

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**AGENDA DATE:** March 28, 2023  
**PUBLIC HEARING DATE:** NA

**CONTACT PERSON(S) NAME AND PHONE NUMBER:**

Maria O. Pasillas, Tax Assessor & Collector, (915) 212-1737  
K. Nicole Cote, Managing Director (915) 212-1092

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** No. 6 – Set the Standard for Sound Governance and Fiscal Management

**SUBGOAL:** 6.11 – Provide efficient and effective services to taxpayers

**SUBJECT:**

That the City Council ratify the award of Payment Processing Lockbox, Solicitation No. 2017-483 to Data Business Equipment Inc. and that the City Council accept pricing for Maintenance and Support for an additional three-year period for a total amount of \$44,535.00. The terms and conditions of the ratified award will remain unmodified including the ability to terminate the Maintenance and Support Agreement with thirty days' notice. The City shall review the Award annually prior to the new fiscal year and terminate the Award in the event adequate funding is not allocated.

**BACKGROUND / DISCUSSION:**

An in-house lockbox allows the Tax Office to process mail payments locally and more efficiently year-round.

**SELECTION SUMMARY:**

NA

**CONTRACT VARIANCE:**

NA

**PROTEST**

NA

**PRIOR COUNCIL ACTION:**

On May 30, 2017 City Council approved the award of contract 2017-483 to Technique Data Systems, Inc. for a five (5) year term for at total amount of \$146,665.00.

**AMOUNT AND SOURCE OF FUNDING:**

Amount: \$44,535.00

Funding Source: Enterprise Funds – Data Processing

Account: 206-3700-19040-522290

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?  X  YES   NO**

**PRIMARY DEPARTMENT:** Tax office

**SECONDARY DEPARTMENT:** Purchasing & Strategic Sourcing

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

Sheryl R. Mack for Maria O. Pasillas  
Maria O. Pasillas, Tax Assessor & Collector

**COUNCIL PROJECT FORM  
(CONTRACT RATIFICATION)**

\*\*\*\*\***POSTING LANGUAGE BELOW**\*\*\*\*\*

Please place the following item on the **REGULAR** agenda for the Council Meeting of **MARCH 28, 2023.**

**STRATEGIC GOAL: No 6: Set the Standard for Sound Governance and Fiscal Management**

This linkage to Strategic Plan is subsection 6.11 – Provide efficient and effective services to taxpayers

Request that the City Council ratify the award of Payment Processing Lockbox, Solicitation No. 2017-483 to Technique Data Systems, Inc. and that the City Council accept pricing for Maintenance and Support for an additional three-year period for a total amount of \$44,535.00. The terms and conditions of the ratified award will remain unmodified including the ability to terminate the Maintenance and Support Agreement with thirty days' notice. The City shall review the Award annually prior to the new fiscal year and terminate the Award in the event adequate funding is not allocated.

\*\*\*\*\***ADDITIONAL INFO BELOW**\*\*\*\*\*

## **RESOLUTION**

**WHEREAS**, in 2017, the City of El Paso (“City”) formally bid for Payment Processing Lockbox, Solicitation No. 2017-483; and

**WHEREAS**, on May 30, 2017, the City Council approved the award and purchase for Payment Processing Lockbox, Solicitation No. 2017-483 (“Award”) to Technique Data Systems, Inc. (“Assignor”); and

**WHEREAS**, the City Council Agenda posting for May 30, 2017 stated that the award was for an initial amount of \$89,585.00 for Equipment, software, and to implement the software and a maintenance and support services agreement for years 2-5 in the amount of \$44,535.00 (“Maintenance and Support Agreement”); and

**WHEREAS**, the Maintenance and Support Agreement executed by the City of El Paso provided pricing for a period of four years and a term that is renewed automatically for successive one-year periods unless cancelled by either party with thirty days’ notice; and

**WHEREAS**, the parties now desire that City Council ratify the Award including updated pricing for maintenance and support for an additional three years for a total amount of \$ 44,535.00 and all Award terms and conditions remaining the same.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

1. That the City Council ratify the award of Payment Processing Lockbox, Solicitation No. 2017-483 to **Data Business Equipment Inc.** and that the City Council accept pricing for Maintenance and Support for an additional three-year period for a total amount of \$44,535.00. The terms and conditions of the ratified award will remain unmodified including the ability to terminate the Maintenance and Support Agreement with thirty days’ notice. The City shall review the Award annually prior to the new fiscal year and terminate the Award in the event adequate funding is not allocated.

*(Signatures Begin on the Following Page)*

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

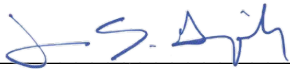
THE CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeser  
Mayor


**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Juan S. Gonzalez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
K. Nicole Cote, Managing Director  
Purchasing and Strategic Sourcing



## **EXTENDED SERVICE PLAN**

### **Depot Service Program**

**Data Business Equipment (DBE)** is committed to providing exceptional service to our clients. Our experienced, factory-trained technical staff strives to exceed customer expectations. DBE has the committed resources of on-site field engineers, system engineers, training, call tracking and parts stocking to effectively service your equipment for maximum uptime.

