-site access to AIRS facilities, including, but not limited to Vendor's Project Manager, shall be subject to background requirements. Any project delay that is a direct result of COUNTY'S criminal records check task, provided that biographical and other information needed for the background check is delivered to COUNTY in a timely manner, shall not be considered the Vendor's responsibility.

**C-8. Right to Interface:** COUNTY shall have the right to connect the products for which it has contracted under this Agreement to any product or software developed internally, manufactured or supplied from other sources, including, but not limited to, computer software, peripheral equipment, other computers, communications equipment, mobile devices, and like equipment. The internal staff or other source supplying the other equipment or software mentioned above

shall make or supervise the interconnection and supply any interface devices required.

The following Warranty exclusions may apply with issues involving COUNTY interfaces: (i) defects or damage resulting from use of the Vendor Software in other than its normal and customary manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided by the Vendor or contrary to express instructions provided in writing by the Vendor; (iv) defects or damage caused by COUNTY'S failure to comply with all applicable industry and OSHA standards.

COUNTY may request, but Vendor is not required to repair any damages caused by COUNTY'S actions under this section. This work will be quoted independently of any existing contract between the COUNTY and Vendor, but may be at the same time and material rates quoted in any existing maintenance contract or those rates then in effect.

Such alterations or attachments shall be removed and the product restored to the prior configuration at COUNTY expense before return of the product by COUNTY.

**C-9. Confidential Information:** In accordance with the Mutual Non-Disclosure Agreement (Exhibit L) and subject to any disclosure obligations under applicable Oregon Public Records law, including ORS 192.410-192.505, COUNTY agrees to treat information it receives which Vendor reasonably believes meets an Oregon Public Records exemption, and which is clearly and prominently marked "Confidential Information" by Vendor, as confidential, trade secret, and commercially sensitive information and shall disclose only pursuant to a request made pursuant to such law and after providing Vendor an opportunity to establish that such information is exempt from the disclosure obligation. This confidentiality shall not apply to disclosures by COUNTY to its employees and agents, and to entities and agencies supported by COUNTY through AIRS, provided such disclosures are reasonably necessary for use of the System.

**C-10. Patent And Copyright Infringement:** Vendor will defend at its expense any suit brought against COUNTY to the extent that it is based on an Infringement Claim that the Vendor software infringes a United States patent or copyright. Vendor will indemnify COUNTY for those costs and damages finally awarded against the COUNTY for an Infringement Claim. Vendor's duties to defend and indemnify are conditioned upon: (i) COUNTY promptly notifying Vendor in writing of such Infringement Claim; (ii) Vendor having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) COUNTY providing to Vendor cooperation and, if requested by Vendor, reasonable assistance in the defense of the Infringement Claim. If COUNTY reasonably concludes that its interests are not being properly protected, or principles of governmental or public law are involved, it may enter any action, at its own expense. Any settlement by

the COUNTY with the party alleging such infringement shall not be binding on the Vendor and the Vendor shall be under no obligation to pay or indemnify the COUNTY.

If the Vendor software becomes, or in Vendor's opinion is likely to become, the subject of an Infringement Claim, Vendor may at its option and expense procure for COUNTY the right to continue using such Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant COUNTY a credit for returned software equal to the reasonable replacement costs of the software, such software as depreciated and accept its return. In addition, Vendor shall refund any license fees paid by COUNTY, on a pro rata basis, and refund any prepaid amounts for service or software not yet provided. The depreciation amount will be calculated based upon generally accepted accounting standards for such equipment and software. The COUNTY may also invoke additional remedy steps as specified in *Section C-41, Termination*.

Vendor will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the equipment or software with any software, apparatus or device not furnished by Vendor; (ii) the use of ancillary equipment or software not furnished by Vendor and that is attached to or used in connection with the equipment or software; (iii) any Equipment that is not Vendor's design or formula; (iv) a modification of the Vendor Software by another party without Vendor's approval; or (v) the failure by COUNTY to install an enhancement release to the Vendor Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Vendor with respect to infringement of patents and copyrights by the Equipment and Vendor Software or any parts thereof.

**C-11. Title and Risk of Loss:** Title to Software will not pass to COUNTY at any time. Risk of loss will pass to COUNTY upon delivery of the Software and Equipment to the COUNTY.

**C-12. Preservation of Vendor's Proprietary Rights:** Vendor owns and retains all of its Proprietary Rights. The third party manufacturer of any Equipment and the copyright owner of any Non-Vendor Software own and retain all of their Proprietary Rights. COUNTY owns title to the physical media for the software as well as all data entered into software. All intellectual property that is created or produced by Vendor under this Agreement is and shall remain the property of Vendor. Nothing in this Agreement is intended to restrict the Proprietary Rights of Vendor, any copyright owner of Non-Vendor Software, or any third party manufacturer of Equipment. This Agreement does not involve shared development rights of intellectual property or any Software that is a "work made for hire."

Except as explicitly provided in *Section C-13, License of Software*, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppels, or otherwise, any of Vendor's Proprietary Rights. Concerning both the Vendor Software and the Non-Vendor Software, COUNTY agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, reproduce (except as provided in *Section C-14, Warranties* and the Agreement for Maintenance Services), or export the Software, or permit or encourage any third party to do so.

**C-13. License of Software:** COUNTY agrees to operate software acquired under this contract according to the terms of the Software License Agreement included as Exhibit J.

**C-14. Warranties:** Vendor warrants that the product components or products that are defined as Vendor's responsibilities, when installed will be in good working order and will conform to the Vendor's official published specifications and the technical specifications of Exhibit A.

Vendor represents that the System will meet the technical specifications as defined in Exhibit A or as mutually agreed in writing. The start of the warranty period is upon successful completion of the Performance Period. Vendor is not responsible for System performance deficiencies that occur during unauthorized use or are caused by ancillary equipment not furnished by Vendor attached to or used in connection with the System; or for reasons beyond Vendor's control, such as (i) an earthquake, or other natural causes; (ii) COUNTY changes to load usage or configuration outside the Specifications; or (iii) any acts of parties, excluding subcontractors, who are beyond Vendor's control.

The Vendor Software is warranted during the Warranty Period in accordance with the applicable limited warranties shown below. In the event Vendor Software does not conform to these warranties, COUNTY must notify Vendor in writing no later than the expiration of the Warranty Period. Upon receipt of such notice, Vendor will respond to the warranty claim. If this response confirms a valid warranty claim, Vendor will (at its option and at no additional charge to COUNTY) repair defective Vendor Software, replace it with the same or equivalent product, or refund the price of the defective Vendor Software; and such action will be the full extent of Vendor's liability hereunder. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Vendor. Vendor shall also provide to COUNTY all available warranties for 3<sup>rd</sup> party products included in Vendor's Proposal.

Vendor Software is warranted at no charge to the COUNTY for one year following completion of the performance period for production use in accordance with the terms of this section, C-14, Warranties. After the expiration of this

period, COUNTY may obtain maintenance and support services. Maintenance charges, as defined in the contract shall not begin until the date of expiration of warranty period.

These warranties do not apply to: (i) defects or damage resulting from use of the Vendor Software in other than its normal and customary manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Vendor; (iv) defects or damage caused by COUNTY'S failure to comply with all applicable industry and OSHA standards.

**C-15. Product Support:** Vendor guarantees availability of long-term product support (availability of equipment and software maintenance service and upgrades) for all equipment and software leased or acquired under this contract for a minimum period of three (3) years following the date the Vendor provides written notification to the COUNTY that the equipment or software is out of production.

**C-16. Source Code:** Vendor shall establish an escrow account with a third party, and County may become a party to the escrow agreement upon payment of a separate service fee to the escrow service provider.

In the event Vendor fails to maintain an escrow agreement within which County may participate, Vendor will release the source code of the system to COUNTY under the following conditions. However, title to the source code will not pass to the COUNTY at any time.

