

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) NA
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Development Services Department	DATE: 11/12/2015
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SUBJECT: Pursuing approval of a new financing package for the Accela implementation with Government Capital Corp ("GovCap") and amending Contract with Accela.

PRIMARY CONTACT (NAME, PHONE): Jim Myers, 619-446-5007 401	SECONDARY CONTACT (NAME, PHONE): Robert A. Vacchi, 619-446-5423 501
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	\$0.00	\$0.00	\$0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Debt Management	ORIG DEPT.	Vacchi, Robert	11/12/2015
Financial Management	CFO		
Comptroller	DEPUTY CHIEF	Graham, David	11/13/2015
Equal Opportunity Contracting	COO		
Liaison Office	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Approve Amendment to Accela Contract under R-309996 and Approve new financing package with GovCap.

STAFF RECOMMENDATIONS:
Approve Amendment to R-309996 Accela Contract and approve new financing package with GovCap.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT:	
CITY CLERK INSTRUCTIONS:	N/A

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 11/12/2015

ORIGINATING DEPARTMENT: Development Services Department

SUBJECT: Pursuing approval of a new financing package for the Accela implementation with Government Capital Corp (“GovCap”)and amending Contract with Accela.

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Jim Myers/619-446-5007 401

DESCRIPTIVE SUMMARY OF ITEM:

Development Services (DSD) is pursuing approval of a new financing package for the Accela implementation with Government Capital Corp (“GovCap”)and amending Contract with Accela. The Gov Cap financing replaces the existing financing through the EVFP.

STAFF RECOMMENDATION:

Approve Amendment to R-309996 Accela Contract and approve new financing package with GovCap.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

DSD is pursuing procurement approval of a new financing package for the Accela implementation with Government Capital Corp (“GovCap”). This would be for the license fees, hosting fees, maintenance fees and professional services (statement of work) fees identified in the Accela contract, excluding the fees for the initial year of hosting and maintenance.

In September 2015 the City Council approved a multi-year contract with Accela in an amount of \$10.9 million. The City has paid Accela approximately \$967,000 for certain initial hosting and maintenance costs. The overall remaining project cost is estimated at \$9.9 million to be paid to Accela for the initial and future costs through FY2020. To fund the program costs, in May 2015, City Council had authorized financing (# O-20494) in the amount up to \$6.44 million through the City’s Equipment and Vehicle Financing Program (EVFP) with Banc of America Public Capital Corp. The remainder of the project cost was anticipated to be cash funded by the City applying DSD enterprise funds. After further discussions with Accela, the vendor has offered to partner with Government Capital Corporation(“GovCap”) and arrange for a vendor financing for the full outstanding project costs and revise the outstanding cost down to \$9.3 million which covers all current and future costs of the program. The fixed interest rate for the reduced program cost of \$9.3 million will be 2.60% to be repaid by City in 5 equal installments in FY 2017 to 2021 years. This vendor financing option is more cost effective, as it provides an overall lower cost when compared to the funding under City EVFP due to the reduced principal cost of the program. The original financing amount of \$6.44 million through the City’s EVFP will not be utilized for the program.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S): The existing system no longer fits the City's IT strategy and has been identified as such in several audits. The Accela solution fits the City's strategy and is used by 26 of the largest 50 cities in the United States.

FISCAL CONSIDERATIONS: \$967K has been paid to Accela and that there is no additional fiscal impact.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): This agreement is subject to the City's Equal Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): The Accela contract that was approved by the Council earlier this year will be amended to reflect the provisions of the financing agreement.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Vacchi, Robert
Originating Department

Graham, David
Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: November 13, 2015
SUBJECT: Pursuing Approval of a New Financing Package for the Accela Implementation with Government Capital Corp (“GovCap”) and Amending Contract with Accela	

GENERAL CONTRACT INFORMATION

Recommended Contractor: Accela, Inc. (Not Certified, Cauc M)
 Government Capital Corporation (Not Certified, Cauc M)

Amount of this Action: \$ 9,300,000.00 (FY 2017-2021)
 Previous Amount: \$ 967,000.00
 Total Contract Amount: \$10,267,000.00

Funding Source: City of San Diego

Goal: 20% Voluntary SLBE/ELBE

Accela, Inc.

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Accela, Inc. submitted a Work Force Report for their Contra Costa County employees dated, August 28, 2015, indicating 389 employees in their Administrative Work Force. The Administrative Work Force indicates under representation in the following categories:

- Black, Latino, Filipino, and Female in Mgmt & Financial, Professional, and Sales
- Filipino and Female in Technical
- Black, Asian, Filipino, and Female in Administrative Support

Based on the under representations in the workforce noted above, staff has an approved Equal Employment Opportunity (EEO) Plan on file as of September 11, 2015. Staff will continue to monitor the firm’s efforts to implement their EEO plan.

