

CONTRACT AMENDMENT

CITY OF TUCSON BUSINESS SERVICES DEPARTMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: (520) 837- 4125
DAN.LONGANECKER@TUCSONAZ.GOV
ISSUE DATE: 06/08/2021

CONTRACT # 161436-07
CONTRACT AMENDMENT NUMBER: ONE (1)
PAGE 1 of 2
DL/jp
CONTRACT OFFICER: DAN LONGANECKER, CPPB

Energy Performance Contracting Services

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM ONE (1): RENEWAL

In accordance with Contract Special Terms and Conditions, Section 03, "Term and Renewal", the City hereby exercises its option to renew the contract for an additional five (5) year period from **October 20, 2021** through **October 19, 2026**.

ITEM TWO (2): PRICE ADJUSTMENT

In accordance with Contract Special Terms and Conditions, Section 03, "Term and Renewal", the City hereby accepts the Terms of the Proposed Price Adjustment ([Form 2](#)), as attached, herein.

The Terms of Pricing will be implemented per the ranges outlined in the attached, ([Form 3](#)) Sample Agreement.

END OF AMENDED ITEMS

CONTRACT AMENDMENT

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ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR: McKinstry Essention LLC

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF
AND UNDERSTANDING OF THE ABOVE AMENDMENT

Bryan Hanson
Digitally signed by Bryan Hanson
DN: C=US, E=bryanh@mckinstry, O=RKY
Region, OU="McKinstry Essention, LLC.",
CN=Bryan Hanson
Date: 2021.08.23 13:30:00-06'00'
Signature of person authorized to sign Date

Bryan Hanson - Regional Director
Name and Title (typed or printed legibly)

McKinstry
Company Name

16025 Table Mountain Pkwy, #100
Address

bryanh@mckinstry.com
Email Address

Golden CO 80403
City State Zip

Contact information for Sales/Account
Representative for daily business operations:

Kreischer Davis - Account Executive
Name and Title (typed or printed legibly)

602-402-9886
Phone Number

kreischerd@mckinstry.com
Email Address

CITY OF TUCSON:

THE ABOVE REFERENCED CONTRACT AMENDMENT
IS HEREBY EXECUTED THIS 23rd DAY
OF August, 2021, AT TUCSON, ARIZONA.

Dan Longanecker for
Director of Business Services and not personally

Form: 2

Pricing

Form 3: Pricing

Instructions: Complete the pdf form. Answer "N/A" or "none" if applicable.

INVESTMENT GRADE AUDIT (IGA)

The City is requesting a price-per-foot for investment grade audit service for projects that require a detailed audit or IGA before price and savings numbers can be finalized. The following rates and charges are hereby proposed for IGAs:

\$ per square foot

n/a

If offering IGA services, please enclose a sample IGA agreement with proposal that is representative of the typical IGA your firm will offer.

Enclosed

SPACE UTILIZATION ASSESSMENTS

The City is requesting a price-per-foot for space utilization assessment service. The following rates and charges are hereby proposed for space utilization assessments:

\$ per square foot

n/a

If offering space utilization assessment services, please enclose a sample agreement with proposal that is representative of the typical space utilization assessment your firm will offer.

Enclosed

BUILDING, EQUIPMENT AND SYSTEMS CONDITION ASSESSMENT

The City is requesting a price-per-foot for condition assessment services. The following rates and charges are hereby proposed for condition assessments:

\$ per square foot

n/a

If offering condition assessment services, please enclose a sample condition assessment agreement with proposal that is representative of the typical condition assessment your firm will offer.

Enclosed

COMBINED ASSESSMENTS

The City is requesting a price-per-foot for firms able and willing to provide combined energy, space and condition assessments. The following rates and charges are hereby proposed for combined assessments:

\$ per square foot

n/a

Comments regarding combined assessments:

If offering combined assessments, please enclose a sample combined assessment agreement with proposal that is representative of the typical combined assessment your firm will offer.

Enclosed

ESCO MARKUP FEES

The City is requesting Open Book Pricing for the implementation phase of this project. If selected to implement Energy Conservation Measures (ECM's) eligible for funding and/or any additional ECM's, the above respondent will assess the following overhead and profit markup percentages:

Overhead %

Profit %

n/a

Will your firm provide basic consultations, initial walk-through audits, and draft cost analyses at no charge to the City?