An **extended service plan (ESP)** will give you the peace of mind of having access to priority service, resulting in less downtime, making your operations more efficient while driving down costs. DBE will continually work to meet your specific needs, leading to an excellent service experience. Our goal is to provide you with the most attractive service program available, enabling a solid, long-term partnership.

#### **OBTAINING SERVICE**

As a condition to obtaining service under the ESP, you must first troubleshoot your Product's malfunction in good faith with DBE's technical support team.

#### **REMOTE SUPPORT**

We offer Toll-Free telephone support for troubleshooting issues at 1-800-856-8552 or email at [support@dbeinc.com](mailto:support@dbeinc.com), available Monday through Friday from 8:30 a.m. to 5:00 p.m., CST, excluding holidays. We find that many times issues arise due to incorrect system settings or operator procedural errors. Remote support is the timeliest method to resolve such issues.

#### **ADVANCED EXCHANGE PROGRAM**

Under the Advanced Exchange Program, a defective Product will be exchanged for a comparable refurbished Product and shipped via UPS ground service. The replacement Product will be shipped out within 24 hours. A return label will be included inside of the box for return of the defective Product. For customers outside the United States, the customer is responsible for freight and any additional shipping cost. You will be required to provide a ship to location (street address only) for the replacement product. You may be required to sign a form to guarantee the return of the defective unit and provide a valid credit card authorization. If you do not return your defective Product to DBE by the date and in the manner specified by DBE, DBE may cancel your ESP and invoice you for the full replacement cost of a new Product or charge your credit card the cost.

#### **LOANER PROGRAM**

Under the Loaner Program, a working Product of similar features and specifications will be sent to the customer. Upon receipt of the loaner Product, the customer will then send the defective Product to DBE for repair. Once the customer's Product is repaired and returned, the customer will return the loaner Product to DBE. Due to the additional shipping costs using the Loaner Program, DBE does charge an additional fee per service incident.

#### **COVERAGE**

The ESP includes all parts and labor required to properly maintain the equipment. Subject to the limitations set forth in "Terms and Conditions" below, DBE agrees to repair or replace, without charge, any defective part in your equipment with a part that meets or exceeds OEM specifications during the term of the ESP. Coverage also includes any firmware updates to system software as recommended by the manufacturer. Coverage does not include damage to equipment resulting from abuse, misuse, power surges, accidents, acts of God, or any other occurrence considered to be out of normal operating usage.



## EXTENDED SERVICE PLAN Terms and Conditions

1. Equipment Schedules  
No maintenance or other services are ordered by execution of this Agreement alone. For equipment to be covered hereby or services ordered, an approved form of Equipment Schedule shall be completed by DBE and provided to Subscriber. Each such Schedule is deemed a part of this Agreement.
2. Coverage  
The ESP includes all parts and labor required to properly maintain the equipment listed on the Equipment Schedule. Subject to the limitations set forth here within, DBE agrees to repair or replace, without charge, any defective part in equipment with a new or comparable rebuilt part during the term of the ESP. Replacement of parts shall not exceed the term of the ESP. Likewise, if DBE should replace the equipment covered under the ESP, the original equipment shall become property of DBE. Coverage under the ESP shall automatically transfer to the replacement product but shall not extend the term. Parts used by DBE to perform maintenance and repair service hereunder may be new, rebuilt or refurbished. Title to parts shall pass to Subscriber when the same are installed by DBE. Title to parts that are removed and replaced by DBE shall pass to DBE.
3. Service  
For the fee set forth in a given Equipment Schedule from Data Business Equipment (DBE), will inspect and repair the equipment itemized on such Equipment Schedule, or provide such other services as described on the Equipment Schedule. Preventive maintenance which DBE deems necessary to maintain the equipment in reasonable operating condition will be provided. DBE may provide any preventive maintenance at the same time as DBE is providing other service on the covered equipment.
4. Taxes  
In addition to the charges for the services, Subscriber shall additionally pay any and all sales, use, excise, or other taxes or fees imposed by any federal, state or local government.
5. Terms of Payment  
Unless an Equipment Schedule provides otherwise, Subscriber will be invoiced annually in advance. All invoices for periodic fees are due prior to the commencement date for the applicable fee period. For Equipment Schedules added subsequent to the date hereof, DBE may prorate its invoice to provide for a common invoice date for all equipment covered. All invoices not paid within thirty (30) days of the date due shall bear interest at the rate of one and one-half percent (1-1/2%) per month on the unpaid. In the event Subscriber fails to pay any invoice when due, DBE may, in addition to any other rights and remedies available to DBE, suspend service under this Agreement and any or all Equipment Schedules until Subscriber's account has no amounts more than thirty (30) days past due.
6. Limitation of Liability
  - a) Notwithstanding any other provision of this agreement, the parties acknowledge and agree:
    - i) DBE is not an insurer;
    - ii) The payments provided for herein are based solely on the value of the goods and services provided and are unrelated to the value of subscriber's property or the property of others located on subscriber's premises or within the equipment;
    - iii) The providing of service and/or preventive maintenance does not guarantee the continued or uninterrupted operation of the equipment or connected systems; DBE be liable for losses or damage that subscriber sustains due to burglary, robbery, illegal activity, fire, flood, or other cause, or as a result of loss or compromise of data, systems or facilities, or for the mis-dispensing or loss of funds, documents, currency or other items of value. DBE shall not be liable for special, incidental, indirect or consequential damages of any kind or nature, or for loss of profits, income or business opportunity, whether any of such damages or losses arise under contract, tort, strict liability, or other form of action, and whether or not DBE has been advised of the possibility thereof.
    - iv) In no event shall DBE be liable for losses that subscriber sustains due to computer malfunctions, network connectivity or computer monitor screen resolution issues that may affect the performance of covered equipment.
    - v) DBE will provide a certificate of liability insurance upon request.
7. Term  
The term of this Agreement shall be for the initial term set forth on the attached Equipment Schedule with DBE providing services starting on the commencement date. Unless terminated earlier due to a default, the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19 and 20 shall survive termination.
8. Exclusions  
The services to be provided for an annual service fee do not include:
  - a) service required as a result of abuse, misuse, electrical storms, power failures or fluctuations, acts of God, foreign objects, failure to follow user maintenance and operating instructions, or the failure or results of failure of interconnected equipment, software or data not specified on an Equipment Schedule, including, but not limited to, wiring, conduit, or data transmission equipment or facilities;
  - b) lockouts or damages caused by war, public disorder, vandalism, illegal activity, fire, water or other liquids, burglary, blasting, mining, settling of foundations, expansion of doors or walls, loss of combinations or by imperfect changing of combinations or time locks;