Government Capital Corporation

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Government Capital Corporation submitted a Work Force Report for their Tarrant County employees dated, November 13, 2015, indicating 30 employees in their Administrative Work Force. The Administrative Work Force indicates under representation in the following categories:

Female in Mgmt & Financial
Black, Latino, and Female in Sales

These agreement are subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

3661 - Sole Source Tracking Number. This action authorizes approval to amend the Accela contract (R-309996) as well as approve a new financing package with Government Capital Corporation.

CCA for CS

SOFTWARE LEASE PURCHASE AGREEMENT

THIS SOFTWARE LEASE PURCHASE AGREEMENT (the “Agreement”), is dated as of [Dated Date], between **GOVERNMENT CAPITAL CORPORATION**, a corporation organized and existing under the laws of the State of Texas, as Lessor (“Lessor”), and the **CITY OF SAN DIEGO, CALIFORNIA**, a political subdivision existing under the laws of the State of California, as Lessee (“Lessee”), wherein the parties hereby agree as follows:

Section 1. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“**Agreement**” means this Software Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commencement Date**” is the date when the term of this Agreement and Lessee’s obligation to pay rent commences, which date will be the earlier of (i) the date on which the Property is accepted by Lessee in the manner described in **Section 13**, or (ii) the date on which sufficient moneys to purchase the Property are deposited for that purpose with an escrow agent.

“**Event of Default**” means an Event of Default described in **Section 35**.

“**Issuance Year**” is the calendar year in which the Commencement Date occurs.

“**Lease Term**” means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in **Section 6**.

“**Lessee**” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“**Lessor**” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“**Maximum Lease Term**” means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment Date set forth on the Payment Schedule.

“**Net Proceeds**” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys’ fees) incurred in the collection of such claim or award.

“**Original Term**” means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

“**Payment Schedule**” means the schedule of Rental Payments and Purchase Price set forth on **Exhibit B**.

“**Property**” means the property described on the Property Schedule attached hereto as **Exhibit A**, and all replacements, substitutions, updates, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

“**Purchase Price**” means the amount set forth on the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Property.

“**Renewal Terms**” means the optional renewal terms of this Agreement, each having a duration of one year and a term co-extensive with Lessee’s fiscal year.

“**Rental Payment Dates**” means the dates set forth on the Payment Schedule on which Rental Payments are due.

“Rental Payments” means the basic rental payments payable by Lessee pursuant to **Section 9**.

“State” means the State of California.

“Vendor” means the manufacturer of the Property as well as the agents or dealers of the manufacturer from whom the Property is or has been purchased, as listed on **Exhibit A**.

Section 2. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

(a) Lessee is a political subdivision duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a political subdivision. Lessee has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.

(b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.

(f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.

(g) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Property hereunder.

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.

(i) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.

(j) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Property pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(k) The Property described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Property, which need is not temporary or expected to diminish in the foreseeable

future. The Property will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(l) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Property will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(m) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(n) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of this Agreement, would have caused any portion of this Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(o) Lessee has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of Lessee.

(p) The useful life of the Property will not be less than the Maximum Lease Term.

(q) The application, statements and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Agreement and the escrow agreement, if any, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(r) Lessee has provided Lessor with audited financial statements through [Date of Last Audited Financial Statements]. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under the Agreement since [Date of Last Audited Financial Statements].

(s) Lessee shall pay the excess (if any) of the actual costs of acquiring the Property under the Agreement over the amount deposited by Lessor in the escrow fund, if any, established under any related escrow agreement and interest earnings thereon.

(t) Lessee shall provide written notice to Lessor within 30 days of any termination or suspension of any of Lessee's rights under any licensing agreement included in or respecting the Property.

(u) Lessee shall comply with all of the requirements of Section 149(a) and Section 149(e) of the Code, as the same may be amended from time to time, and such compliance shall include, but not be limited to, executing and filing Internal Revenue Form 8038G or 8038GC, as the case may be, and any other information statements reasonably requested by Lessor.

Section 3. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Property will not be less than the total principal portion of the Rental Payments.

(b) The Property has been ordered or is expected to be ordered within six months of the Commencement Date, and the Property is expected to be delivered and installed, and the Vendor fully paid, within eighteen months of the Commencement Date.

(c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Property has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

(e) To the best of our knowledge, information and belief, the above expectations are reasonable.

Section 4. Lease of Property. Lessor hereby demises, leases and lets the Property to Lessee, and Lessee rents, leases and hires the Property from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 5. Lease Term. The Original Term of this Agreement will commence on the Commencement Date and will terminate on the last day of Lessee's current fiscal year. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee will be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee has terminated this Agreement pursuant to **Section 6** or **Section 31**. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the Rental Payments will be as provided in the Payment Schedule.