- a. Entry of an order for relief under Title 11 of the United States Code; an assignment by Vendor for the benefit of its creditors; the appointment of a receiver or trustee in bankruptcy of Vendor's business or property; or action initiated by Vendor or a third party under state law involving Vendor's insolvency or the protection of or from its creditors; and the same has not been rescinded, discharged or terminated within thirty (30) days unless there would be prejudice to the COUNTY'S rights or interests under this agreement allowing this grace period. If there would be such prejudice, COUNTY shall be provided the source code immediately upon the occurrence of any of the above events.
- b. Vendor has ceased its business operations, or the sale, licensing, maintenance or other support of the software.
- c. Vendor shall provide written notice to COUNTY, within a reasonable time, if any of the events in parts (a.) or (b.) in this section has occurred.

**C-17. Independent Vendor:** The performance of this contract is at the Vendor's sole risk. The service or services to be rendered under this contract are those of an



independent Vendor who is not an officer, employee or agent of the COUNTY as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, the Vendor is acting as and assumes liability of an independent contractor as to any claims between COUNTY and the Vendor. The Vendor is solely liable for any workers' compensation coverage; social security, unemployment insurance or retirement payments; and federal or state taxes due as a result of payments under this contract. Any subcontractor hired by the Vendor shall be similarly responsible.

The parties will be acting in their individual capacities and not as agents, employees, partners, joint-venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be employees or agents of the other party for any purpose whatsoever. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

**C-18. Vendor not Federally Employed, Fair Charges:** Vendor is not currently employed by the Federal government, and the amounts charged will not exceed the normal charges for the type of services provided.

**C-19. Worker's Compensation:** The Vendor, its sub-contractors and agents, if any, and all employers working under this contract are either subject employers under the Oregon Worker's Compensation law and shall cover all subject workers pursuant to ORS 656.017, or be exempt under ORS 656.126. As a covered employer, Vendor shall provide Worker's Compensation benefits to workers performing work under this contract in accordance with Oregon law. Vendor shall require its sub-contractors and agents to comply with this law.

**C-20. Free From Tax Law And Discrimination Violations:** By execution of this contract, Vendor certifies under penalty of perjury that:

- a. To the best of Vendor's knowledge, Vendor is not in violation of any tax laws described in ORS 305.380(4); and
- b. Vendor has not discriminated against minority, women, or small business enterprises in obtaining any required subcontract.

**C-21. Employment Taxes and Workers' Compensation Payments:** Vendor is an independent Vendor and shall be responsible for any and all taxes or Workers' Compensation payments due as a result of this contract. Any sub-contractor or agent hired by Vendor shall be similarly responsible.

**C-22. Taxes - Federal and Local:** COUNTY will not be responsible for any taxes coming due as a result of this agreement, whether federal, state, or local. It is

agreed that the Vendor has anticipated these taxes and included them in the proposal.

**C-23. Safety Requirements:** Equipment, software and services shall comply with all Federal Occupational Safety and Health Administration (OSHA) and State of Oregon Electrical Safety Code requirements. Vendor shall also comply with all other applicable state and local code requirements.

**C-24. Governing Law:** The laws of the State of Oregon shall govern the validity, construction and enforcement of this Contract, as well as the interpretation of the parties' rights and duties without reference to conflicts of laws. The parties expressly agree that any action or proceeding involving the terms and conditions of this contract must be brought in the appropriate court of the State of Oregon for Lane County.

Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement.

The Vendor agrees that, during the performance of work under this contract, it will comply with all applicable provisions of the administrative rules, laws and constitution of the State of Oregon, and all applicable local rules, regulations, and ordinances of cities, counties, municipalities, and local taxing districts.

Vendor further agrees to comply with the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the Department of Health and Human Services issued according to that Act, and provisions of Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965, as amended. Vendor shall certify the existence of the Vendor's own equal employment opportunity programs in all non-exempt contracts between the Vendor and the COUNTY as provided in Title I, Part 60 of the Code of Federal Regulations.

**C-25. Lane Manual:** The applicable provisions of the *Lane Manual* setting forth standard provisions for public contracts (*Lane Manual, Chapter 21.130, Standard Provisions*) are hereby incorporated by this reference and as set forth *Exhibit I, Lane Manual, Chapter 21.130, Standard Provisions*.

**C-26. Prime Vendor Responsibilities:** Unless otherwise stated in the RFP, Vendor shall assume responsibility for delivery, installation and configuration, (unless the item is usually customer installed, and COUNTY is so notified in the proposal), and warranty and maintenance service of all software, and support services offered in the proposal, regardless of whether Vendor is the Vendor or the manufacturer, producer, or supplier of the equipment, software, or support services. A contract will be awarded to the prime Vendor or Vendors. If the prime Vendor is not capable of providing all goods or services, it is the prime Vendor's sole responsibility to form alliances with other firms to meet the requirements of the RFP RIS03/04-01. The prime Vendor will be responsible for

performance of all involved parties. The COUNTY reserves the right to approve subcontractors and any changes after the award of the contract.

**C-27. Insurance:**

- a. Insurance and Bonding: Vendor shall provide all insurance as stipulated in *Exhibit H, INSURANCE COVERAGES REQUIRED.*
- b. Certificate of Insurance: As evidence of the insurance coverage required by this contract, the Vendor shall furnish a certificate of insurance to:

LANE COUNTY INFORMATION SERVICES  
125 E. 8<sup>th</sup> Avenue  
Eugene, OR 97401

This certificate must specify as Additional Insured: State of Oregon, Lane County, its commissioners, agents, officers and employees with respect to the activities performed under this contract and must include a notice provision regarding cancellation. Insurance coverages required under this contract shall be obtained from insurance companies authorized to do business in the State of Oregon. If Vendor is self-insured under the laws of the State of Oregon, Vendor shall provide appropriate declarations of coverage.

- c. Continuation of Coverage: There shall be no cancellation, material change, reduction or exhaustion of aggregate limits, or intent not to renew insurance coverage without Vendor providing ten (10) days written notice to COUNTY. Should any policy be canceled before final payment by Lane County to Vendor and should Vendor fail to immediately procure other insurance as specified, Lane County reserves the right to procure such insurance and to deduct the cost thereof from any sum due Vendor under this contract.
- d. Responsibility for Payment of Damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of the Vendor's responsibility for payment of damages resulting from Vendor's operation under this contract.

**C-28. Indemnity:** Vendor agrees to indemnify, defend, and hold COUNTY, its Commissioners, agents, officers, and employees harmless from all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the negligence or wrongful misconduct of Vendor, its subcontractors, employees or agents in performing or failing to perform obligations covered by this agreement. COUNTY shall give Vendor prompt, written notice of any such claim, proceeding or suit and shall reasonably cooperate with Vendor in its defense or settlement of such claim or suit. The Vendor's financial responsibility will not exceed the initial purchase price (\$277,481.88). Vendor shall not be required to indemnify the

COUNTY to the extent the damage, loss or expense is caused by the COUNTY'S negligent or wrongful misconduct.

**C-29. Intentionally Deleted**

**C-30. Force Majeure:** Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure, meaning an event, third-party, or circumstance that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of the government, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, quarantine restrictions, unusually severe weather or any other similar cause. In every case of Force Majeure, the delay must be beyond the control and without the fault or negligence of the Vendor or the COUNTY. If the delays are caused by the default of a sub-contractor, and if such default rises out of causes beyond the control of both the Vendor and its sub-contractor, and without the fault or negligence of any of them, the Vendor will not be liable for non-performance or delays, unless the supplies or services to be furnished by their sub-contractors were obtainable from other sources in sufficient time to permit the Vendor to meet the required schedule.

Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

**C-31. Limitation of Liability:** Except for indemnification amounts for patent and copyright infringement, for personal injury, death, or property damage to the extent caused by Vendor, Vendor's total monetary liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the contract amount, except as provided in *Section C-29, Liquidated Damages*. Any liability of the COUNTY shall be limited to the lesser of the following amounts: this contract amount, Oregon Tort Claims Act, or Oregon Constitution, Article XI, Section 10, Limitations. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT NEITHER PARTY WILL BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF SOFTWARE, OR THE PERFORMANCE OF OBLIGATIONS BY EITHER PARTY PURSUANT TO THIS AGREEMENT.** This Limitation of Liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than two years after the accrual of such cause of action.

Vendor is not an officer, employee, or agent of COUNTY as those terms are used in ORS 30.265. Public liability and property damage insurance will be required if so specified in *Exhibit H, INSURANCE COVERAGES REQUIRED*, and in accordance with the requirements set forth therein.

- C-32. Waiver:** Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.
- C-33. Non-Assign:** This Contract shall not be sub-contracted or assigned without the prior written consent of all parties hereto.
- C-34. Successors in Interest:** The provision of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.
- C-35. Award to Foreign Vendor:** If the amount of this contract exceeds \$10,000, and if Vendor is not domiciled in or registered to do business in the State of Oregon, Vendor shall promptly provide all information relative to this contract required by the Oregon Department of Revenue to that Department. The COUNTY shall withhold final payment under this contract until Vendor has met this requirement.
- C-36. Maintenance Services:** During the term of this Agreement, Vendor shall provide the following maintenance services for equipment and software:
- a. Provision and/or installation of corrections of substantial defects in the equipment or software so that they will operate as described in the parties agreement;
  - b. Provision and/or installation of periodic updates of the software incorporating:  
(i) corrections of any substantial defects,(ii) fixes of any minor bugs, and (iii) at the discretion of the Vendor and subject to the maintenance contract, enhancements, new functionality, later versions and supplements;
  - c. Provision of any system documentation supporting a maintenance service performed; and
  - d. Telephone support for COUNTY problem/request reporting and resolution; and onsite support at the discretion of the Vendor.
- C-37. Conditions, Benefits:** Vendor may make the product and/or components available to any other state or local governmental jurisdiction as allowed by State

of Oregon law with similar terms and conditions for a period of twelve (12) months from the date the proposal was submitted. However, such purchases shall be accomplished by separate contracts between Vendor, in its own name. Any software, materials, equipment or services sold by Vendor for such agencies shall be ordered by, delivered to, and paid by the 3<sup>rd</sup> party entity, and any liability shall expressly be borne by the vendor or 3<sup>rd</sup> party entity, holding COUNTY harmless.

- C-38. Authority To Execute Agreement:** Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.
- C-39. Survivability:** Termination shall not affect the rights and obligations each party owed to the other prior to the termination date. In addition, the following provisions shall survive the termination or expiration of this agreement: Limitation of Liability, Disputes, Preservation of Vendor's proprietary rights, license of software as provided in *Section C-16, Source Code*; confidentiality and non-disclosure; patent, copyright, infringement; indemnity, hold harmless, and defense; legal remedies and damage limitations; and maintenance as provided in *Exhibit K, Maintenance Agreement*.
- C-40. Severability:** If any provision of this contract or any portion of a provision, is declared by a court of competent jurisdiction to be illegal, in conflict with any law, invalid or otherwise unenforceable, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- C-41. Termination:** This Agreement shall continue through the contract term until terminated as provided below. The parties may terminate this agreement, or any part of it, by mutual agreement or as provided in a. through d. below.
- a. Termination by COUNTY for Convenience. COUNTY may terminate this agreement, in whole or in part, for any or no reason on sixty (60) days written notice to Vendor. In the event of such termination for convenience, COUNTY shall immediately cease use of any software or other products provided by Vendor and shall comply with the obligations upon termination set forth in *Section C-41D, Obligations on Termination*. Subject to applicable limitations of liability as in Section C-31, COUNTY shall be liable for reasonable costs directly related to such termination. Vendor, upon notification, shall take all reasonable steps to minimize termination costs. If Vendor possesses any

advance payments made by COUNTY for services, software, products or equipment not yet provided, any sums owed by COUNTY shall be credited, and Vendor shall pay COUNTY any excess advance payments. The parties shall comply with Section C-41.d.i. & d. ii.

- b. Termination by COUNTY for Cause. If Vendor fails to achieve System Acceptance in accordance with this Agreement or otherwise breaches a material obligation under this Agreement, COUNTY may consider Vendor to be in default, unless COUNTY or a Force Majeure causes such failure. If COUNTY asserts a default, COUNTY will give Vendor written and detailed notice of the default and Vendor will have thirty (30) days thereafter to cure the default. If after following these default procedures, the Vendor has not cured the default COUNTY may terminate this Agreement, in whole or in part. It may also choose to extend the period to cure if the vendor, within the thirty (30)-day cure period, both provides the COUNTY with a plan of action acceptable to COUNTY and commences execution of the plan. COUNTY may withhold all monies due and payable to Vendor, under this agreement, until COUNTY accepts such a plan. These remedies shall be in addition to, and cumulative of, any other remedy available to COUNTY, and the exercise of this remedy by COUNTY shall not prejudice or impair the availability to COUNTY of any other remedy at law or in equity for breach of this Contract, subject to any contractual limitation of liability.
- c. Termination by Vendor. If COUNTY fails to pay any amount when due under this Agreement or otherwise breaches a material obligation under this Agreement, Vendor may consider COUNTY to be in default, unless Vendor or a Force Majeure causes such failure. If Vendor asserts a default, it will give COUNTY written and detailed notice of the default and COUNTY will have thirty (30) days thereafter to cure any monetary default (including interest). If after following these procedures, the COUNTY has not cured the default, the Vendor may terminate this Agreement. Vendor may also choose to extend the period to cure if the COUNTY, within the thirty (30)-day cure period, both provides the Vendor with a plan of action acceptable to the Vendor and commences execution of the plan. Vendor may stop work until it accepts the plan of action to cure a non-monetary default by COUNTY. This remedy shall be in addition to, and cumulative of, any other remedy available to Vendor, and the exercise of this remedy by Vendor shall not prejudice or impair the availability to Vendor of any other remedy at law or in equity for breach of this Contract, subject to any contractual limitations of liability.
- d. Obligations on Termination. Upon termination pursuant to a – c above, COUNTY expressly acknowledges and agrees that within thirty (30) calendar days following such termination, COUNTY shall certify and warrant to Vendor, that: (i) it has destroyed or returned to Vendor all and every part of the software and documentation and all copies thereof, and (ii) that it has complied with all other terms and provisions of this Agreement. Upon

termination, Vendor expressly acknowledges and agrees that within thirty calendar days following such termination, Vendor shall certify and warrant to COUNTY, that it has destroyed or returned to COUNTY all and every part of the confidential materials and all copies thereof.

Nothing in this Agreement shall prohibit the COUNTY from continuing to possess and use software, documentation or other equipment which are not subject of the partial termination.

- e. Payment/Financial Obligations Upon Termination. Upon termination, COUNTY shall pay to Vendor all amounts that have actually accrued or which are owing to Vendor as of the date of such termination in accordance with the schedules in this agreement and reasonable business judgment. In addition, Vendor shall reimburse COUNTY for any advance payments for services not rendered. The parties shall agree on a mutual settlement regarding any other payments owed either COUNTY or Vendor.

When the Agreement is terminated as in paragraphs C-41. a., b, or c. above, the parties are responsible for performing their obligations up to the date of termination. Vendor shall deliver all software, products, equipment, and services that it is required to provide up to the date of termination. COUNTY shall pay Vendor all amounts actually owed to Vendor as of the date of the termination, in accordance with the schedules in the Agreement as provided in Exhibit C, Payment Milestones.

**C-42. Good Faith Attempt to Resolve:** The parties agree to make good faith effort to resolve any dispute prior to or during the default process.