Yes

No

Comments

* McKinstry is proposing a range of cost for this activity to be negotiated based on the scope and size of the audit. A small, single building audit would fall at the higher end of the cost range, while large square footage (multiple properties bundled into a single audit) would fall at the lower end of the cost range.

Form: 3
Sample Agreement



Client Name

Facility Condition Assessment

CITY, STATE

DATE

FOR THE
LIFE OF
YOUR
BUILDING

Client Name

FCA Proposal

SCOPE OF WORK

McKinstry has assembled a best-in-class team that is fully resourced, trained, and ready to execute an extremely detailed and accurate in-depth assessment. Our approach will be informed by decades of team member and company experience. We will spend the time needed to analyze every aspect of your facilities and create a multi-year roadmap articulating the condition, cost, risk, and need for **CLIENT NAME** to utilize for years to come.

Our FCA process includes both quantitative and qualitative assessments. The qualitative assessment incorporates professional experience and first-hand knowledge derived from site assessments of building elements. Quantitative assessment includes capture of field data for all MEP equipment; and integration with industry data regarding equipment and facilities lifecycle and cost. Our meticulous, comprehensive approach to combining expertise, intelligence, data and analytics leads to a robust, reliable determination of facility condition.

Using non-invasive, non-destructive testing and observation methods our FCA process consists of five key components:

1. DOCUMENTATION REVIEW AND INTERVIEWS WITH KEY ON-SITE PERSONNEL
(Facility Assessment Planning)

The FCA team will review available documents to familiarize themselves with the facility and to verify the accuracy of information collected versus existing. Interviews with on-site occupants and maintenance staff is then performed to gather critical information on historic performance and known deficiencies.



2. WALK-THROUGH SURVEY BY TEAM OF FIELD OBSERVERS REPRESENTING KEY DISCIPLINES
(On-site Facility Condition Assessment)

The walkthrough includes:

- a. Description of the building system;
- b. Determination of the estimated remaining life of each building system, and establish an overall score for the entire building;
- c. Identify major building and maintenance deficiencies (backlog maintenance) likely to be addressed over a time period established by the **client**, but not less than 10 years, and
- d. Identify and document specific deficiencies, and provide recommended methods for repairing/replacing and the associated costs.



Scoring is measured in several ways. Based on our understanding of the facilities and interviews with staff, we obtain a criticality rating for each building system or piece of equipment. Secondly, we determine if the “condition age” of the systems by identifying any deferred maintenance or lack of preventative maintenance (The “condition age” is

Client Name

FCA Proposal

not necessarily the real age of the system, for example, if a 5-year-old boiler has never been maintained, it's "condition age" may be 10 years old). Using the "condition age," we provide an expected remaining life of the system. Taking all of the ratings into consideration, a score is determined and can be used for repair or replacement prioritization.

3. *PREPARE REALITY-BASED CONSTRUCTION COSTS ESTIMATES AND ACTION TO ADDRESS DEFICIENCIES*

(Analysis of Facility Condition Assessment Information)

Utilizing our team's experience with all of the building systems, cost data, and past experiences, an opinion of probable cost will be developed for each element within the report to assist in establishing appropriate repair budgets to be used in determining the Net Present Value of the Asset. Depending on the complexity of a given building and the corresponding condition, we have a professional cost estimator who can provide line item breakdowns of materials and labor anticipated for repairs along with summaries of assumptions. Additionally, our goal in cost estimation is not to simply provide the owner with a list of potential projects, but potential recommendations and solutions.