Section 6. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to **Section 8**;

(b) the exercise by Lessee of the option to purchase the Property under the provisions of **Section 31** and payment of the Purchase Price and all amounts payable in connection therewith;

(c) a default by Lessee and Lessor's election to terminate this Agreement under **Section 36**; or

(d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

Section 7. Continuation of Lease Term. Lessee currently intends, subject to the provisions of **Section 8** and **Section 12**, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The responsible financial officer of Lessee will do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 8. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds will not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement will be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice will not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee's rights to the Property will simultaneously terminate and Lessee agrees, at Lessee's cost and expense, (i) to immediately discontinue

use of the Property, remove the Property from Lessee's computers and other electronic devices and deliver the Property to Vendor at the location or locations specified by Vendor and (ii) within 30 days of any such termination, to deliver a certificate to Lessor certifying that Lessee has complied with clause (i).

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Property during the fiscal year in which such payments are due. Rental payments may be made by check, ACH credit or wire transfer. Any Rental Payment not received within 4 days of its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from its due date.

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error.

Section 10. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 11. Rental Payments To Be Unconditional. Except as provided in Section 8, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Property to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the property or any accident, condemnation or unforeseen circumstances.

Section 12. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee, are from year to year and do not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder will not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

Section 13. Delivery, Installation and Acceptance of the Property. Lessee will order the Property, cause the Property to be delivered and installed at the location specified on **Exhibit A** and pay any and all delivery and installation costs in connection therewith. When the Property has been delivered and installed, Lessee will immediately accept the Property and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After it has been installed, the Property will not be moved from the location specified on **Exhibit A** without Lessor's consent, which consent will not be unreasonably withheld.

Section 14. Enjoyment of Property. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Property during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Property during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 15. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Property.

Section 16. Use of the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any licensing or other agreement, or in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Property) with all applicable laws, regulations and rulings of any legislative, executive,

administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest or rights of Lessor under this Agreement.

Section 17. Maintenance of Property. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Property in good repair, working order and condition similar to other property owned by Lessee and install all upgrades, improvements and additions to the Property made available to it by Vendor. Lessor will have no responsibility to maintain or repair or to provide or make updates, upgrades, improvements or additions to the Property. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Property with Vendor.

Section 18. Title to the Property. During the Lease Term, title to the Property and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the provisions of this Agreement and any applicable license or other agreement. However, upon (a) any termination of this Agreement other than termination pursuant to **Section 31** or (b) the occurrence of an Event of Default, Lessee's title to the Property shall immediately and without any action by Lessee terminate and Lessee shall immediately discontinue use of the Property, remove the Property from Lessee's computers and other electronic devices and deliver the Property to Vendor. Within 30 days of any event described in clause (a) or (b) of the preceding sentence, Lessee shall deliver to Lessor a certificate certifying that it has complied with the preceding sentence.

Section 19. [Reserved].

Section 19. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the following property (collectively, the "Collateral"), whether now owned or hereafter acquired by Lessee: (a) the Property and any license agreement related thereto, including, without limitation, the licenses granted thereunder, (b) all rights to payment thereunder relating to any refund, indemnification and/or abatement to which Lessee is or becomes entitled, no matter how or when arising, whether such rights are classified as accounts, general intangibles or otherwise, and (c) all proceeds of the foregoing. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the perfection of the security interests granted herein.

Section 20. [Reserved].

Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Property free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes and other similar charges. If the licensing, use, possession or acquisition of the Property is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee will pay all utility and other charges incurred in the use and maintenance of the Property. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term.

Section 22. Insurance. At its own expense, Lessee will maintain (a) property insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Property, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a), (b), and (c). All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such property and liability insurance will be with insurers that are acceptable to Lessor, will name Lessor as a loss payee and an additional insured and will contain a provision to the effect that such

insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 23. Advances. In the event Lessee fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Property in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums on the thereof, pay such taxes and charges and make such Property repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Within 270 days after the end of each fiscal year, Lessee will provide Lessor with current financial statements, current fiscal year budget and proofs of appropriation for that current fiscal year or certification relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 25. Release and Indemnification. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Property, (c) the ordering, licensing, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property, (d) any accident in connection with the licensing, operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 26. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Property from any cause whatsoever. No such loss of or damage to the Property nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 27. Damage, Destruction, Unfitness for Use and Condemnation; Use of Proceeds. If (a) the Property or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or is otherwise rendered unfit for use by any cause whatsoever, or (b) title to, or the temporary use of, the Property or any part thereof or the interest of Lessee or Lessor in the Property or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair or restoration of the Property, unless Lessee has exercised its option to purchase Lessor's interest in the Property pursuant to **Section 31**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair or restoration referred to in **Section 26**, Lessee will either (a) complete such replacement, repair or restoration and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Property pursuant to **Section 31**. The amount of the Net Proceeds, if any, remaining after completing such replacement, repair or restoration or after purchasing the Property will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under **Section 9**.

Section 29. Disclaimer of Warranties. **LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE PROPERTY OR AGAINST INFRINGEMENT, OR ANY**

OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY PROPERTY PROVIDED FOR IN THIS AGREEMENT.