**C-43. Disputes:** Vendor and COUNTY will attempt to settle any claim or controversy between them arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The respective Project Managers will confer and attempt to settle a dispute. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. Absent a dispute handled in accordance with *Section C-41, Termination*, if cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Vendor and COUNTY within thirty days after notice by one of the parties demanding mediation on the conditions that: (i) The location shall be in Eugene, Oregon, (ii) Each party shall bear their own costs, witness fees, and attorneys fees, and (iii) Joint costs for the process (e.g. filing and mediation costs) shall be borne equally. Vendor and COUNTY will not unreasonably withhold consent to the selection of a mediator. The parties may postpone mediation until they have completed any mutually agreed upon specified, and limited discovery about the dispute.

Any claim relating to intellectual property and any claim that cannot be resolved between the parties through negotiation or mediation within two months after the



date of the initial demand for mediation shall then be submitted by either party to a court of competent jurisdiction in Lane County, Oregon unless otherwise agreed. Each party consents to jurisdiction over it by such a court. The use of mediation will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party. Either party may resort to the judicial proceedings described in this section before the expiration of the two-month, or other agreed, period if (i) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (ii) interim relief from the court is necessary to prevent serious and irreparable injury to such party or any of its affiliates, agents, employees, officers, suppliers, or sub-contractors.

**C-44. Notices:** Whenever under this Contract one party is required or permitted to give notice to the other, such notice shall be deemed given when received by personal delivery, courier or facsimile; or up to ten (10) business days after the date mailed by United States mail, certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Vendor:

Edward Colin	604/986-9941
President, FDM Software LTD.	604/986-7130 FAX
Suite 201, 814 W. 15 <sup>th</sup> Street	
North Vancouver, BC V7P1M6	

In the case of COUNTY:

Dara Boush	541/682-4003
AIRS Manager	541/682-9876 FAX
125 E 8 <sup>th</sup> Avenue	
Eugene OR 97401	

**C-45. Headings and Section References, Construction:** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

**C-46. Entire Agreement:** This Contract, including RFP RIS03/04-01, as modified by the Vendor's Proposal, and the Appendices attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, understandings or agreements, whether oral or written, relating to the subject matter hereof. All prior or contemporaneous representations, understandings or agreements, whether oral or written, that are not expressly set forth within the four corners of this Contract are hereby deemed waived, superseded and abandoned. The preprinted terms and conditions found on any COUNTY purchase order, acknowledgment or other form will not be considered an amendment or

modification of this Agreement, even if a representative of each party signs such document, unless explicitly otherwise agreed.

**C-47. Modifications and Amendments:** This Agreement may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have executed this contract on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**Company Name.**

**Lane County, Oregon**

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

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

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
County Administrator  
Title

\_\_\_\_\_  
Business ID Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM

Date \_\_\_\_\_ Lane County

\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

**EXHIBIT B  
BILL OF MATERIALS**

Item	Quantity	Unit Price	Purchase Agreement
<b>Software</b>			
<b>Total Concurrent users</b>	<b>30</b>		
Incidents (Fire/EMS) Modules (NFIRS and PCR Reporting)			\$38,668.50
Training Module			\$25,769.25
Inspection Module			\$32,760.00
Permit Module			included
Roster Module			\$32,760.00
Asset Management Module			\$25,769.25
<b>FDM "Core"</b>			
Facilities Management			included
Personnel			included
Property			included
Roster Sign In			included
Hydrants			included
Station Log			included
Public Education			included
Complaints			included
FDMTools Administrator Utility			included
FDMSecurity Utility			included
FDMeBiz Utility			included
FDMeSync Utility			included
FDMezScript Utility			included
FDMrb Utility			included
FDMImporter Utility			included
FDM DSM (Data Synchronization Module)			\$10,000.00
Motorola Premier CAD 6.x			included
Motorola Premier Mobile Data Computing (MDC) 5.x			included
PinPoint Sanitas Medical Billing			included
Medtronic Physio Control Lifepack			included
Zoll Data Control Patient Monitor			included
Mobiles, Beta option	51	\$1,000.00	\$51,000.00
Map (GIS) Interface, Beta option			\$9,754.88
<b>Software Subtotal</b>			<b>\$226,481.88</b>
<b>Services</b>			
Project Initiation (resources/project plan)	3	\$750.00	\$2,250.00
Ongoing Day to Day Project Management	10	\$750.00	\$7,500.00
Final Acceptance Project Analysis	2	\$750.00	\$1,500.00
Design Changes Requests	10	\$750.00	\$7,500.00
Ongoing Day to Day Implementation Support	20	\$750.00	\$15,000.00
<b>Services Subtotal</b>			<b>\$33,750.00</b>
<b>Training</b>			
Initial Set Up and Configuration	1	\$750.00	\$750.00
Administrators Training	10	\$750.00	\$7,500.00

**EXHIBIT B  
BILL OF MATERIALS**

Train The Trainer	6	\$750.00	\$4,500.00
<b>Training Subtotal</b>			<b>\$12,750.00</b>
<b>Conversion</b>			
Data Conversion	6	\$750.00	\$4,500.00
<b>Conversion Subtotal</b>			<b>\$4,500.00</b>
<b>Fire/EMS RMS Purchase Total</b>			<b>\$277,481.88</b>
<b>Options</b>			
Additional Mobile licenses		\$1,000.00	
Preventative Maintenance Module			\$25,769.25
Panasonic CF 29 rugged zed laptops		\$4,150.00	

**EXHIBIT C  
PAYMENT MILESTONES**

	<b>Amount</b>	<b>Percentage</b>
<b>Contract Signing</b>	\$41,622.28	15%
<b>Administrator Training</b> , Completion of Training classes	\$6,111.93	2%
<b>Incidents (Fire/EMS) Modules (NFIRS and PCR Reporting)</b> , Completion of Performance Period	\$28,647.20	10%
<b>FDMSecurity Master Supervisor And Workspace Supervisor Functionality</b> , Successful completion of functional testing.	\$13,874.05	5%
<b>Mobiles</b> , Completion of Performance Period	\$37,782.87	14%
<b>Map (GIS) Interface</b> , Completion of Performance Period	\$7,226.81	3%
<b>Inspection Module</b> , Completion of Performance Period	\$24,268.63	9%
<b>FDMTools Multi-Agency Functionality Available in Version 4.8</b> , Successful completion of functional testing	\$13,874.05	5%
<b>Training Module</b> , Completion of Performance Period	\$19,090.93	7%
<b>Asset Management Module</b> , Completion of Performance Period	\$19,090.91	7%
<b>Roster Modules</b> , Completion of Performance Period	\$24,269.94	9%
<b>Final System Acceptance</b>	\$41,622.28	15%
<b>System Total</b>	\$277,481.88	100%

**Notes:**

- 1) Project Management and Implementation Support are prorated across delivered modules, although there is a "not to exceed" amount, \$33,750 exclusive of travel expenses, that may, if not fully utilized, be a credit on the final payment.
- 2) Train the Trainer training, FDM DSM, and Data Conversion costs are prorated across delivered modules.
- 3) Third party items will be invoiced as purchased. Interface development, training, testing and other professional services required outside the scope of this agreement will be invoiced as work is completed at a rate of \$100/hour for a client service support and \$150/hour for custom programming. Maintenance and Support is to be invoiced annually on December 31 each year. Payment is due 30 days after invoice.
- 4) Reasonable expenses for travel and per diem related to training and project management shall be reimbursed as invoiced. Travel expenses may include lodging, meals, shipping, airfare, airport fees, parking, car rental, gas, and other

**EXHIBIT C  
PAYMENT MILESTONES**

reasonable expenses that may be necessary in connection with the duties performed under this Agreement by FDM.

All invoices submitted shall reference Lane County and shall be itemized according to the line items listed in this exhibit. All invoices shall include applicable taxes.