- c) services required because of contact, modification, service, inspection, or tampering with equipment by non-DBE designated personnel, relocation of equipment, changes to configuration, software or data, installation of additional features, options or functions; major overhauls, or refurbishing the equipment;
  - d) changing of any locks or combinations, or the replacement of keys unless specified on an Equipment Schedule;
  - e) service outside the hours of coverage set forth on the Equipment Schedule. If no hours are set forth, coverage shall be from 8:30 a.m. to 5:00 p.m. CST at the site of the equipment, exclusive of Saturdays, Sundays, or holidays generally observed by state or local governments in the area where the equipment is located;
  - f) malfunctions resulting from the use of software, media, supplies, and/or consumables which are not furnished by DBE or which do not meet standards set by the equipment manufacturer;
  - g) service on equipment, components or other items that are no longer supported by DBE or the manufacturer, or
  - h) setting, changing, securing or managing passwords or codes that can be used to access equipment, software, devices or facilities.
9. Software  
Equipment listed on the Equipment Schedule may require software or firmware to operate.
- a) Firmware updates released by the manufacturer are included in the ESP. Firmware may be updated remotely by DBE system engineers or on-site by a field engineer at DBE's discretion.
  - b) Currency templates are not considered to be a part of cash automation hardware. If a currency template is to be included in the ESP, it must be described in the Equipment Schedule as a separate item.
  - c) Security updates and hotfixes to computer operating systems located within equipment listed on the Equipment Schedule are the responsibility of the Subscriber. DBE is not responsible for damage of any kind resulting from security updates released by the operating system developer--e.g., Microsoft, Linux, Android
10. Other Services  
Subscriber may from time to time request that DBE provide other services not included in the service plan for equipment described on a specific Equipment Schedule, or for which no Equipment Schedule has been completed. DBE will use reasonable efforts to provide such service at DBE's then current "time and material" rates. Any such service shall be subject to the provisions of this Agreement. Subscriber may request service or additional services pursuant to this provision by contacting DBE.
11. Termination
- a) This Agreement may be terminated by a party without liability as follows:
    - i) upon a material breach hereof by the other party if such other party has failed to correct, or commence and diligently pursue the correction of such breach within thirty (30) days after notice to such breaching party;
    - ii) if the other party is insolvent, makes a general assignment for the benefit of
- creditors, or commences voluntarily a petition under bankruptcy or similar laws or allows an involuntary petition to continue more than forth-five (45) days after filing; or
- iii) in the case of DBE, if Subscriber fails to make a payment when due.
12. Confidentiality  
DBE strives to maintain impeccable controls and safeguards when it comes to handling customer information. Our service staff is expressly trained to honor the confidentiality agreements that we have in place with our client institutions. DBE acknowledges that any and all confidential and proprietary information, data, and documentation, including business and financial information, and individual personal information of Subscriber and its agents, employees and customers are confidential and proprietary to Subscriber. DBE shall use confidential information only to perform the contract duties and for no other purpose whatsoever. DBE shall not disclose or permit access to confidential information to any third party without consent of Subscriber, and only if such person has legitimate need to know the confidential information to perform the contract duties. As DBE does not host or process data of any kind, be it of our client institutions or their end users, the SSAE17 auditing standard is not applicable. Since none of our products or services involve processes to which SSAE17 is applicable, a standard confidentiality agreement provides coverage against any liability and adequately addresses any concerns involving sensitive information.
13. Service by Others
- a) With respect to any Equipment Schedule covering equipment that is installed, de-installed, relocated, altered, or serviced by other than DBE representatives, DBE may require, as a condition to accepting or continuing the equipment for service coverage, that the Subscriber have DBE inspect the equipment (pursuant to Section 12) for damage and to assure that all manufacturer-recommended changes have been made and that the equipment is otherwise in good working order. Subscriber shall have DBE perform any required servicing or repairs recommended by DBE prior to the acceptance of the equipment for service coverage.
  - b) DBE may, at its sole discretion, employ a third party service provider to assist with repair of equipment at any time. DBE will be solely responsible for compensating said service provider for any services or parts rendered. DBE is responsible for ensuring that any third party service provider is factory-trained on equipment, carries appropriate liability insurance, and adheres to all industry standard regulations and business practices.