Section 30. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Property or licensing or other agreements; Lessee is advised to contact the Vendor for a description of any such rights. Lessee hereby assigns to Lessor during the Lease Term all rights under any licensing or other agreement and warranties, if any, running from Vendor to Lessee included in or respecting the Property. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property that Lessor may have against the Vendor. Lessee's sole remedy for the breach of such licensing or other agreement, warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such agreements or warranties by the Vendor.

Section 31. Purchase Option. Lessee will have the option to purchase Lessor's interest in the Property, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date beginning July 15, 2017, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor; or

(b) In the event that substantially all of the Property is substantially damaged, destroyed or otherwise rendered unfit for use or is condemned, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months.

Upon the exercise of the option to purchase set forth above, title to the Property will be vested in Lessee, free and clear of any claim by or through Lessor.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Property and that the amount required to exercise Lessee's option to purchase Lessor's interest in the Property pursuant to **Section 31** represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Property. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Property hereunder. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Property, (b) the uses and purposes for which the Property will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Property and the use of the Property pursuant to the terms and provisions of this Agreement and any applicable license or other agreement, and (d) Lessee's option to purchase Lessor's interest in the Property. Lessee hereby determines and declares that the acquisition and installation of the Property and the leasing of the Property pursuant to this Agreement will result in property of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Property were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Property.

Section 33. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Property may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; and such assignment, transfer or conveyance shall be made only to (i) an affiliate of Lessor or (ii) banks, insurance companies or other financial institutions or their affiliates. Nothing herein shall limit the right of Lessor or its assignees to sell or assign participation interests in this Agreement to one or more entities listed in (i) or (ii); provided that any assignment will not be effective against Lessee until (a) Lessee has received written notice of the name and address of the assignee and (b) in the event that such assignment is made to a bank or trust company for holders of certificates representing interests in this Agreement, such financial institution or trust company agrees to maintain, or cause to be maintained, a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Lessee will retain all such notices as a register of all assignees and will make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Property and in this Agreement and agrees to the filing of financing statements with respect to the Property and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor.

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Property may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Property, to the extent, if any, permitted by any applicable license or other agreement, if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Property will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Property.

Section 35. Events of Default Defined. Subject to the provisions of **Section 8**, any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Any termination or suspension of any of Lessee's rights under any licensing agreement included in the Property;

(c) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 35(a)**, or to comply with any licensing or other agreement included in or respecting the Property, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(d) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(e) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

(f) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its

inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(g) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

Section 36. Remedies on Default. Whenever any Event of Default exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) Lessor may terminate this Agreement and enter the premises where the Property is located and retake possession of the Property or require Lessee at Lessee's expense to (i) discontinue immediately use of the Property, (ii) remove the Property from all of Lessee's computers and electronic devices, (iii) return the Property to Vendor at a location or locations specified by Vendor, holding Lessee liable for Rental Payments and other amounts payable by Lessee under this Agreement to the end of the then current Original Term or Renewal Term, and (iv) within 30 days of any such termination, deliver to Lessor a certificate certifying that it has complied with this subsection; and

(c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as Lessor under this Agreement.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 38. Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

Section 39. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 40. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 41. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 42. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 43. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 44. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 45. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 46. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[The remainder of this page left blank intentionally.]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized officers as of the date first above written.

GOVERNMENT CAPITAL CORPORATION

By: _____

Name: _____

Title: _____

Address: 345 Miron Drive
Southlake, Texas 76092

CITY OF SAN DIEGO, CALIFORNIA

By: _____

Name: _____

Title: _____

Address: 1222 First Avenue, MS 301
San Diego, CA 92101-4101

CERTIFICATION

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee, and (ii) that the fiscal year of Lessee is from [Lessee Fiscal Year].

DATED: [Dated Date].

By: _____

Name: _____

Title: _____

EXHIBIT A TO SOFTWARE LEASE PURCHASE AGREEMENT

PROPERTY SCHEDULE

[Subject to revision.]

The Property comprises acquisition and implementation of an Accela Civic Platform software system, including perpetual, nonexclusive, nontransferable licenses to the following programs, capitalizable support functions customarily provided and essential for proper utilization of such system and all disks, updates, upgrades, improvements, additions, instructions, licensing agreements and other items related thereto provided by Vendor:

<u>Quantity</u>	<u>Description/Serial No./License No.</u>	<u>Location*</u>
-----------------	---	------------------

[Please attach or fill in a description of Property, including location(s) of computers and other electronic devices that will be using the Property.]

* Including location of computers and other electronic devices that will be using the Property.

EXHIBIT B TO SOFTWARE LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Principal Amount: \$9,300,623.12

Interest Rate: 2.60%

Rental payments will be made in accordance with **Section 9** and this Payment Schedule.

[The following draft payment schedule is included for reference only.]