4. *PREPARE FACILITY CONDITION ASSESSMENT REPORT*

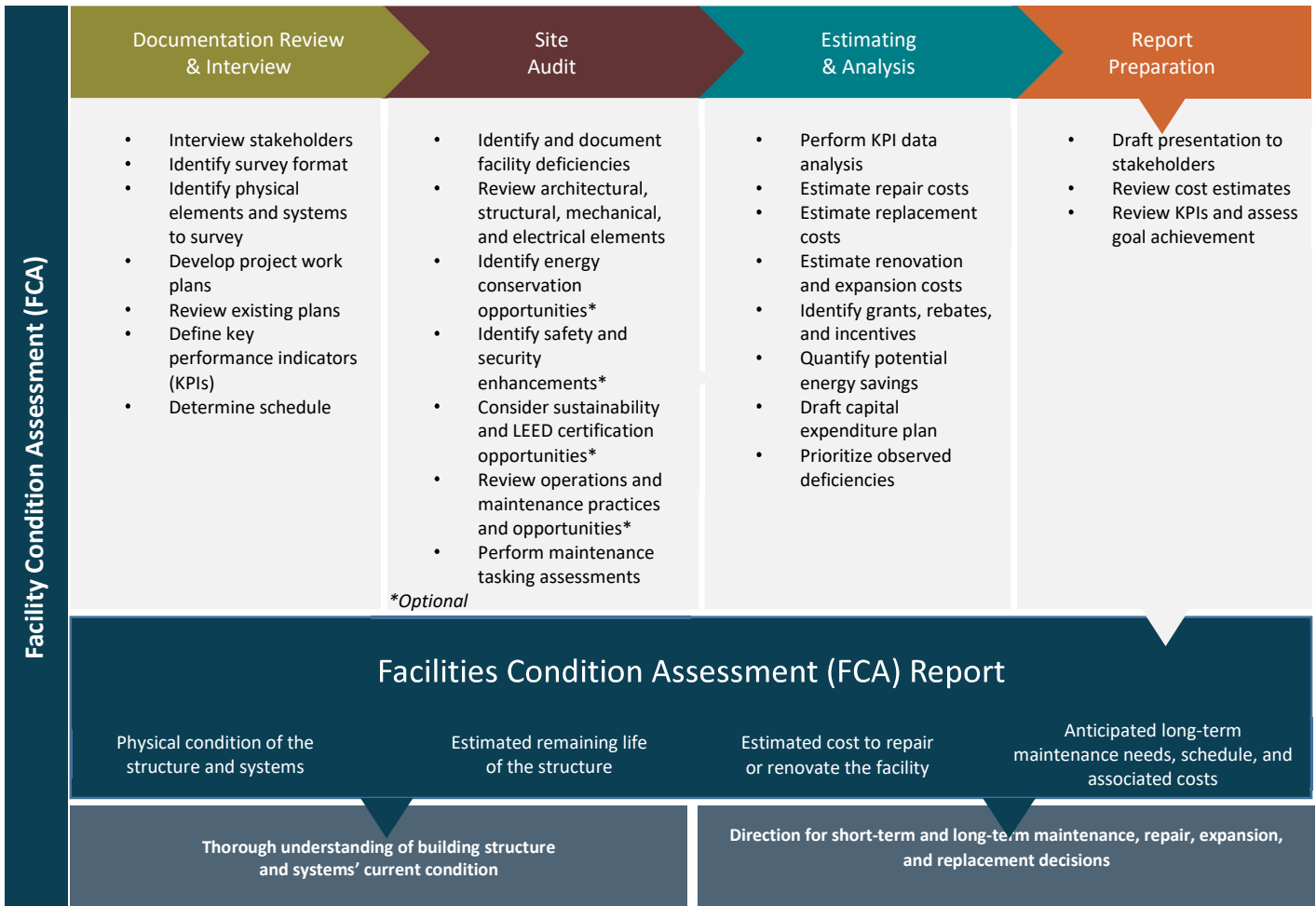
We then compile all field observation reports, along with documented interviews into a final working presentation document.



5. *PROJECT OUTCOMES & INTEGRATION*

Findings will be summarized and prepared for presentation to **client** staff and necessary personnel for review and discussion of report findings. A presentation meeting will provide an opportunity to answer questions regarding report findings, methodology and opportunities within the FCAs.





FCA Deliverables

FCA Visualization Tool – integration of asset/inventory data

FCA Reports – as described above

Asset Management Workbook

Primary MEP System QR Tagging [OPTIONAL, ADDED PRICE]

Communication Tools

To make data even more actionable, McKinstry will provide access to our proprietary software tool Reveal™ which enables visualization of collected facilities data. Reveal™ is an online, interactive data visualization tool that gives decision makers the ability to navigate through their portfolio from top to bottom, plan multiple scenarios for funding and replacement, and communicate priorities and plans to stakeholders.

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Visualization – Data visualization allows interaction with data and ensures your team can use the insights from an FCA to make decisions focused on reaching long-term goals. Our tool enables you to sort by system and location for side-by-side system comparisons to aid in project prioritization and asset management.