15. Delay in Performance and/or Increase in Expenses

- a) DBE will not be liable for any delay in providing service that is caused by fire or flood, strikes, labor disturbances, riots, war, insurrection, acts of any governmental entity, delays in transportation, delays in procuring materials from third parties, unavailability of fuel or other supplies, or any other cause beyond the reasonable control of DBE. In the event of such occurrence, DBE's time for performance shall be equitably adjusted or cancelled if in DBE's reasonable judgment performance has been rendered not economically reasonable.
- b) If at any time during the term of this Agreement, DBE is required to obtain any site specific or any other license, permit, certification or authorization to perform the services for Subscriber, not already held by DBE, or if there is any change in applicable law, ordinance or regulation that materially increases DBE's cost to perform the services, then, upon giving Subscriber reasonable notice of such increase in costs and/or expenses, Subscriber shall be responsible to reimburse DBE therefor or otherwise to pay such increased costs and expenses.

16. Modification of Agreement

Except as provided herein, this Agreement may be waived or modified only by a writing executed by both parties. In the event of the addition or deletion of equipment from service coverage under this Agreement, or other modifications of Equipment Schedule(s) contemplated by this Agreement, DBE shall provide a new Equipment Schedule or other appropriate notice of a change to Subscriber. The provisions of such new Equipment Schedule or notice of change shall be deemed a part of this Agreement and legally binding upon Subscriber, unless Subscriber objects to DBE in writing within thirty (30) days of the issuance of the new Equipment Schedule or notice of change.

18. Obsolete Equipment

At any time during the term of this Agreement or any renewal or extended term hereof, DBE may reasonably determine that equipment being serviced hereunder is obsolete or not otherwise reasonably capable of being maintained in an operable condition as a result of age,

volume of use, unavailability of necessary replacement parts or other reason or condition, which DBE may identify as extraordinary. Upon receipt of written notice

or such determination from DBE, Subscriber shall either replace the obsolete equipment with new equipment, remove the equipment from the scope of coverage of this Agreement, or agree in writing that such equipment will continue to be serviced hereunder by DBE on a time and materials basis.

19. Electronic Signature/Governing Law

The parties acknowledge and agree that this Agreement may be executed or accepted using electronic, stamped or facsimile signatures, and that such a signature shall be legally binding to the same extent as a written cursive signature by a party's authorized representative. Each party waives any legal requirement that this Agreement be embodied, stored or reproduced in tangible media, and agrees that an electronic reproduction shall be given the same legal force and effect as a signed writing. Customer agrees that any terms delivered with or notified to Subscriber by DBE regarding software items shall apply to and govern the use of such items. This Agreement shall not be binding upon DBE until accepted.

20. General

- a) This Agreement and Equipment Schedule(s) constitute the entire agreement between the parties concerning any service provided by DBE to Subscriber, and no representation, inducement, promises or agreements not embodied herein shall be of any force or effect. Any purchase order or similar document issued by Subscriber shall be deemed issued only for Subscriber's internal administrative convenience and shall not become a part of this Agreement. This Agreement shall be binding in accordance with its terms upon the parties hereto, may not be assigned in whole or in part without the express prior written consent of the other party and any unauthorized assignment is void; however, DBE may assign this Agreement to a partner service company at any time or subcontract its duties under this Agreement without first obtaining Subscriber's prior consent thereto.



## EXTENDED SERVICE PLAN Equipment Schedule

### Customer Billing Information

Company Name: City of El Paso Tax Office  
Address: 221 N. Kansas Suite 300  
City, State, Zip: El Paso, TX 79901  
Contact Name: Jennifer McCloud  
Contact Phone: (915) 212-1200  
Contact Email: McCloudJM@elpasotexas.gov

The services listed on this maintenance order are subject to the attached Tech Data Systems ESP terms and conditions. The information on this schedule takes precedence over the terms and conditions attached, to the extent of any conflict. Any additional equipment to be added and considered to be included as part of this equipment schedule may be submitted as "Exhibit A".


Model	Description	Location	Install Date	Terms	Price
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CR-190i II	CHECK SCANNER	221 N. Kansas Suite 300 El Paso, TX	7/14/17	3 YR	\$ 442.00
CANON DR-G1130	PRODUCTION SCANNER 130ppm/260ipm	221 N. Kansas Suite 300 El Paso, TX	10/1/21	3 YR	\$ 1,820.00
				Annual Total	\$ 4,914.00

All equipment listed includes a 90-day factory warranty. Service contract will start after warranty period ends.  
Service hours are M-F, 8AM-5PM CST


*\*Pricing listed does not include applicable sales taxes.*

CUSTOMER ACKNOWLEDGES HAVING READ AND UNDERSTOOD ALL PAGES OF THIS AGREEMENT.