<u>Rental Payment Date</u>	<u>Total Rental Payment</u>	<u>Principal Portion</u>	<u>Interest Portion</u>	<u>Purchase Price*</u>
07/15/2016	\$1,984,942.93	\$1,851,272.31	\$133,670.62	N/A
07/15/2017	1,984,942.93	1,791,259.81	193,683.12	\$5,752,332.92
07/15/2018	1,984,942.93	1,837,832.56	147,110.37	3,868,055.82
07/15/2019	1,984,942.93	1,885,616.21	99,326.72	1,950,803.87
07/15/2020	1,984,942.93	1,934,642.23	50,300.70	1.00
Totals	<u>\$9,924,714.65</u>	<u>\$9,300,623.12</u>	<u>\$624,091.53</u>	

CITY OF SAN DIEGO, CALIFORNIA

By: _____

Name: _____

Title: _____

* Lessee may exercise its option to purchase pursuant to **Section 31(b)** of the Agreement at any time; option to purchase pursuant to **Section 31(a)** of the Agreement may be exercised on or after July 15, 2017.

LESSEE'S CLOSING CERTIFICATE

Re: Software Lease Purchase Agreement dated as of [Dated Date], between the City of San Diego, California, as lessee ("Lessee"), and Government Capital Corporation, as lessor ("Lessor") (the "Agreement")

I, the undersigned, the duly appointed, qualified and acting _____ (**Clerk or Secretary**) of the above-captioned Lessee do hereby certify as of [Dated Date], as follows:

(1) Lessee did, at a meeting of the governing body of Lessee held November 17, 2015, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Agreement and the related tax certificate on its behalf by the following named representative of Lessee:

Printed Name	Title	Signature
--------------	-------	-----------

[This signature line to be signed by person who executed the Agreement and the related tax certificate on behalf of Lessee.]

(2) The above-named representative of Lessee held at the time of such authorization and holds at the present time the office designated above and the signature set forth opposite his or her name is the true and correct specimen of his or her genuine signature.

(3) The meeting of the governing body of Lessee at which the Agreement and the related tax certificate were approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval and that the action approving the Agreement and the related tax certificate and authorizing the execution thereof has not been altered or rescinded. Attached hereto as **Exhibit A** is a true and correct copy of the resolution, ordinance or other documents constituting such official action.

(4) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

(5) All insurance required in accordance with the Agreement is currently maintained by Lessee.

(6) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term (as such terms are defined in the Agreement), and such funds have not been expended for other purposes.

(7) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the interest of Lessor or its assigns, as the case may be, in the Property.

(8) The Property has not been the subject of a referendum that failed to receive the approval of the voters of Lessee within the preceding four years.

(9) Since [Date of Last Audited Financial Statements], Lessee has not entered into any direct or contingent bond debt, lease, installment purchase or loan obligation, other than listed on **Exhibit B** attached hereto.

(10) [Lessee initial here to confirm the following provision is NOT applicable: _____]

Lessee hereby designates this Agreement as a “qualified tax-exempt obligation” as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the current calendar year is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including the Agreement but excluding private activity bonds other than qualified 501(c)(3) bonds) during the current calendar year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor that the designation of the Agreement as a “qualified tax-exempt obligation” will not be adversely affected.

(11) The correct billing address for Rental Payments is as follows:

City of San Diego, California
1222 First Avenue, MS 301
San Diego, CA 92101-4101
Attention: _____

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the governing body of Lessee the day and year first above written.

Signature of Secretary/Clerk

Printed or typewritten title and name

Subscribed and affirmed before me this ____ day of _____, 2015.

Signed: _____

My commission expires: _____

(NOTARY SEAL)

**EXHIBIT A TO
LESSEE'S CLOSING CERTIFICATE
COPY OF AUTHORIZATION DOCUMENT
(per Section 3)**

(Please attach. Attached is a form of resolution for adoption by governing body, if no resolution previously adopted.)

RESOLUTION

WHEREAS, the City of San Diego, California (the "Lessee") is a political subdivision duly organized under the constitution and laws of the State of California; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition and installation of an Accela Civic Platform software system (the "Property"); and

WHEREAS, it is necessary and desirable and in the best interest of the Lessee, as lessee, to enter into a Software Lease Purchase Agreement (the "Agreement") with Government Capital Corporation or another entity stated therein, as lessor (the "Lessor"), for the purposes described therein, including the leasing of the Property;

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF THE CITY OF SAN DIEGO, CALIFORNIA, AS FOLLOWS:

Section 1. The Agreement, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the _____ of the Lessee is hereby authorized to execute and deliver the Agreement on behalf of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments (including a tax certificate) as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Agreement and the Escrow Agreement.

