

**INTEGRATION AGREEMENT
FOR
CITYWIDE MULTI-FUNCTION DEVICES**

**REQUEST FOR COMPETITIVE SEALED PROPOSAL (“RFCSP”)
NO. 6100012291**

This Agreement is entered into by and between the **City of San Antonio**, Texas, a home-rule municipal corporation (“City”) acting by and through its Director of Finance or said Director’s designee (“Director”), and **Toshiba America Business Solutions, Inc., dba Toshiba Business Solutions** (“Toshiba” or “Vendor”). City and Vendor may be referred to herein collectively as the “Parties”.

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

1.0 CONTRACT DOCUMENTS

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

- a. This Integration Agreement;
- b. City’s RFCSP No. 6100012291, including all exhibits, attachments and addendums thereto (Exhibit A);
- c. Vendor’s Best and Final Offer (BAFO) Price Schedule (Exhibit B), *Option 2: 60 Month Lease with Cancellation Option*;
- d. Vendor’s Proposal in response to RFCSP No. 6100012291 (Exhibit C);
- e. Toshiba Professional Services Terms and Conditions (Exhibit D);
- f. Toshiba Statement of Work (SOW) for Papercut Enterprise Deployment (Exhibit E);
- g. Fiscal Funding Addendum (Exhibit F);
- h. Assignment Consent (Exhibit G);
- i. Opinion of Counsel Letter (Exhibit H); and
- j. Essential Use Questionnaire (Exhibit I).

2.0 TERM

- 2.1 Contract Term. After approval by the San Antonio City Council, this contract shall begin upon execution by all parties and shall remain in full force and effect for a five (5) year period subject to City’s option to cancel.
- 2.2 Cancellation Option. At City’s option, this contract may be terminated in accordance with the termination provisions in this Agreement.

- 2.3 Temporary Short Term Extensions. City shall have the right to extend this contract under the same terms and conditions beyond the original term or any renewal thereof, on a month to month basis. not to exceed three months. Said month to month extensions shall be in writing, signed by Director, subject to and contingent upon appropriation of funding therefor.

3.0 TERMINATION

- 3.1 Termination-Breach. Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this contract, or violate any of the material terms of this contract, the City shall have the right to immediately terminate the contract in whole or in part. Notice of termination shall be provided in writing to Vendor, effective upon the date set forth in the notice. City may, in City's sole discretion, provide an opportunity for Vendor to cure the default. If City elects to offer an opportunity to cure, City shall provide notice to Vendor specifying the matters in default and the cure period. If Vendor fails to cure the default within the cure period, City shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve Vendor of any liability to the City for damages sustained by virtue of any breach by Vendor.
- 3.2 Termination-Notice. City may terminate this contract, in whole or in part, without cause. City shall be required to give Vendor notice **thirty (30)** days prior to the date of termination of the contract without cause.
- 3.3 Termination-Funding. If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.
- 3.4 Termination by City may be effected by Director, without further action by the San Antonio City Council.

4.0 DLL ASSIGNMENT

By separate written consent in **Exhibit G –Assignment Consent**, City has consented to the assignment by Vendor to De Lage Landen Financial Services, Inc. ("DLL") of all right, title and interest of Vendor in the equipment subject to this Agreement and all rent for such equipment. Parties acknowledge and agree that Vendor shall invoice City for services provided under this Agreement and DLL shall separately invoice City for such rent and sales or use tax, if applicable, in accordance with the invoicing provisions in **Exhibit A – City's RFCSP No. 6100012291**. City shall pay all such undisputed amounts invoiced by DLL to DLL without set-off or withholding for any reason whatsoever other liens against DLL or any of its affiliates for taxes due to the State of Texas or any political subdivision thereof, including City.

5.0 NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
ITSD
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Vendor, to:

Toshiba Business Solutions
14607 San Pedro Avenue, Suite 215
San Antonio, Texas 78232

With copy to:

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

5.0 ENTIRE AGREEMENT

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

6.0 MISCELLANEOUS

- 6.1 Attorney's Fees. Unless **Exhibit A – City's RFCSP No. 6100012291** provides otherwise, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorney's fees.
- 6.2 Venue, Jurisdiction and Arbitration. Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matter in question between City and Vendor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This Agreement is made to be

performed in Bexar County, Texas and is governed by the laws of the State of Texas. The City will not contractually agree to engage in binding arbitration and will not contractually agree to relinquish its right to a trial by jury.