### DBE REPRESENTATIVE

Signature:  Digitally signed by Scott Milliken  
Date: 2023.03.15 17:54:13 -05'00'  
Name: Scott Milliken  
Title: Vice President of Sales  
Date: 3/15/23

### CUSTOMER REPRESENTATIVE

Signature:   
Name: K. Nicole Cote  
Title: Managing Director  
Date: 3/21/2023

## **JAGUAR SOFTWARE DEVELOPMENT, INCORPORATED**

### **END-USER LICENSE AGREEMENT**

THIS END-USER LICENSE AGREEMENT (this “Agreement”) is made as of the date shown below, by and between Jaguar Software Development, Incorporated, a corporation organized under the laws of the State of Illinois, with its principal place of business at 915 West Monroe, Sullivan, Illinois 61951 (“Licensor”), Data Business Equipment, Incorporated, a corporation organized under the laws of the State of Iowa, with its principal place of business at 10513 Buena Vista Ct, Des Moines, IA 50322 (“Maintenance Provider”) and City of El Paso, a Texas municipal corporation with offices at 300 N. Campbell, 1<sup>st</sup> Floor El Paso, TX 79901 (“Licensee”).

The parties hereto agree as follows:

#### **Section 1**

##### **DEFINITIONS**

1.1. “Licensed Program” means the package of computer programs and data in machine-readable form and related materials, including documentation and listings, identified in Exhibit A attached hereto and all upgrades, enhancements or improvements to such software program subsequently provided to Licensee by Licensor or its authorized agents.

## **Section 2**

### **LICENSE**

2.1. In consideration of the payment of the license fees set forth herein, Licensor grants Licensee, and Licensee accepts, a nonexclusive license to use the Licensed Program subject to the following terms and conditions.

2.2. Licensee agrees that the Licensed Program may be used only on computer equipment owned, leased, or otherwise controlled by Licensee or one of its affiliates or majority-owned subsidiaries. Licensee agrees that it will not assign, sublicense, transfer, pledge, lease, rent, or share its rights under this Agreement except that licensee is permitted to transfer and assign the Licensed Program and this Agreement in accordance with Section 6.2. Licensee agrees that it may not reverse assemble, reverse compile, or otherwise translate the Licensed Program.

2.3. Upon loading the Licensed Program into its computer, Licensee may retain the original compact disk (CD) of the Licensed Program for backup purposes. In addition, Licensee may make a reasonable number of copies of the Software on CD (or other media) for the sole purpose of backup in the event the original CD of the Licensed Program is damaged or destroyed. Any copies made of the Licensed Program shall include Licensor's copyright and other proprietary notices. Except as authorized under this section, no copies of the Licensed Program or any portions thereof may be made by Licensee or any person under Licensee's authority or control.

2.4. Licensee may receive the Licensed Program in more than one medium. Regardless of the type or size of medium Licensee receives, Licensee agrees to use only one medium that is appropriate for its single computer. Licensee agrees not to use or install the other medium on another computer. Licensee further agrees not to loan, rent, lease or otherwise transfer the other medium to another user.

### **Section 3**

#### **FEES AND PAYMENTS**

3.1. The License fee for the Licensed Program is specified in Exhibit A (hereinafter referred to as “License Fee”). Licensee agrees to pay the License Fee upon acceptance of the Licensed Program in accordance with the Acceptance procedures provided in Section 3.2. The License Fee shall be due in full thirty (30) days from the date of Acceptance (as defined in Section 3.2).

3.2. Licensee shall have thirty (30) days from the date of installation of the Licensed Program to use the Licensed Program, subject to the terms of this Agreement, on an evaluative basis (“Evaluation Period”). During the Evaluation Period Licensee can reject and return the Licensed Program for any reason. If Licensee does not reject and return the Licensed Program prior to the end of the Evaluation Period, Licensee shall be deemed to have accepted the Licensed Program (“Acceptance”) and the end of the Evaluation Period shall serve as the Acceptance Date.

3.3. Licensee agrees to pay a maintenance fee as listed in Exhibit A to cover Licensor’s and Maintenance Provider’s support of the Licensed Program mentioned in Section 4 of this Agreement for a term of one year starting from the date of Acceptance.

3.4. The maintenance fee listed in Exhibit A will remain the same for the first five (5) years from the date of Acceptance. After this initial five-year term, Licensor and Maintenance Provider reserve the right to change its maintenance fee no more than once annually on 90 days advance notice (to apply on a prospective basis only). Any such increase shall not (a) exceed the

lesser of five percent (5%) or the Consumer Price Index for the current year; and (b) be effective until the commencement of the subsequent year of maintenance coverage.