Section 3. The Lessee has made certain capital expenditures in connection with the acquisition of the Property prior to the date hereof, and the Lessee expects to make additional capital expenditures in connection with the acquisition of the Property in the future. The Lessee intends to reimburse itself for all or a portion of such expenditures, to the extent permitted by law, with the proceeds of the Agreement or other tax-exempt obligations to be delivered by the Lessee. The maximum principal amount of the Agreement or other tax-exempt obligations expected to be delivered for the Property is not expected to exceed \$9,300,623.12.

Section 4. This Resolution shall take effect and be in full force immediately after its adoption by the governing body of the Lessee.

PASSED AND ADOPTED by the governing body of the City San Diego, California, this ____ day of _____, 2015.

CITY OF SAN DIEGO, CALIFORNIA

By: _____
Name: _____
Title: _____

**EXHIBIT B TO
LESSEE'S CLOSING CERTIFICATE**

**LIST OF OUTSTANDING OBLIGATIONS
(per Section 9)**

Please list all direct or contingent bond debt, lease or loan obligations (including estimated outstanding principal amount) that Lessee has entered into since [Date of Last Audited Financial Statements]. If this statement is not applicable, please state "None."

ESSENTIAL USE CERTIFICATE

[Dated Date]

Government Capital Corporation
345 Miron Drive
Southlake, Texas 76092

Re: Software Lease Purchase Agreement dated as of [Dated Date] between the City of San Diego, California, as lessee (“Lessee”), and Government Capital Corporation, as lessor (“Lessor”) (the “Agreement”)

Ladies and Gentlemen:

I, _____, a duly elected, appointed, or designated representative of the City of San Diego, California (“Lessee”), am qualified to answer the questions set forth below regarding the Property to be acquired by Lessee in connection with the above-referenced Agreement:

1. *What is the specific use of the Property?*

2. *What increased capabilities will the Property provide?*

3. *Why is the Property essential to your ability to deliver governmental services?*

4. *Does the Property replace existing property?*
(If so, please explain why you are replacing the existing property)

5. *Why did you choose this specific Property?*

6. *For how many years do you expect to utilize the Property?*

7. *What revenue source will be utilized to make Rental Payments due under the Agreement?*

Very truly yours,

CITY OF SAN DIEGO, CALIFORNIA

By: _____

Name: _____

Title: _____

[Dated Date]

Government Capital Corporation
345 Miron Drive
Southlake, Texas 76092

[Special Tax Counsel]

Re: Software Lease Purchase Agreement dated as of [Dated Date] between the City of San Diego, California, as lessee (“Lessee”), and Government Capital Corporation, as lessor (“Lessor”) (the “Agreement”)

Ladies and Gentlemen:

As legal counsel to Lessee, I have examined (a) an executed counterpart of the Agreement, which, among other things, provides for the lease by Lessee from Lessor of the Property, (b) an executed copy of the Federal Tax Certificate dated the date hereof (the “Tax Certificate”) executed by Lessee, (c) an executed counterpart of the ordinance or resolution of Lessee which, among other things, authorizes Lessee to execute the Agreement and the Tax Certificate, and (d) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of California, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.
2. Lessee has the requisite power and authority to purchase the Property and to execute and deliver the Agreement and the Tax Certificate and to perform its obligations thereunder.
3. The Agreement, the Tax Certificate and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Agreement and the Tax Certificate are valid and binding obligations of Lessee enforceable in accordance with their respective terms.
4. The authorization, approval and execution of the Agreement and the Tax Certificate and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws.
5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement and the Tax Certificate or the security interest of Lessor or its assigns, as the case may be, in the Property.

All capitalized terms herein will have the same meanings as in the Agreement. Lessor, its successors and assigns and any counsel rendering an opinion on the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation are entitled to rely on this opinion.

Very truly yours,

**LESSEE'S PAYMENT INSTRUCTIONS
AND ACCEPTANCE CERTIFICATE**

Government Capital Corporation
345 Miron Drive
Southlake, Texas 76092

Re: Software Lease Purchase Agreement dated as of [Dated Date], between the City of San Diego, California, as lessee ("Lessee"), and Government Capital Corporation, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

In accordance with the above-referenced Agreement, the undersigned Lessee hereby certifies and represents to, and agrees with, Lessor as follows:

(1) Attached hereto as **Exhibit A** are invoices relating to the Property (as described below). Lessor (or its assignee) is hereby instructed and directed to disburse the proceeds of the Agreement in the principal amount of \$9,300,623.12 as follows:

<u>Payee</u>	<u>Amount</u>	<u>Description</u>
_____	\$9,300,623.12	Acquisition and installation of
_____		Accela Civic Platform software
_____		system (the "Property")

(See attached invoices,
including payment
instructions.)

(2) All of the Property has been delivered, installed and accepted.

(3) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.

(4) Lessee is currently maintaining the insurance coverage required by **Section 22** of the Agreement.

(5) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Dated: [Dated Date].