## **EXHIBIT J SOFTWARE LICENSE AGREEMENT**

FDM Software Ltd., an existing British Columbia corporation ("FDM" or "Licensor"), and Lane County, OR ("Licensee" or "Customer" or "County"), hereby enter into this Software License Agreement ("Agreement"). For good and valuable consideration, the parties agree as follows:

### **DEFINITIONS:**

"AIRS" means the Area Information Records System division of the Lane County Information Services department.

"AIRS Services" means computer services provided by AIRS that support judicial, public safety, and law enforcement functions.

"Documentation" means Product and Software Documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software, including all physical or electronic media upon which this information is provided.

"Lane County Purchase Contract" means the contract, including all exhibits, executed between Lane County, OR and FDM to which this Agreement forms Exhibit J.

"Software" means the Software that is owned by FDM and FDM's software suppliers. This includes any corrections, bug fixes, patches, maintenance updates, new version releases, improvements, developments, derivations, adaptations or other modifications to the Software.

"Subsystem" means FDM software modules or groups of software modules provided by Licensor, as described in the Lane County Purchase Contract.

"System" means collectively the software provided by Seller as a system as described in the Technical and Implementation Documents attached as exhibits to the Lane County Purchase Contract.

### **Grant of License and Right to Use**

FDM retains exclusive title and ownership of all copies of the Software licensed under this Agreement and hereby grants to Customer a personal, non-exclusive, non-transferable, royalty free, worldwide license in perpetuity to use one copy of the Software and related Documentation pursuant to the License terms within this Agreement. This license is granted to Lane County for the purposes of supporting the entities and agencies that receive AIRS services. The Licensee's use, as described in this Agreement, is intended to include use by all of the entities and agencies supported by COUNTY through AIRS, including all future entities and agencies that may arise from service realignments and organizational or political changes among the agencies and entities. All rights not specifically granted in this Agreement are reserved to FDM.

## **EXHIBIT J SOFTWARE LICENSE AGREEMENT**

### **Permitted Uses**

Customer may use the Software solely for the purpose of operating a fire records management and/or CAD system for use by the entities and agencies that receive AIRS services, and for such other additional purposes authorized by the license within the Lane County Purchase Contract to which this Software License Agreement is an exhibit. The Software may be installed on any and all workstations owned or controlled by the Customer or its Affiliates. The maximum number of concurrent users shall be Thirty (30). Additional users may be added by purchase of additional licenses from FDM according to the published price list. Customer acknowledges that users who attempt to use the Software may not be able to log on successfully when the maximum number of concurrent users is exceeded. Customer is authorized to make reasonable copies of the Software for backup, testing, training, system upgrades, and/or archival purposes.

### **Ownership**

COUNTY acknowledges that Licensor and its sub-licensors own all proprietary rights, including patent, copyright, trademark, trade secret, and other proprietary rights, in and to the Software and to any corrections, bug fixes, patches, maintenance updates, new version releases, improvements, developments, derivations, adaptations or other modifications, whether made by Licensor or any third party, and such will remain the exclusive property of Licensor or its sub-licensors, whether or not specifically recognized or perfected under the laws of the country where the Software is located. COUNTY agrees not to take any action that jeopardizes such proprietary rights or attempt to acquire any rights in Software.

### **Prohibitions**

Customer shall not sell, rent, lease, sub-license, lend, time-share or transfer, in whole or in part, or provide unlicensed third parties access to the prior or present versions of the Software, any updates, or to Customer's other rights under this Agreement. Customer shall not reverse engineer, de-compile, or disassemble the Software. Customer shall not alter or modify the Software except as authorized by this Agreement. Customer shall not make additional copies of the Software beyond those necessary for back-up purposes. Customer shall not remove or obscure any of the copyright or trademark notices. Customer may not copy the Documentation that accompanies the Software. Except as provided herein, no right is granted for the use of Software directly by any third person.

### **Assignment**

This Agreement shall not be subcontracted or assigned without the prior written consent of both parties. In the event of any assignment or subcontract, Licensor will remain responsible for all obligations as described in this Agreement. Customer shall not assign this license or any of Customer's rights without the prior written consent of FDM. Any purported assignment without such consent is null and void. As a condition to granting consent, FDM may require the payment of additional licensing fees. Should the Customer wish to transfer or install the Software to another user or location, FDM will provide a replacement copy, registered for the new user or location, for the then current transfer fee. Upon receipt of the replacement copy, Customer agrees to destroy all working and backup copies of the Software at the original site. It is understood that the authorized user may utilize the Software on a temporary basis at other locations without any



## **EXHIBIT J SOFTWARE LICENSE AGREEMENT**

additional fees or registration procedures, and such use will not be deemed to be a transfer of use as long as the licensed copy is not installed on more than one computer at a time.

### **Audit**

For each year of the term, Customer agrees to maintain, until three (3) years after expiration of this license, complete books, records and accounts relevant to computation and accounting relating to the authorized users of Customer and any payments payable pursuant to this license. Licensor shall have the right, at its sole discretion, cost and expense, to have an independent accountant conduct, during normal business hours and not more frequently than quarterly, an audit of the appropriate records of Customer to verify amounts paid or payable to Licensor. The auditor shall be bound to keep confidential the details of Customer's business affairs and to limit disclosure of the results of any audit to the sufficiency of the accounts and the amount, if any, of a payment adjustment that should be made. Customer may require that the persons conducting the audit sign confidentiality agreements as a condition of access to Customer's books. If the amounts due as determined by the audit are less than amounts paid by Customer, Customer will be invoiced for the difference. Any deficiency shall be payable within thirty (30) days of such invoice. If the deficiency is greater than five percent (5%) of the amount paid during the period under audit, Customer shall pay the reasonable expenses associated with such audit, in addition to the deficiency, plus interest.

### **Copies of the Software**

Customer may make such copies of the Software as are reasonably necessary for Customer for backup, testing, training, system upgrades, and/or archival purposes only.

### **Term**

The term of the license for the Software provided shall begin upon the effective date of this Agreement and continue until such time as the System ceases to be within the control of COUNTY or until otherwise terminated in accordance with the provisions of this Agreement.

### **Return of Software Upon Termination**

Upon termination of the license granted herein, the Customer shall, within ten (10) days, return all copies of the Software for which licenses have been terminated with a certified statement by an authorized agent of the Customer stating the returned copies constitute all of the Documentation possessed by the Customer.

### **Compliance with Laws**

The parties will comply with all applicable federal, state and local laws, regulations, and rules concerning performance under this Agreement.

### **Waivers**

Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

## **EXHIBIT J SOFTWARE LICENSE AGREEMENT**

### **Entire Agreement and Amendment**

The provisions of this Software License Agreement and the Lane County Purchase Contract, including amendments and Exhibits, apply to the County's use of Licensor's Software, and all are binding. Terms in the Lane County Purchase Contract related to the County's use of Software and this Software License Agreement shall be incorporated herein, and continue in force for as long as this Software License Agreement is in effect. The term "Vendor" shall be replaced with "Licensor" for purposes of this Software License Agreement. These terms include: C-7 (Vendor's Personnel); C-8 (Right to Interface); C-9 (Confidential Information); C-10 (Patent and Copyright Infringement); C-11 (Title and Risk of Loss); C-12 (Preservation of Vendor's Proprietary Rights); C-13 (License of Software); C-14 (Warranties); C-17 (Independent Vendor); C-19 (Workers' Compensation); C-20 (Free From Tax Law and Discrimination Violations); C-21 (Employment Taxes and Workers' Compensation Payments); C-22 (Taxes); C-23 (Safety Requirements); C-25 (Lane Manual); C-26 (Prime Vendor Responsibilities); C-27 (Insurance); C-28 (Indemnity); C-30 (Force Majeure); C-34 (Successors in Interest); C-36 (Maintenance Services); C-42 (Good Faith Attempt to Resolve); C-43 (Disputes), and any Exhibits relevant to interpret or implement these provisions.