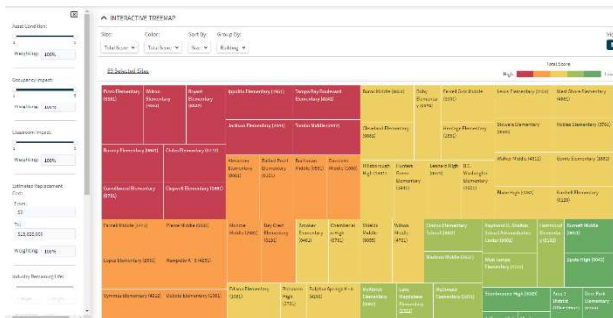


Figure 1 – Visualize selected buildings and/or systems in the portfolio and compare across multiple parameters.

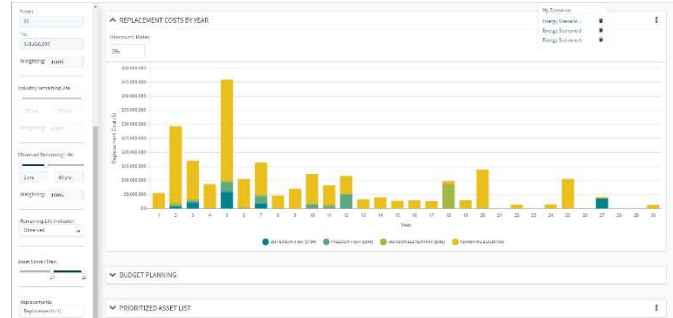


Figure 2 – See the expected capital needs for selected buildings and/or systems based on observed data.

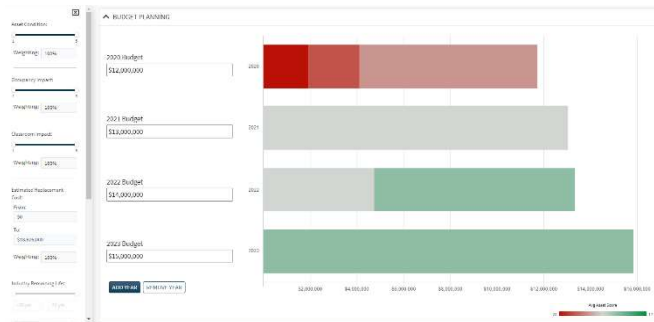


Figure 3 – Align annual capital budget amounts with asset priorities to create actionable plans with specific assets.

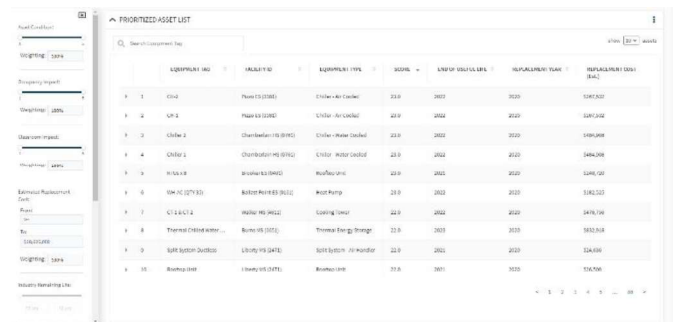


Figure 4 – Save the scenario to share with other users or export the asset list and data to .csv for use in third-party software.

Training – McKinstry will provide training specific to visualization, focused on development of scenario analyses and report generation.

Data Ownership – All data collected by McKinstry will be stored in a central database for use in capital planning. Data is owned by **CLIENT NAME** and is transportable to any compatible format or application.

Client Name

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Fee/Cost Proposal

McKinstry will bill our services on a time and material basis per the “Technical Services Billable Rates” schedule and the agreed upon scope of work for the total amount shown below.

Facility Condition Assessment \$0

ASSUMPTIONS

- Work will be executed during normal business hours; Monday-Friday 7am-5pm.
- Client staff and vendors will work with McKinstry to assist with information gathering and building access to allow for an effective and valuable delivery of our scope of work.
- Client will provide McKinstry access to their BAS and CMMS systems.

EXCLUSIONS

- Add exclusions.

Accepted By:

CLIENT NAME

MCKINSTRY ESSENTION, LLC

Name:

Name:

Signature

Signature

Date

Date



Client Name

FCA Proposal

Facility Assessment Billable Rates*

COMMISSIONING

| | |
|----------------------------------|-------------|
| Commissioning Technician | \$115.00/Hr |
| Commissioning Specialist..... | \$125.00/Hr |
| Commissioning Engineer | \$145.00/Hr |
| Sr. Commissioning Engineer | \$175.00/Hr |
| Commissioning Lead..... | \$175.00/Hr |
| Program Manager..... | \$185.00/Hr |
| Sr. Program Manager..... | \$200.00/Hr |