3.5. All fees are payable within thirty (30) days of invoice.

## **Section 4**

### **MAINTENANCE**

4.1. Licensor and Maintenance Provider shall maintain the Licensed Program in the manner specified in Exhibit A. However, Licensor and Maintenance Provider offers maintenance only for the most current version of the Licensed Program issued by Licensor from time to time, so Licensee must make sure to obtain and substitute or incorporate all new releases or fixes issued by Licensor pursuant to its warranty and maintenance programs.

4.2. Ninety (90) days prior to the one year anniversary of the Acceptance, Licensee shall have an option to continue receiving Licensor's and Maintenance Provider's maintenance of the Licensed Program in the manner specified in Exhibit A. Licensee can exercise its option from the time that the option initially arises to one year from the Acceptance Date. If Licensee exercises its option, then Licensee will receive Licensor's and Maintenance Provider's maintenance for the Licensed Program for a period of one year from the one year anniversary of the Acceptance Date upon Licensee's payment of a renewal fee to be determined by Licensor and Maintenance Provider, subject to the limitations on fee increases under Section 3.4.

## **Section 5**

### **LICENSEE'S RESPONSIBILITIES**

5.1. Licensee agrees to be responsible for selecting an operator who is qualified to operate the Licensed Program on Licensee's own equipment and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Program.

5.2. The Licensed Program is designed for use with the peripheral equipment and accessories specified in Exhibit A. Except as agreed otherwise in writing, Licensor and Maintenance Provider assumes no responsibility under this Agreement for obtaining or providing such equipment. Licensee is also responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Program will operate.

5.3. Except as agreed otherwise in writing, Licensor and Maintenance Provider assumes no responsibility under this Agreement for converting Licensee's data files for use with the Licensed Program.

## **Section 6**

### **PROPRIETARY PROTECTION AND RESTRICTIONS**

6.1. Licensee acknowledges and agrees that the Licensed Program is a proprietary product of Licensor protected under U.S. copyright law and international copyright treaties, as well as other intellectual property laws and treaties. Licensee further acknowledges and agrees that Licensor shall have sole and exclusive ownership of all right, title, and interest in and to the

Licensed Program, including associated intellectual property rights, and all modifications and enhancements thereof (including ownership of all intellectual property rights, such as trade secrets and copyrights, pertaining thereto), subject only to the rights and privileges expressly granted to Licensee herein by Licensor. This Agreement does not provide Licensee with title or ownership of the Licensed Program, but only a right of limited use thereof. Licensee agrees to keep the Licensed Program free and clear of all claims, liens, and encumbrances.

6.2. Licensee agrees not to use, copy, modify, or distribute the Licensed Program (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Licensor. Licensee agrees not to reverse assemble, reverse compile, or otherwise translate the Licensed Program. Licensee's rights may not be transferred, leased, assigned, or sublicensed except for a transfer of the Licensed Program in its entirety to (1) a successor in interest to all or substantially all of Licensee's business or assets who assumes the obligations of this Agreement or (2) any other party who is reasonably acceptable to Licensor, agrees to be bound by the terms of this Agreement, and pays a reasonable administrative fee intended to cover Licensor's attendant costs. No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized by Licensor. Licensee agrees not to install the Licensed Program in any other computer system or use it at any other location not occupied by Licensee (or one of Licensee's affiliates or majority-owned subsidiaries) without Licensor's express authorization obtained in advance (which will not be unreasonably withheld); provided that Licensee may transfer the Licensed Program to another computer temporarily if the computer where the program was originally installed is inoperable. If Licensee uses, copies, or modifies the Licensed Program or if Licensee transfers possession of any copy, adaptation, transcription, or merged portion of the Licensed Program to any other party in any way



not expressly authorized by Licensor, Licensor may terminate Licensee's license upon written notice and failure of Licensee to cure within ten (10) days.

6.3. Licensee hereby authorizes Licensor to enter its premises in order to inspect the Licensed Program in any reasonable manner during regular business hours to verify Licensee's compliance with the terms hereof.

6.4. If a third party claims that Licensee's use of the Licensed Program infringes its patent, copyright, or trade secret, or any similar intellectual property right, Licensor will indemnify, hold Licensee harmless from and defend Licensee against that claim at Licensor's expense and pay all reasonable costs and expenses incurred by Licensee, costs of settlement, and all damages that a court finally awards, provided that Licensee promptly notifies Licensor in writing of the claim, and allows Licensor to control, and cooperates with Licensor in, the defense or any related settlement negotiations. If such a claim is made or appears possible, Licensee agrees to permit Licensor to enable Licensee to continue to use the Licensed Program, or to modify or replace them, provided all material functionality is preserved. If Licensor determines that none of these alternatives is reasonably available, Licensee agrees to return the Licensed Program on Licensor's written request, and Licensee will then receive a refund of the License Fee paid by Licensee to Licensor for such Licensed Program.

6.5. Licensor has no obligation for any claim based on Licensee's modification of the Licensed Program or its combination, operation, or use with any product, data, or apparatus not specified or provided by Licensor, provided that such claim solely and necessarily is based on such combination, operation, or use and such claim would be avoided by combination, operation, or use with products, data, or apparatus specified or provided by Licensor.