### **Survivability**

The following provisions from the Lane County Purchase Contract shall survive the termination or expiration of this Agreement: C-9, C-10, C-12, C-28, C-34, C-42, and C-43. The surviving terms of the parties' Mutual Non-Disclosure Agreement, set forth in paragraph 15 of that agreement, shall survive the termination or expiration of this Agreement.

### **Modifications**

This Software License Agreement may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party, except that Licensor may modify this Agreement as necessary to comply with applicable laws and regulations.

### **Governing Law**

The laws of the State of Oregon shall govern the validity, construction and enforcement of this Agreement, as well as the interpretation of the parties' rights and duties without reference to conflicts of laws. The parties agree that the venue for any action or proceeding involving terms of this contract shall be an appropriate court in Lane County, Oregon.

### **Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.

### **Confidentiality**

Any confidentiality obligation under this Agreement shall be in substantial conformity with the parties' Mutual Non-Disclosure Agreement.

**EXHIBIT J**  
**SOFTWARE LICENSE AGREEMENT**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

**Lane County**

**FDM Software Ltd.**

\_\_\_\_\_  
William Van Vactor  
County Administrator

\_\_\_\_\_  
Edward Colin  
President

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

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

**EXHIBIT K  
MAINTENANCE AGREEMENT**

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**SOFTWARE SUPPORT AND MAINTENANCE OBLIGATIONS**

**FDM Software MAINTENANCE AGREEMENT**

THIS AGREEMENT for the support and maintenance of a fire records management software system is made by and between Lane County, a political subdivision of the State of Oregon, acting through the Area Information Records System (AIRS) Division of its Information Services department, hereinafter referred to as CUSTOMER, and FDM Software Ltd., an existing British Columbia corporation, whose address is 814 West 15th Street, Suite 201, North Vancouver, B.C., V7P 1M6 hereinafter referred to as "COMPANY" or "FDM".

**RECITALS:**

A. FDM has licensed the Customer ("License") to use certain modules of the Fire Department Records Management System called FDMWin4 more particularly described in Schedule B ("Software") and the Customer wishes to retain FDM to provide software maintenance and support services for the Software.

**Support Services**

1. Generally. During the term of this Agreement, FDM shall provide to Customer support and maintenance for the Software in accordance with the terms of this Agreement and the response time described in Schedule A attached. Support includes without limitation periodic review of current outstanding questions and usage issues, and the provision of new and upcoming releases of updates, customizations and enhancements relating to the modules of the Software that the Customer is licensed to use that are generally made available without additional charge to other users of the Software with similar support and maintenance contracts. The parties shall amend Schedule B from time to time in the event that Customer purchases the right to use additional modules of the Software. With respect to Customer data, FDM agrees to follow all applicable provisions within the Business Associate Agreement and the Non-Disclosure Agreement that are exhibits to the Purchase Agreement between FDM and Customer.
2. Exceptions. FDM is not responsible for maintaining unauthorized Customer modified portions of the Software or Customer data files, or for maintaining portions of the Software affected by unauthorized Customer modified portions of the Software. Customer agrees that the equipment on which the Software operates will be maintained in proper operating condition and be properly serviced by the manufacturer of the equipment, by a properly qualified service organization, or by properly qualified Customer personnel. 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 mutually agreed upon operating environment may be subject to billing at FDM

## **EXHIBIT K MAINTENANCE AGREEMENT**

Software's current standard time and material charges, except that Customer will not be subject to FDM charges for difficulties or defects that result from causes beyond the reasonable control of the Customer, provided that Customer acts diligently to remedy the cause or effect of such difficulties or defects to the extent the Customer is able. FDM acknowledges that Customer will be responsible for properly testing and applying routine virus updates and security patches without need for additional FDM notification. FDM acknowledges responsibility for testing FDM software updates prior to making them available to Customer. Customer acknowledges responsibility for testing FDM software updates before applying them to production Customer systems. For servers running FDM software, 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, Customer acknowledges responsibility for communicating with FDM prior to replacing a server on which FDM software is being used. For workstations running FDM software, Customer acknowledges responsibility to test new workstation configurations, software service packs, new releases or versions of software, and new software products prior to implementation.

3. **Limitations.** FDM may in 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 adequately trained staff to administer the Software. Prior to doing so, FDM will give Customer 45 days notice of its intention to do so and work with Customer to reduce the demand for telephone support.
4. **Term.** The term of this Agreement ends on December 31 in each year and will renew automatically unless (1) the Agreement is terminated in accordance with the provisions of the Termination section of this Agreement, or (2) FDM properly notifies Customer of changes to the Agreement as provided for by paragraph 5, Adjustments to Terms and Conditions. If FDM properly notifies Customer of such changes, the Agreement will terminate on December 31 prior to the year the adjustments take effect unless FDM and Customer agree to amend the Agreement in the manner provided for in paragraph 5, Adjustments to Terms and Conditions.
5. **Adjustments to Terms and Conditions.** The terms and conditions of this Agreement will remain unchanged until December 31, 2011 unless FDM and Customer agree to amend the Agreement. Thereafter, if FDM wishes to adjust the terms and conditions of this Agreement, FDM must provide written notice to the Customer prior to October 1 in any year for changes relating to the subsequent year. If FDM properly notifies Customer of adjustments to terms and conditions, the Agreement will terminate on December 31 prior to the year the adjustments take effect unless Customer and FDM agree to amend the Agreement. Any amendments to the Agreement must be in writing and must be executed by FDM and Customer in accordance with the provisions in the General section of this Agreement.

## **EXHIBIT K MAINTENANCE AGREEMENT**

### **Cost**

6. Annual Fee. After the initial warranty period has elapsed, Customer shall pay FDM an Annual Fee in January of the year for which support is being provided, or in the first month following the end of the warranty period if the warranty period ends during the year for which support is being provided. The initial Annual Fee will be as stated in Schedule B and will remain unchanged through December 31, 2011. Thereafter the Annual Fee may increase by up to 3% per year without amending this Agreement upon notification provided by FDM to Customer prior to October 1 in any year for changes relating to the subsequent year. An increase in the Annual Fee that exceeds 3% will require an amendment to this Agreement properly executed by Customer and FDM in accordance with the provisions in the General section of this Agreement. The Annual Fee for software covered under warranty for part of the year will be proportionately reduced. If Customer pays software license fees for additional FDM licenses or products, any associated increase in Annual Fee will be limited to 15% of the additional amount paid by Customer net of any Customer discounts for participation in FDM beta programs or other FDM discount programs. If Customer notifies FDM that use of FDM licenses or FDM licensed software is being discontinued by Customer, Customer will be eligible for a prorated refund of the Annual Fee for the discontinued period. Customer may re-instate the use of FDM licenses or FDM licensed software previously discontinued by paying FDM the prorated Annual Fee for the discontinued period. All requests by Customer for additional features or functionality that fall outside of FDM's ongoing policy of upgrading the Software will be quoted on separately.
7. 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 under this Agreement by FDM.

### **Customer's Obligation**

8. Access to Data and System. The Customer agrees to provide FDM with data dumps, as requested, access to the Software system, 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.
9. The Customer shall install and maintain for the term of this Agreement, a mutually acceptable method of remote computer access by FDM to the Software. The Customer shall pay for 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 and concurrence of Customer.
10. Customer must upgrade the Software in its entirety to a release version that is not more than one release version older than the most recent version of the Software (current release version is 4.7.x.x) unless otherwise mutually agreed. Release

## **EXHIBIT K MAINTENANCE AGREEMENT**

versions shall be determined by reference to the first decimal place of those whole numbered versions such as 4.6 and 4.7, without reference to subsequent decimal places such as 4.6.x.x or 4.7.x.x. FDM will not be obligated to provide support for release versions that are more than 1 release version older than the current unless otherwise mutually agreed.

11. Customer agrees that, subject to and in accordance with the Customer's internal policies and guidelines, it will upgrade the computer operating software, hardware and underlying database engines of the RMS 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 releases of the Software are compatible with outdated (exceeding 3 years from date of initial release) hardware, computer operating software or database engines.