CITY OF SAN DIEGO, CALIFORNIA

By: _____

Name: _____

Title: _____

**EXHIBIT A TO
LESSEE'S PAYMENT INSTRUCTIONS
AND ACCEPTANCE CERTIFICATE**

INVOICES AND PAYMENT INSTRUCTIONS

[Please provide.]

FEDERAL TAX CERTIFICATE AND IRS FORM 8038-G

[To Come—to be prepared by Special Tax Counsel.]

NOTICE OF ASSIGNMENT

[Dated Date]

City of San Diego, California
1222 First Avenue, MS 301
San Diego, CA 92101-4101

Re: Software Lease Purchase Agreement dated as of [Dated Date], between the City of San Diego, California, as lessee ("Lessee"), and Government Capital Corporation, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

Please be advised that the undersigned Lessor has assigned all of its right, title and interest in, to and under the Agreement, the Property leased thereunder, and the right to receive Rental Payments thereunder and the payment of the Purchase Price thereunder to _____, a _____ ("Assignee"), whose mailing address is _____, _____, _____, and whose tax identification number is _____.

All Rental Payments and payment of the Purchase Price due under the Agreement should be made to the Assignee at the address below or as otherwise instructed by Assignee:

Lessee acknowledges that Assignee is acting solely as Assignee for its own loan account and not as a fiduciary for Lessee or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of Lessee (including to any financial advisor or any placement agent engaged by Lessee) with respect to the structuring, issuance, sale or delivery of the Agreement. Lessee acknowledges that Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Lessee with respect to the transactions relating to the structuring, issuance, sale or delivery of the Agreement and the discussions, undertakings and procedures leading thereto. Each of Lessee, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the Agreement from its own financial, legal, tax and other advisors (and not from Assignee or its affiliates) to the extent that Lessee, its financial advisor or its placement agent desires, should or needs to obtain such advice. Assignee expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to Lessee's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to Lessee's financial advisor or placement agent, with respect to any such matters. Lessee acknowledges that the transaction between Lessee and Assignee is an arm's length commercial transaction in which Assignee is acting and has acted solely as a principal and for its own interest, and Assignee has not made recommendations to Lessee with respect to the transaction relating to the Agreement.

[The remainder of this page left blank intentionally.]

Please acknowledge your receipt of this notice and your agreement to make payments due under the Agreement to Assignee by the signature of a duly authorized officer in the space provided on the enclosed counterpart of this letter and return it to us at the address set forth below.

Sincerely,

GOVERNMENT CAPITAL CORPORATION
LESSOR

By: _____
Name: _____
Title: _____
Address: 345 Miron Drive
Southlake, Texas 76092

ACKNOWLEDGED AND AGREED TO:

CITY OF SAN DIEGO, CALIFORNIA
LESSEE

By: _____
Name: _____
Title: _____

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____ <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number																											
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Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.
Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.



Purchasing and Contracting Department
City of San Diego

REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From:	Jim Myers	Deputy Director	Development Services
	Name	Title	Department

Date: November 9, 2015

1. Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:

Pursuing procurement approval of a new financing package for the Accela implementation with Government Capital Corp ("GovCap"). This would be for the license fees, hosting fees, maintenance fees and professional services (statement of work) fees identified in the Accela contract, excluding the fees for the initial year of hosting and maintenance. The rate of financing would be zero percent.

Contact for GovCap: Ed King, Senior Vice President, 817-722-0236, Ed.King@GovCap.com, 345 Miron Dr., South Lake, Texas, 76092

2. Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible:

The current financing package approved by Council in May (Ordinance # O-20494 MLA 2015) is with Banc of America at a financing rate of 1.5%. The new rate would be 0.0% because Accela has an ongoing financial relationship with GovCap in which Accela buys down the interest rate.

Additionally this vendors agreement pushes the payment cash flow back 6 months with payment due in July 2016 verses payment due November 2015.

GovCap will also put additional contract performance requirements on Accela which also directly benefits the City.

The requested financing package with GovCap has been approved by Debt Management Department and will result in a direct net savings to the City of over \$120,000.

This new financing package is on the November 18, 2015 Budget Committee Agenda and will go on the December 2015 City Council Docket.

3. This sole source procurement is necessary because:

- Goods are available from only one source
- The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(d) (explain) Click here to enter text.
- Other (describe) Accela has worked out this financing package with GovCap to benefit both Accela and the City.