6.6. THIS SECTION STATES LICENSOR’S ENTIRE OBLIGATION TO LICENSEE WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

## **Section 7**

### **LIMITED WARRANTY AND LIMITATION OF LIABILITY**

7.1. Licensors warrants, for Licensee’s benefit alone, that the Licensed Program conforms in all material respects to the specifications for the current version of the Licensed Program set forth in Exhibit A. This warranty is expressly conditioned on Licensee’s observance of the operating, security, and data-control procedures set forth in the User's Manual included with the Licensed Program. The failure of the Licensed Program to conform materially to the specifications provided in Exhibit A shall be deemed a “Material Defect”.

7.2. Licensors is not responsible for obsolescence of the Licensed Program that may result from changes in Licensee’s requirements. The foregoing warranty shall apply only to the most current version of the Licensed Program issued by Licensors from time to time. Licensors assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Licensed Program.

7.3. Except for maintenance pursuant to Section 4 of this Agreement, Licensee shall have no remedy against Licensors for any Material Defect in the Licensed program for which Licensors is responsible if the Material Defect is not brought to Licensors’s attention within 120 days of the date of Acceptance. For any Material Defect in the Licensed Program for which Licensors is responsible and in which the Material Defect has been brought to Licensors’s attention within 120 days of Acceptance, Licensors shall attempt through reasonable effort to correct or cure any reproducible defect by issuing corrected instructions, a restriction, or a bypass and in the event

Licensor does not correct or cure such nonconformity or defect after it has had a reasonable opportunity to do so, Licensee may elect to return the Licensed Program for a refund of the License Fee or to receive a replacement of the defective or nonconforming module of the Licensed Program. Licensor shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Program if Licensee has made any unauthorized changes whatsoever to the Licensed Program, if the Licensed Program has been misused or damaged in any respect, if Licensee has not reported to Licensor the existence and nature of such nonconformity or defect promptly upon discovery thereof, or Licensor is not employed by Licensee, at the time of Licensee's awareness of the defect, to maintain the Licensed Program pursuant to Section 4 of this Agreement.

7.4. Licensor also warrants the following:

\_\_\_\_\_ (a) Ownership and Right to Grant. Licensor represents that it is the owner of all right, title and interest in and to the Licensed Program and that it has the right to grant to Licensee the license granted hereunder free and clear of any liens and encumbrances.

\_\_\_\_\_ (b) Time Bombs Warranty. Licensor warrants that the Licensed Program is free of features such as "back doors" "trojan horses" and "time bombs" through which the Licensed Program could be disabled either directly or indirectly via remote access.

\_\_\_\_\_ (c) Virus Warranty. Licensor warrants that the Licensed Program is free of any and all computer viruses and that Licensor has taken all reasonable steps to ensure that the Licensed Program is free of such viruses.

\_\_\_\_\_ (d) Professional Services Warranty. Licensor warrants that all services rendered hereunder shall be rendered in a professional manner consistent with general

industry practices.

7.5. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING, BUT NOT LIMITED TO, ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, ANY NEGLIGENCE, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

7.6. The cumulative liability of Licensor to Licensee for all claims relating to the Licensed Program and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all license fees paid to Licensor hereunder. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective. This limitation of liability shall not apply to the indemnification provided in Section 6.5 hereof. Licensor shall have no liability for loss of data or documentation, it being understood that Licensee is responsible for reasonable backup precautions.

7.7. In no event shall either party be liable to the other for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands, even if advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

7.8. Licensee acknowledges that it may have additional rights under certain laws (e.g., consumer laws) that do not allow the exclusion of implied warranties, or the exclusion or limitation

of certain damages. If such laws apply, Licensor's exclusions or limitations do not apply to Licensee.

7.9. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PROGRAM, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

## **Section 8**

### **SOURCE CODE ESCROW**

8.1. If requested by Licensee, Licensor shall promptly place the source code version of the Licensed Program (the "Program Source Code") in the possession of a reputable Escrow Agent for the benefit of the Licensee. Licensor, Licensee, and the Escrow Agent shall in good faith negotiate an agreement mutually agreeable to the parties ("Escrow Agreement") which shall include provisions protecting the confidentiality and non-disclosure of the Program Source Code and shall provide for release of the Program Source Code upon the occurrence of certain events, including, but not limited to, Licensor's failure to fulfill its support or maintenance obligations.

## **Section 9**

### **TERM OF AGREEMENT; TERMINATION**

9.1. Licensee's license of the Licensed Program shall become effective upon delivery of the Licensed Program to Licensee and shall continue in perpetuity, unless sooner terminated as provided herein.

9.2. Upon termination of this Agreement, all rights granted to Licensee will terminate and revert to Licensor. Promptly upon termination of this Agreement for any reason or upon permanent abandonment of Licensee's possession or use of the Licensed Program, Licensee agrees to return or destroy, as requested by Licensor, all copies of the Licensed Program in Licensee's possession (whether modified or unmodified), and all other materials pertaining to the Licensed Program (including all copies thereof). Licensee further agrees to certify its compliance with such restriction upon Licensor's request.