### **Termination**

12. Customer may terminate this Agreement at any time and for any reason upon thirty (30) days prior notice to FDM.
13. In the event of a material default by Customer under this agreement, FDM may terminate this Agreement upon thirty (30) days prior notice to Customer, provided that Customer has been given 30 days notice to cure the default.

### **LIMITATION OF LIABILITY**

14. Customer agrees that it shall be responsible for the manner in which Customer personnel utilize the information produced by the FDM fire records management software system during times when life or property are at risk. Customer agrees to maintain a manual or mechanical system adequate to backup the equipment and software should they become unavailable for use, either planned or unplanned.
15. FDM's maximum liability to the customer for damages, losses, liabilities, claims, and causes of action shall not exceed, if the claim is covered by insurance, the amount payable pursuant to the policy of insurance. For any breach of this agreement the customer's exclusive remedy, and FDM's entire liability is, at FDM's option, either the correction of the defect in the software, re-performance of the service (if the breach arises out of FDM's service), or recovery by the customer of a part of the amount paid hereunder that reasonably relates to the breach, subject to the limitations set out below. FDM is not liable for any indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of revenues, profits, goodwill, use, data, failure to realize expected savings, or other intangible losses (even if FDM has been advised of the possibility of such damages), resulting from the customer's use of the software. Subject to applicable legal limitations, and with the exceptions stated below, neither party's liability to the other

## EXHIBIT K MAINTENANCE AGREEMENT

party in connection with any cause of action, costs or damages relating to this agreement shall exceed, 1) if the claim is covered by insurance, the amount payable pursuant to the policy of insurance or, 2) if the claim is not covered by insurance, the annual maintenance fee paid in the twelve month period preceding the event giving rise to the claim.

### General

16. This Agreement shall be binding upon the successors and assigns of both parties, provided, however that no assignment, delegation or other transfer shall be made by FDM without the prior written approval of the Customer, which approval shall not be unreasonably withheld.
17. No modification or amendment of this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound.
18. 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.
19. The following contract provisions from the Lane County Purchase Contract are incorporated by this reference, and expiration of that agreement shall not effect the continuing applicability of these provisions to this agreement, to the extent they specifically apply to support and maintenance obligations described in this Agreement: The term "Vendor" shall be replaced with "Company" for purposes of this Agreement; C-7 (Vendor's Personnel), C-8 (Right to Interface), C-9 (Confidential Communication), C-10 (Patent and Copyright Infringement), C-12 (Preservation of Vendor's Proprietary Rights), C-15 (Product Support), C-16 (Source Code), C-17 (Independent Vendor), C-18 (Vendor not Federally Employed), C-19 (Workers' Compensation), C-20 (Free From Tax Law and Discrimination Violations), C-21 (Employment Taxes and Workers' Compensation Payments), C-22 (Taxes – Federal and Local), C-23 (Safety Requirements), C-25 (Lane Manual), C-27 (Insurance), C-28 (Indemnity), C-34 (Successors in Interest), C-36 (Maintenance Services), C-40 (Severability), C-42 (Good Faith Attempt to Resolve), C-43 (Disputes).
20. Survivability. The following provisions from the Lane County Purchase Contract shall survive the termination or expiration of this agreement: C-9, C-10, C-12, C-16, C-28, C-34, C-40, C-42, and C-43. The surviving terms of the parties' Mutual Non-Disclosure agreement, set forth in paragraph 15 of that agreement, shall survive the termination or expiration of this agreement.



**EXHIBIT K  
MAINTENANCE AGREEMENT**

21. This Agreement shall be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties.
22. Any provision of this Agreement or part thereof found to be illegal or unenforceable shall be deemed severed, and the balance of the Agreement shall remain in full force and effect.
23. This agreement shall be effective upon completion of the warranty period of the first subsystem.

In witness whereof the parties have set their hands and seal.

FDM SOFTWARE LTD.

Lane County

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(Authorized signing officer)

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(Authorized signing officer)

Name and Title:

Name and Title:

Ed Colin, President

William Van Vactor,  
County Administrator

## **EXHIBIT K MAINTENANCE AGREEMENT**

### **SCHEDULE "A"**

"Priority A Issues" shall mean issues which include but are not limited to errors which cause loss of use of major features, file system corruption, data loss or corruption, cause a system to crash or hang and/or errors which affect a significant business opportunity for Customer. FDM will normally respond to a telephone request for Priority A Issues within one hundred and twenty (120) minutes of receipt of the call.

"Priority B Issues" shall mean issues that include but are not limited to issues in features of the product preventing normal operation.

"Priority C Issues" shall mean issues that include but are not limited to issues in non-critical features, for which a convenient or reasonable work around exists, or a feature which functions unexpectedly.

### **Response Time**

1. FDM shall provide support to Customer by telephone at substantially all times from 6:30 a.m. until 5:00 p.m. (Pacific Time) each day except Saturdays, Sundays, and legal holidays in the jurisdiction of the FDM. For calls received outside of these hours, FDM maintains an answering service, and will respond to Customer within two hours of the call being received by the answering service.

### **Procedure to Resolve Issues**

2. FDM will use its best efforts to evaluate Priority A Issues and provide a response to Customer within (1) business day of FDM's receipt of verbal, written or electronic notice thereof and to correct the Priority A Issue by Customer's reasonably requested date. If the Priority A Issue is not corrected by the requested date, FDM will then use best efforts to correct the Issue and will provide Customer reports of its efforts to correct Priority A Issue as requested by Customer, and at a minimum every (1) business day.

3. FDM will use its best efforts to evaluate Priority B Issues and provide a response to Customer within (3) business days of FDM's receipt of verbal, written or electronic notice thereof and to correct the Priority B Issue by Customer's reasonably requested date. If the Priority B Issue is not corrected by the requested date, FDM will provide Customer reports of its efforts to correct the Priority B Issue as requested by Customer.

4. FDM will respond to and correct Priority C Issues on an as time permits basis for inclusion in the next scheduled update to the Licensed Product.

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

# EXHIBIT K MAINTENANCE AGREEMENT

## SCHEDULE "B"

Item	Maintenance Cost = 15% of Price
<b>Software</b>	
Incidents (Fire/EMS) Modules (NFIRS and PCR Reporting)	\$5,800.28
Training Module	\$3,865.39
Inspection Module	\$4,914.00
Permit Module	
Roster Module	\$4,914.00
Asset Management Module	\$3,865.39
<b>FDM "Core"</b>	
Facilities Management	
Personnel	
Property	
Roster Sign In	
Hydrants	
Station Log	
Public Education	
Complaints	
FDMTTools Administrator Utility	
FDMSecurity Utility	
FDMeBiz Utility	
FDMeSync Utility	
FDMezScript Utility	
FDMrb Utility	
FDMImporter Utility	
FDM DSM (Data Synchronization Module)	\$1,500.00
Motorola Premier CAD 6.x	
Motorola Premier Mobile Data Computing (MDC) 5.x	
PinPoint Sanitas Medical Billing	
Medtronic Physio Control Lifepack	
Zoll Data Control Patient Monitor	
Mobiles, Beta option	\$7,650.00
Map (GIS) Interface, Beta option	\$1,463.23
<b>Software Subtotal</b>	<b>\$33,972.28</b>
<b>Options</b>	
Additional Mobile licenses	\$150.00
Preventative Maintenance Module	\$3,865.39

## EXHIBIT L MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure and Confidentiality Agreement (the "Agreement") is made and entered into by and between FDM Software Ltd. ("Contractor"), a British Columbia corporation, having its principal place of business at 814 West 15<sup>th</sup> Avenue, North Vancouver, BC V7P 1M6, Canada, ("FDM") and **Lane County, Oregon** ("County"), an entity having its principal place of business at 125 East Eighth Avenue, Eugene, Oregon 97401.