4. Goods and services evaluated (add additional pages, if needed):

A.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
B.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
C.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status

REVIEWED:


Department Director or Designee

11/10/15
Date

APPROVED:


Deputy Chief Operating Officer

11.12.15
Date

DENIED:

Deputy Chief Operating Officer

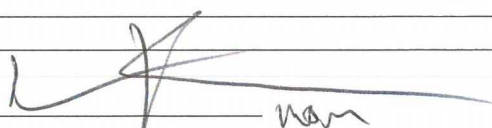
Date

Reason for denial: _____

5. Purchasing Department Comments:

Recommend approval

Buyer:



11/12/15

received
11/13/15
by HR



SUBMIT

Request for Human Resources Approval for Purchase Requisition (Contracting Out Review Request Form)

Requesting Department: Development Services
 Vendor Name: Government Capital Corp "GovCap"
 WBS No. or Project Title: Financing Plan for Accela Implementation, Accela contract has been approve by Council R309996
 Purchase Requisition # (if available): _____
 Department Contact: Jim Myers
 Date of Request: 11/13/2015
 Contract Amount/Estimate: \$ 10,891,635.25 for Accela contract which was already approved at Council R309996
 Contract/Service Duration: 5 years
 Litigation Services (if applicable): Yes or No
 Deputy City Attorney Assigned/Contact: _____
 P-Card Purchase (if applicable): Yes or No

An amendment to previously approved 11/13/15 contracting out request

NOTE: Please provide a description of the activity/services requested and what the request to contract out work will cover.
(Please use plain language for the terms/definitions)

Please submit request to HumanResources@saniego.gov or MS 56L

Question	Department Response
What is the contract/service for? (Please be specific as to the scope of work)	This is a new financing package for the PTS Replacement software, Accela implementation. <i>→ 11/13/15 amendment to financing package, no change in service per Susan Bender (DD)</i>
What is the location of the project/service?	N/A <i>* No other changes (see original attached)</i>
Are City employees currently performing any of the work?	No
Do City employees currently have the expertise to do this work in-house? If not, why not?	No

Will any City employees be displaced as a result of this contract/service?	No
If this is a renewal of an existing contract, how long have these services been contracted out?	N/A
Is this a Public Works project? * (i.e. construction, reconstruction or repair of City buildings, street or other facilities)	No
Is this a Tenant Improvement project? * (i.e. changes to the interior of a City facility, such as floors, wall coverings, shelves, ceilings, windows, partitions, etc.)	No
Was another Department contacted to determine if they can or do perform this service (i.e. Streets, Facilities, etc.)? If so, please attach communication. If not, why was another Department not contacted?	No other department can provide this.

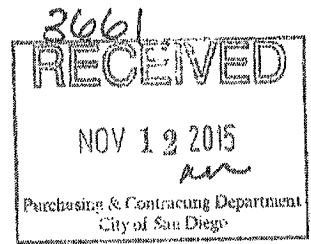
***NOTE:** If Public Works project (\$100,000 in labor costs or less) or Tenant Improvement project (\$250,000 in labor costs or less) requires HR review/approval. All other contracts require HR review/approval regardless of dollar amount. Remember – Departments cannot intentionally bundle services to avoid the threshold labor costs.

HUMAN RESOURCES DEPARTMENT USE ONLY

Based on the Department's representation, this contract is Approved from a labor relations perspective.


Human Resources Department Liaison

11/13/15
Date



Purchasing and Contracting Department
City of San Diego

REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From:	Jim Myers	Deputy Director	Development Services
	Name	Title	Department

Date: November 9, 2015

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This new financing package is on the November 18, 2015 Budget Committee Agenda and will go on the December 2015 City Council Docket.

3. This sole source procurement is necessary because:

**City of San Diego
Human Resources Department
Request for Human Resources Approval for Purchase Requisition**

Requesting Department:	DSD
Vendor Name:	Accela, CXM Solutions
Purchase Requisition #:	
Department Contact:	Jim Myers
Date of Request:	7/17/2015
Contract Amount:	\$9,600,000

Please submit request to HumanResources@san Diego.gov or MS 56L

Question	Department Response
What is the contract for?	Configuration of an online permit application to support regulatory and public safety compliance requirements and subscription for ongoing hosting of the application
Are City employees currently performing any of the work?	No
Will any City employees be displaced as a result of this bid?	No
If this is a renewal of an existing contract, how long have these services been contracted out?	NA
Is this a Public Works Contract? (construction, reconstruction or repair of City buildings, street or other facilities)	NA <i>7/17/15 per Sanatruan Burke (DPTD) Accela, CXM Solutions scope of DoIT not done by city</i>
Is this a Tenant Improvement?	NA
Was another department contacted to determine if they can or do perform this service (i.e. Streets, Facilities, etc.)? If so, please attach communication.	The Department of IT (DoIT) was contacted to identify the most efficient and cost-effective solution to the creation and on-going hosting of an online permit application. DoIT reviewed the needs requirements and identified <u>Accela Inc. and CXM Solutions</u> as the companies best equipped to perform the required services. <i>see attached by mail 7/17/15 * consistent 888-15-0000 IT</i>

NOTE: If a public works construction contract and over \$100k, see City Charter Section 94.

HUMAN RESOURCES DEPARTMENT USE ONLY	
Based on the Department's representation, this contract is from a labor relations perspective.	<p style="font-size: 2em; margin: 0;">Approved</p> <p style="font-size: 1.5em; margin: 0;">7/17/15</p>