FACILITY OPERATIONS

| | |
|---|-------------|
| Facility Operations Specialist..... | \$125.00/Hr |
| Facility Operations Consultant..... | \$145.00/Hr |
| Senior Facility Operations Consultant | \$175.00/Hr |
| Program Manager..... | \$185.00/Hr |
| Sr. Program Manager..... | \$200.00/Hr |

TECHNOLOGY SOLUTIONS

| | |
|---|-------------|
| Technology Solutions Specialist..... | \$125.00/Hr |
| Technology Solutions Engineer..... | \$145.00/Hr |
| Senior Technology Solutions Engineer..... | \$175.00/Hr |
| Lead Technology Solutions Engineer | \$175.00/Hr |
| Program Manager..... | \$185.00/Hr |
| Sr. Program Manager..... | \$200.00/Hr |

OPERATIONS, ADMINISTRATION & SUPPORT SERVICES

| | |
|-----------------------------------|-------------|
| Business Operations Analyst..... | \$135.00/Hr |
| Safety Engineer | \$165.00/Hr |
| Building Data Engineer | \$170.00/Hr |
| Program Manager..... | \$185.00/Hr |
| Sr. Program Manager..... | \$200.00/Hr |
| Operations Manager..... | \$215.00/Hr |
| Project Director | \$225.00/Hr |
| Account Management Director | \$245.00/Hr |
| Regional Director | \$245.00/Hr |

*A 3% escalation will be taken into account for years subsequent to the 2021 rates shown above to account for inflation



Client Name

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Terms and Conditions

PERFORMANCE OF WORK

McKinstry shall perform the scope of work (“Work”) specified herein. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform any and all aspects of the Work.

PAYMENTS

Customer shall pay McKinstry the compensation specified herein (“Price”) for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within fifteen (15) days of receiving an invoice. McKinstry will be entitled to interest at the rate of 1.5 percent per month on all sums overdue and unpaid from the date due.

WARRANTIES

Customer shall receive a one (1) year warranty that covers labor and materials provided by McKinstry as part of the Work. This warranty commences on the date that the portion of the Work warranted is substantially complete. However, McKinstry makes no warranty whatsoever regarding components of the Work provided by third parties, and in such case the terms of the third party’s warranty, including manufacturers’ warranties, if any, shall apply between Customer and the third party. The warranties in this section are exclusive and in lieu of all other warranties, whether express or implied.

TERMINATION

Either Party may terminate this agreement upon fifteen (15) days written notice to the other Party. In such case, the rights and obligations of each Party that arose prior to the termination date shall survive such termination.

DISPUTES

In case of dispute between the Parties, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation, and the Parties have not agreed to extend such date, then the Parties shall pursue mediation. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, then either Party may pursue arbitration. *No litigation will be commenced by either Party unless all of the foregoing steps have been pursued to completion.*

CHOICE OF LAW, VENUE

The validity, interpretation, and performance of this agreement shall be governed by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

FORCE MAJEURE

Neither McKinstry nor Customer shall be considered in breach of this agreement to the extent that the Party’s performance is prevented by an event or events that are beyond the control of such party, including but not



Client Name

FCA Proposal

limited to acts of God, fire, earthquake, flood, storm, war, rebellion, revolution, insurrection, riot, strike, nuclear contamination, and/or acts or threats of terrorism.

NO WAIVER

No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

INTELLECTUAL PROPERTY

Intellectual property provided by McKinstry to Customer as part of the Work are instruments of service owned by McKinstry and are not “work made for hire” as such term is defined under U.S. copyright law. When the Work is performed to completion, McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of the Work.

DAMAGES LIMITATION

Neither party shall be liable to the other party for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, arising out of or relating to this agreement, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. Furthermore, the total aggregate liability of either party, under any theory, is limited to the agreement price.

INDEMNIFICATION

McKinstry shall indemnify and hold harmless Customer from and against all third-party claims, damages, losses and expenses for bodily injury, sickness, disease, or death or destruction of tangible property, directly arising from McKinstry’s performance of the Work, but only to the extent caused by the negligent acts or omissions of McKinstry.

SEVERABILITY, SURVIVAL

If any portion of this agreement shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the agreement shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties’ intentions.

AMENDMENT

This agreement may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

COMPLETE AGREEMENT

This agreement, including the exhibits attached hereto, is a fully integrated agreement. Any legal terms and conditions appearing elsewhere in this agreement shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing numbered list. All previous agreements between McKinstry and Customer as to the Work are superseded by this agreement.