### DEFINITION

"Confidential Information" includes, but is not limited to, know-how, trade secrets, tools, methods, methodologies, techniques, designs, specifications, computer source code, customer lists, pricing information, marketing plans, personnel information, financial information and business strategies, drawings, data, software, together with other information which, a reasonable person would conclude, is intended to remain confidential, due to its nature or the circumstances under which it is disclosed, and any other non-public information that either party designates as proprietary and/or confidential pursuant to the terms herein. For purposes of this Agreement, Confidential Information does not include protected health information as defined by the Health Insurance Portability and Accountability Act (HIPAA). Any applicable HIPAA confidentiality requirements will be covered under a separate agreement.

1. Lane County is a public entity and is subject to all public records disclosure requirements of Oregon Public Records Law.
2. It is anticipated that each of the parties may disclose to the other various Confidential Information. Information that a party reasonably believes meets an Oregon Public Records exemption must be clearly and prominently labeled "Confidential Information" in order to be deemed proprietary.
3. Each party shall be a "Disclosing Party" with respect to Confidential Information, which that party discloses to the other and shall be a "Receiving Party" with respect to Confidential Information which that party receives from the other.
4. In consideration of the disclosure of Confidential Information, a confidential relationship is established between the parties.
5. The County is acting through the Area Information Records System (AIRS) Division of its Information Services Department. The County's use, as described in this Agreement, is intended to include County employees and agents, as well as the entities and agencies supported by Lane County through AIRS, including those referenced in Appendix B of the Lane County RFP for Fire and EMS Records Management System.
6. This agreement is intended only to facilitate the evaluation of information technology products, services, documents, and information during consideration of a future purchase, or for support of products and/or services already purchased. The County may be requested to disclose limited data which it maintains as a public entity in order for necessary evaluation or support functions to be accomplished. Unless specified otherwise in writing by the County, all County data stored on County computer systems accessible to Contractor in the performance of these activities shall be considered Confidential Information and subject to the disclosure restrictions stated within this Agreement. It is not the intent of the County to disclose any medical record information about County clients as part of any evaluation or use of information technology products and services.

## EXHIBIT L

### MUTUAL NON-DISCLOSURE AGREEMENT

7. A Disclosing Party shall not designate as Confidential Information any materials or information which the Disclosing Party does not with reasonable belief consider to be proprietary and/or confidential.

8. With respect to Confidential Information that the County provides to Contractor under this Agreement, Contractor shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information. With respect to Confidential Information that Contractor provides under or in contemplation of this Agreement, County's obligation to maintain confidentiality is subject to any disclosure obligations of Oregon Public Records Law, and if entitled to confidentiality, County shall: (a) restrict disclosure and use of the Confidential Information solely to those employees (including contract employees and consultants) of such parties with a need-to-know, and not disclose it to any other parties, (b) advise those employees and consultants of their obligation with respect to the Confidential Information, (c) not copy, duplicate (except as needed for backup, testing, training, system upgrades), or reverse engineer or compile anything provided hereunder, and (d) the County shall use Confidential Information provided by Contractor only for the purposes set forth in this Agreement. If County receives a request for disclosure of information labeled confidential by Contractor pursuant to Oregon Public Records Law or a subpoena, County will provide notice to Contractor before a response is due, and it shall be Contractor's responsibility to establish that such information is exempt from disclosure. Contractor shall defend, indemnify, and hold County harmless from any claim or administrative appeal, including costs, expenses, and any attorneys fees, related to a request to disclose information Contractor has labeled as "Confidential Information".

9. Upon the request of the Disclosing Party, the Receiving Party shall promptly deliver to the Disclosing Party any and all documents and Information, without retaining any copies or excerpts thereof, that contain or relate to the Disclosing Party's proprietary and confidential Information.

10. Nothing in this Agreement shall be construed to grant to the Receiving Party any ownership or other proprietary interest in the Confidential Information. The Receiving Party agrees that it does not acquire any title, ownership, or other intellectual property right or license under this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to enter into a purchase contract, subcontract or other business relationship with the other party.

11. A Receiving Party has no obligation with respect to any Confidential Information disclosed hereunder that: (a) was rightfully in Receiving Party's possession before receipt from Disclosing Party other than through prior disclosure by Disclosing Party; or (b) is or becomes a matter of general public knowledge through no breach of this Agreement; or (c) is rightfully received by Receiving Party from a third party without an obligation of confidentiality; or (d) is independently developed by Receiving Party; or (e) is disclosed to third parties by the disclosing party without restriction; or (f) is disclosed under operation of law, including Oregon Public Records law, governmental regulation, or court order, provided Receiving Party first gives Disclosing Party notice and a reasonable opportunity to secure confidential protection of such Confidential Information.

12. A Receiving Party shall not publicly disseminate evaluations or summaries of the Confidential Information of Disclosing Party without Disclosing Party's review of such evaluations or summaries and written authorization for their dissemination. All materials disseminated with such authorization shall bear the Disclosing Party's copyright notice and any other markings necessary to protect the Confidential Information.

## **EXHIBIT L**

### **MUTUAL NON-DISCLOSURE AGREEMENT**

13. Neither party will, without the prior written consent of the other and such approvals, governmental or other, as may be required, use or transmit, directly or indirectly, the Information or any portion thereof outside the United States.

14. This agreement may not be assigned by either party without the prior written consent of the other.

15. The term of this agreement shall be two (2) years from the date entered into unless subsequently incorporated, by mutual agreement, into the parties' purchase contract. The parties may extend this agreement, including incorporating any applicable changes, if a purchase contract is executed within two (2) years from the date entered into unless the parties' agree otherwise. This Agreement may also be terminated by either party for convenience upon thirty (30) days written notice. Termination of this Agreement for any reason shall not relieve a Receiving Party of its obligations hereunder, and all obligations under this paragraph, and paragraphs 1, 4, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20 shall survive the termination of this Agreement.

16. Except as otherwise expressly agreed by the parties in writing, upon termination of this Agreement, a Receiving Party shall (a) immediately cease using the Confidential Information of Disclosing Party, (b) promptly return to Disclosing Party all media received from Disclosing Party which contain the Confidential Information of Disclosing Party and destroy all other copies of such Confidential Information, and (c) promptly certify in writing Receiving Party's compliance with the terms of this Article.

17. Contractor agrees to indemnify, defend, and hold County, its Commissioners, agents, officers, and employees harmless from all damages, losses and expenses and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the negligence or wrongful misconduct of Contractor, its subcontractors, employees or agents in performing or failing to perform obligations covered by this agreement.

18. Subject to the limitations of the Oregon Tort Claims Act and Article XI, Section 10 of the Oregon Constitution, County agrees to indemnify, defend, and hold Contractor, its agents, officers, and employees harmless from all damages, losses and expenses and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the negligence or wrongful misconduct of County, its officers, agents, or employees in performing or failing to perform obligations covered by this agreement.

19. This Agreement supercedes any prior oral or written understanding with respect to the exchange and protection of confidential information. Except if the parties mutually agree to incorporate this agreement into a purchase contract, this Agreement contains the entire understanding of the parties with respect to its subject matter. In such case, any additional terms related to exchange and protection of confidential information that are included in a purchase contract shall be binding. No modification, amendment, or waiver thereof shall be effective unless in writing and signed by both parties.

20. This Agreement shall be governed in all respects by the laws of the State of Oregon. The parties agree to the exclusive jurisdiction of the courts of the State of Oregon, and specifically agree that any action or proceeding involving a claim arising from this agreement must be brought in the appropriate court in Lane County, Oregon.

21. The provisions of Lane Manual 21.130, setting forth standard public contracting provisions, are hereby incorporated by this reference.

**EXHIBIT L**  
**MUTUAL NON-DISCLOSURE AGREEMENT**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

**Lane County**

**FDM Software Ltd.**

\_\_\_\_\_  
William Van Vactor  
County Administrator

\_\_\_\_\_  
Edward Colin  
President

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

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