9.3. Termination for Non-Appropriation by Licensee:  
Licensee may terminate the Agreement if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local government. In the event of such termination, the Licensee will not be considered to be in default or breach under this Agreement, nor shall it be liable for any further payments ordinarily due under this Agreement, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

## **Section 10**

### **MISCELLANEOUS**

10.1. Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed.

10.2. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.3. No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

10.4. In the event that any of the terms of this Agreement are or become or are declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.

10.5. THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF EACH PARTIES OBLIGATIONS AND RESPONSIBILITIES AND SUPERSEDES ANY OTHER PROPOSAL, REPRESENTATION, OR OTHER COMMUNICATION BY OR ON BEHALF OF EITHER PARTY RELATING TO THE SUBJECT MATTER HEREOF.

Accepted and Approved:

JAGUAR SOFTWARE DEVELOPMENT, INCORPORATED

By: 

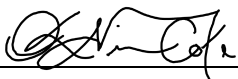
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DATA BUSINESS EQUIPMENT, INCORPORATED

By: *Scott Milliken*

Title: Vice President of Sales

CITY OF EL PASO PURCHASING & STRATEGIC SOURCING DEPT.

By: 

Title: Managing Director

Date: 3/21/2023



## EXHIBIT A

### I. IDENTIFICATION OF LICENSED PROGRAMS:

Software Module	# Licenses	Purpose
MirrorImage Payment Processing Bundle	1	Provides for Image Capture, Repair, Balancing, Research, and Reporting functions. This software bundle also provides the ability to create electronic deposit files that may be transmitted directly to a financial institution for deposit.
MI – PPS Archive Server	1	Provides access to SQL Server database for storing and retrieving item data and images.
CAR/LAR & IQA Up to 100k Items/Year	2	Recognition of hand written amounts on checks, Image Quality testing (up to 100,000 checks in a 12 month period)
ICR/Barcode up to 100k Fields/Year	2	Recognition of hand written or machine printed data from remittance stubs (up to 100,000 fields in a 12 month period)
MI-PPS Additional Station	7	Additional station license that provides for Image Capture, Repair, Balancing, Research, and Reporting functions.
MI Host Image Presentment	1	Provides an interface for external systems to be able to query the MirrorImage database for item information and images.
MI- Image Export Utility	1	Export file and images in format that is readable by Licensee's accounts receivable system.
Accounting Interface	3	Export file in format that is readable by Licensee's accounts receivable system.

### II. LOCATION OF LICENSEE'S FACILITY: 300 N. Campbell, 1<sup>st</sup> Floor, El Paso, TX 79901

### III. NECESSARY PERIPHERAL EQUIPMENT AND ACCESSORIES: Canon CR-190i Check Image Scanners & Canon DR-G1130 Document Scanner

### IV. MAINTENANCE SERVICES:

**Preventive Maintenance:** Licensor and Maintenance Provider will (a) advise Licensee of problems encountered by other users of the MirrorImage products which Licensor believes are likely to affect Licensee in a materially adverse manner, (b) perform the remedial work required to correct such problems encountered by other users of the MirrorImage products, and (c) review data provided by Licensee on the operation of the MirrorImage products to ascertain potential problems.

**Error Correction:** Licensor and Maintenance Provider will attempt through reasonable effort to correct any reproducible defect in the MirrorImage products that affect Licensee in a materially adverse manner and are reported to Licensor or Maintenance Provider during the Maintenance period. Licensor and Maintenance Provider are not responsible for correcting any errors which (a) are not reproducible, or (b) Licensee fails to provide Licensor or Maintenance Provider with a description of the parameter(s), procedure(s), or condition(s) which resulted in such condition in sufficient detail to permit Licensor or Maintenance Provider to isolate the error.

**Telephone Support:** Maintenance Provider will provide telephone support Monday through Friday, from 9:00 a.m. to 5:00 p.m. CST, excluding holidays. Outside of the indicated support hours, Licensee may leave a message at Maintenance Provider's support line, and a representative of Maintenance Provider will return the call the next business day.

**Updates and Enhancements:** Licensor and Maintenance Provider will provide Licensee with any updates and enhancements to the MirrorImage products listed in Section I above for no additional cost at the time such versions are generally made available to other users of the MirrorImage products. Licensor reserves the right to make such updates and enhancements to the MirrorImage products as it deems necessary and appropriate.

**V. Annual Pricing:**

QTY	DESCRIPTION	PRICE	EXT PRICE
1	MI PAYMENT PROCESSING SYSTEM-L2	\$1,560.00	\$1,560.00
2	CAR/LAR & IQA	\$73.00	\$146.00
1	JAGUAR HOST IMAGE PRESENTMENT	\$468.00	\$468.00
2	ICR/BARCODE	\$32.00	\$64.00
1	MI IMAGE EXPORT UTILITY	\$312.00	\$312.00
3	MI ACCOUNTING INTERFACE	\$296.00	\$888.00
1	MI-PPS ARCHIVE SOFTWARE	\$858.00	\$858.00
7	MI PAYMENT PROCESSING	\$805.00	\$5,635.00

TOTAL ANNUAL CONTRACT: \$9,931.00