- 6.3 Toshiba warrants and represents that (a) it will use reasonable commercial efforts to perform services and deliver multi-functional equipment in accordance with acceptable industry standards, but in no event less than a reasonable standard of care; (b) the Toshiba personnel have the skill and qualifications necessary to perform the services and deliver the equipment under this Agreement in a timely, competent, and professional manner in accordance with the applicable industry standards and governmental requirements, laws, ordinances rules and regulations; (c) that Toshiba will fulfill the technical service requirements of this Agreement; and (d) the equipment will be continually maintained in good working order, normal wear and tear excluded.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

CITY OF SAN ANTONIO

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC., DBA TOSHIBA BUSINESS SOLUTIONS

Name: Norbert Dziuk

Title: Assistant Finance Director

Date: _____

Approved as to Form:

Assistant City Attorney

Name: 

Title: President and CEO

Date: February 1, 2021

EXHIBIT A
RFCSP NO. 6100012291, INCLUDING ALL EXHIBITS, ATTACHMENTS AND
ADDENDUMS THERETO

EXHIBIT B
VENDOR'S BEST AND FINAL OFFER (BAFO) PRICE SCHEDULE, *OPTION 2: 60*
MONTH LEASE WITH CANCELLATION OPTION

EXHIBIT C
VENDOR'S PROPOSAL IN RESPONSE TO RFCSP NO. 6100012291

EXHIBIT D
TOSHIBA PROFESSIONAL SERVICES TERMS AND CONDITIONS

EXHIBIT E
TOSHIBA STATEMENT OF WORK (SOW) FOR PAPER CUT ENTERPRISE
DEPLOYMENT

EXHIBIT F
FISCAL FUNDING ADDENDUM

FISCAL FUNDING ADDENDUM

CUSTOMER	Full Legal Name _____	DBA Name (If Any) _____
	Billing Address _____	Phone Number _____
	City _____	County _____ State _____ Zip Code _____
	Agreement Number _____	Agreement Date _____

Customer warrants that it has funds available to pay all rents (the "Payments") payable under the above identified Agreement until the end of Customer's current appropriation period. If Customer's legislative body or other funding authority does not appropriate funds for Payments for any subsequent appropriation period and Customer does not otherwise have funds available to lawfully pay the Payments (a "Non-Appropriation Event"), Customer may, subject to the conditions herein and upon prior written notice to Company (the "Non-Appropriation Notice"), effective sixty (60) days after the later of Company's receipt of same or the end of the Customer's current appropriation period (the "Non-Appropriation Date"), terminate the Agreement and be released of its obligation to make all Payments due Company coming due after the Non-Appropriation Date. As a condition to exercising its rights under this Addendum, Customer shall (1) provide in the Non-Appropriation Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (2) deliver to Company an opinion of Customer's counsel (addressed to Company) verifying that the Non-Appropriation Event as set forth in the Non-Appropriation Notice has occurred, (3) return the equipment/system subject to the Agreement (the "Equipment/System") on or before the Non-Appropriation Date to Company or a location designated by Company, in the condition required by, and in accordance with the return provisions of the Agreement and at Customer's expense, and (4) pay Company all sums payable to Company under the Agreement up to the Non-Appropriation Date.

In the event of any Non-Appropriation Event, Company shall retain all sums paid hereunder or under the Agreement by Customer, including the Security Deposit (if any) specified in the Agreement.

Customer further represents, warrants and covenants for the benefit of Company that:

- (a) Customer is a municipal corporation and political subdivision duly organized and existing under the constitution and laws of the State.
- (b) Customer is authorized under the constitution and laws of the State, and has been duly authorized to enter into the Agreement and the transaction contemplated hereby and to perform all of its obligations thereunder.
- (c) The Agreement constitutes the legal, valid and binding obligation of Customer enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (d) Customer has complied with such public bidding requirements as may be applicable to the Agreement.
- (e) The Equipment/System described in the Agreement is essential to the function of Customer or to the service Customer provides to its citizens. Customer has an immediate need for, and expects to make immediate use of, substantially all the Equipment/System, which need is not temporary or expected to diminish in the foreseeable future.
- (f) Customer has never failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any lease, lease purchase, installment sale or other similar agreement.

CUSTOMER AGREES THAT A FACSIMILE COPY OR OTHER ELECTRONIC TRANSMISSION OF THIS DOCUMENT WITH FACSIMILE AND/OR ELECTRONIC SIGNATURES MAY BE TREATED AS AN ORIGINAL AND WILL BE ADMISSIBLE AS EVIDENCE IN A COURT OF LAW.

CUSTOMER SIGNATURE	Signature X _____ <small>(MUST BE SIGNED BY AUTHORIZED REPRESENTATIVE OR OFFICER OF GOVERNMENT ENTITY)</small>
	Print Name _____
	Title _____ Date _____
	Name of Government Entity _____
ACCEPTED BY COMPANY	Signature X _____
	Print Name <u>Scott Maccabe</u>
	Title <u>President and CEO</u> Date <u>2-1-2021</u>
	Name of Corporation or Partnership <u>Toshiba America Bus</u>

1716NC016V2
Solutions

EXHIBIT G
ASSIGNMENT CONSENT

Assignment Consent

Re: Assignment: Contract No. _____ dated _____ between
City of San Antonio, as Customer and Toshiba Business Solutions as nominal
Owner (the "Agreement").