Client Name

FCA Proposal

CLARIFICATIONS

Use of the cloud-based Reveal™ software service is provided for the term of this contract and will terminate at its conclusion.

CLIENT has requested McKinstry's assistance to provide technical support, service and/or analysis (herein "Work") through a remote connection to the Client's intelligent building management system. To provide this Work, the Client understands and acknowledges that they will be providing McKinstry with access to the Client's network as reasonably required to perform the service.

The use of this access is in accordance with the following disclaimer. By accepting this, the Client acknowledges that they are solely responsible for safeguarding the Client's own information systems. McKinstry relies on the Client's knowledge of their own internal systems to determine the appropriateness of the access granted and to monitor the system as appropriate. McKinstry has no access to or knowledge of the Client's networks, systems, and/or security protocols and has no practical way of monitoring the operational activities of the computer systems or network so cannot be held responsible for the performance therein. Specifically, the:

1. Client agrees to assume all responsibilities for the operations and security of the network and systems.
2. Client agrees to release and hold harmless McKinstry from any and all liability associated with the access and acknowledges also that McKinstry service offers no explicit or implied warranty or guarantee regarding the network access.
3. Client acknowledges and agrees that McKinstry cannot warranty and/or guarantee the safety of the network, software, systems, data, data exchange or other information.
4. Client acknowledges and agrees that McKinstry will not be responsible for loss of data or loss of use for the network. McKinstry strongly advises that Client safeguard critical data by backing up said data prior to any services performed by McKinstry.
5. Client acknowledges and understands that Work may be subject to limitations, security risks, delays, and other problems inherent in the use of the internet and electronic communications. McKinstry is not responsible for any delays, delivery failures, security breaches or other damage resulting from such problems. The Work contains technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the Work could lead to death, personal injury, or severe physical, property or environmental damage.
6. The client acknowledges and agrees that in regard to this agreement, the entire liability under any provision of this agreement shall be limited to the amount actually paid by Client for the Work.

Payment for the service will be invoiced annually in advance of the year that service is provided. Should the Client wish to end the service prior to the end of the contract they must provide McKinstry with written notice. Upon receipt of the request to terminate McKinstry will discontinue the clients use of the service. Client forfeits any remaining time already paid for, McKinstry will not provide a refund for any time that was invoiced and paid for that the client does not use.

Reveal™ and related sections may be subject to limitations, security risks, delays, and other problems inherent in the use of the internet and electronic communications. McKinstry is not responsible for any delays, delivery failures, security breaches or other damage resulting from such problems. McKinstry cannot warranty and/or guarantee the safety of software, systems, data, the data exchange or other information affected by 3rd parties.



Client Name

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The work contains technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the work could lead to death, personal injury, or severe physical, property or environmental damage. McKinstry does not warrant that the use of the service will be uninterrupted or error free.

As McKinstry does not know of; have the ability to mitigate; or even insure against certain damages, the parties agree that McKinstry will not be responsible for consequential, indirect, incidental or similar damages or losses, including loss of profits or loss of use arising out of or relating to Reveal™, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. For all damages or losses related to Reveal™, the aggregate liability of McKinstry shall be no greater than the value paid for the service.

CLIENT will: 1) be responsible for all user's compliance with this agreement in conjunction with the user's compliance with the services; 2) be responsible for the accuracy, quality, appropriateness and legality of any of **CLIENT** or their related user content; 3) use commercially reasonable efforts to prevent unauthorized access to or use of the services and notify McKinstry promptly of any such unauthorized access or use; 4) use the services only in accordance with the documentation and acceptable use policies and applicable laws; 5) and be responsible for appropriately obtaining and maintaining all environments or services needed to access and use the service, including but limited to computer hardware, software, network, internet access services, and related network security resources, including preventative maintenance, data security and backups.

CLIENT will not: 1) distribute, license, loan, or sell Reveal™ or other content that is contained or displayed in it; 2) modify, alter, or create any derivative works of the Reveal™ application; 3) reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code from Reveal™; 4) remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the service.

McKinstry will collect, use and process **CLIENT** data in accordance with McKinstry's Reveal™ Privacy Policy published at https://reveal.mckinstry.com/privacy_policy

The Client's general access to the Reveal™ service, or any subsection of, is made pursuant to the Reveal Terms of Service published at https://reveal.mckinstry.com/terms_conditions