Customer hereby consents and acknowledges that Toshiba Business Solutions hereby sells, assigns, and transfers to De Lage Landen Financial Services, all of Toshiba's rights, title and interest in and to (a) the equipment covered by the Agreement and (b) Toshiba's rights as Owner under the Agreement, including the right to receive equipment payments thereunder. None of Toshiba's obligations under the Agreement, however, are assumed by De Lage Landen Financial Services.

Toshiba Business Solutions

City of San Antonio



Signature

Signature

President and CEO

Title

Title

2-1-2021

Date

Date

De Lage Landen Financial Services

Signature _____

Title _____

Date _____

EXHIBIT H
OPINION OF COUNSEL

OPINION OF COUNSEL LETTER

Date: _____

1111 Old Eagle School Road
Wayne, PA 19087

Gentlemen/Ladies:

Reference is made to the Agreement between _____ (herein called "Company"), and _____ (herein called "Customer") for the lease or rental of _____ (equipment description). Unless otherwise defined herein, terms which are defined or defined by reference in the Agreement or any exhibit or schedule thereto shall have the same meaning when used herein as such terms have therein.

The undersigned is Counsel for the Customer in connection with the negotiation, execution and delivery of the Agreement, and as such I am able to render a legal opinion as follows:

1. The Customer is a public body corporate and politic of the State of _____ and is authorized by the Constitution and laws of the State of _____ to enter into the transactions contemplated by the Agreement and to carry out its obligations thereunder.
2. The Agreement set forth above has been duly authorized, executed and delivered by the Customer and constitutes a valid, legal and binding agreement enforceable in accordance with its terms.
3. No further approval, consent or withholding of objections is required from any federal, state or local governmental authority with respect to the entering into or performance by the Customer of the Agreement and the transactions contemplated thereby.
4. The entering into and performance of the Agreement and the other related documents will not violate any judgment, order, law or regulation applicable to the Customer 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 upon any assets of the Customer or the equipment pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement or other instrument by which the Customer is a party or by which it or its assets may be bound.
5. There are no actions, suits or proceedings pending or, to the knowledge of the Customer, threatened against or affecting the Customer in any court or before any governmental commission, board or authority, which, if adversely determined, will have a material adverse effect on the ability of the Customer to perform its obligations under the Agreement.
6. The equipment is personal property and, when subject to use by the Customer, will not be or become fixtures under the laws of the State of _____.
7. All required public bidding procedures regarding the award of the Agreement have been followed by the Customer.
8. Except as provided in the Agreement, Customer has no authority (statutory or otherwise) to terminate the Agreement prior to the end of its term for any reason other than non-appropriation of funds to pay the Payments for any fiscal period during the term of the Agreement.

YOU AGREE THAT A FACSIMILE COPY OR OTHER ELECTRONIC TRANSMISSION OF THIS DOCUMENT WITH FACSIMILE AND/OR ELECTRONIC SIGNATURES MAY BE TREATED AS AN ORIGINAL AND WILL BE ADMISSIBLE AS EVIDENCE IN A COURT OF LAW.

Very truly yours,

BY: _____

PRINT NAME: _____

TITLE: _____

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STANCO 15

EXHIBIT I
ESSENTIAL USE QUESTIONNAIRE

Essential Use Questionnaire

Lessee Contact Name / Position _____ Phone Number: _____

1) Please clarify legal name of proposed lessee? _____

2) Is any equipment to be leased replacing any existing equipment? Yes No (If No, proceed to question 3)

What percentage of the equipment to be leased is replacement? _____%

How long was the existing equipment in use? 1-3 yrs 3-5 yrs 5+ yrs

Why is the existing equipment being replaced? _____

What will be done with the replaced equipment? _____

3) For what purpose is the equipment being acquired? (Provide detail as to which department(s) and the expected use of the equipment)

4) Was the equipment/lease placed for competitive bid? Yes No

If No, why was a bid not required?

Covered under state contract (Contract name and # _____)

Size of transaction does not require competitive bid (What documentation _____)

Transaction exempt from bidding process pursuant to current statutes (statute # _____)

(Please attach copy of statute if available)

Other _____

5) What is the source of funds for repayment of this obligation?

Local Property Taxes

State Unrestricted Revenues

Federal Financial Assistance

Chapter I

Chapter II

Other _____

Other _____

6) Are the funds to be used for repayment of this obligation appropriated and encumbered in an approved budget? Yes No

If No, why is the obligation not included in an approved budget? _____

7) Why do you expect funds to continue to be appropriated in the future for repayment of this obligation? _____

To the best of your knowledge, have you ever non-appropriated funds in the past? Yes No

If Yes, please provide details _____

8) What is required on the Invoice for prompt payment? _____

Completed By: _____

Signature

Title

Printed Name

Phone