REQUEST FOR COUNCIL ACTION

DECEMBER 1, 2020

TITLE:

APPROVE THE SOLE SOURCE PURCHASE ORDER FOR THE PURCHASE AND INSTALLATION OF TWO LAPTOP DISPENSER KIOSKS AT THE MAIN AND NEWHOPE BRANCH LIBRARIES FOR $35,943.25, A THREE-YEAR SERVICE/SUPPORT PLAN AGREEMENT FOR $13,716.34, AND A THREE-YEAR LICENSE AGREEMENT FOR $6,555 FOR A TOTAL AMOUNT OF $56,214.59 WITH JAVA CONNECTIONS, LLC, DBA LAPTOPSANYTIME (NON-GENERAL FUND)

/s/ Kristine Ridge
CITY MANAGER

RECOMMENDED ACTION

Authorize the City Manager to execute a sole source purchase order for the purchase and installation of two laptop dispenser kiosks at the Main and Newhope Branch Libraries for $35,943.25, a three-year service/support plan agreement for $13,716.34, and a three-year license agreement for $6,555 for a total amount of $56,214.59 with Java Connections, LLC, dba LaptopsAnytime, to be funded by the Cannabis Public Benefit Fund, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

Java Connections, LLC, dba LaptopsAnytime is the sole provider and distributor of its patented LaptopsAnytime Automated Laptop Checkout Kiosks. Having additional laptops available will provide Santa Ana youth and their families more opportunities to access the Internet on an electronic device inside the Main and Newhope Libraries. Students will be able to use the self-service kiosks to check out laptops for in-house use to work on homework assignments, conduct research over the Internet, or use other software such as Microsoft Office. In addition, when the libraries re-open with COVID-19 restrictions, having additional laptops will provide more Internet access options for youth and enhanced physical distancing due to the portability of the new computers.

Adding laptops for patron use will also help narrow the digital divide in the community and create a more enjoyable experience, especially for children and teens. Patrons will be able to use a

computer anywhere a seat is available inside the Library and not be confined to specific areas. Additionally, the laptops dispenser kiosks will allow the Library to have less hardwired workstations, which frees up space for staff to create other new services in the future. Having the flexibility to use a computer anywhere in the Library also allows patrons to take advantage of the new and expanded seating options at the Newhope Library. This will also apply to the Main library once furniture upgrades are completed at that location.

One laptop dispenser kiosk will be installed at each library. Each kiosk provides a 6-bay hosting system to circulate laptops. The kiosks will allow patrons to self-checkout the laptops for in-house use. Each kiosk connects to the Library's integrated library system (ILS) called TLC, to verify that the patron has a valid library account as well as taking a picture of the patron using an integrated webcam. Once a patron has returned the laptop to the kiosk, it automatically checks in the device, wipes any modifications or information saved by the patron, and charges the device so it can be ready for the next checkout.

There is no other vendor that offers this unique self-service hardware, backend software dispensing, or monitoring services. LaptopsAnytime's competitors have automated checkout kiosks, but their systems do not provide direct auto-dock technology, integrate with the Library's ILS, or offer the proprietary Deep Freeze software to ensure the secure use of technology.

FISCAL IMPACT
Funds are available in the following accounts for the current year:

Fiscal Year	Accounting Unit-Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 20-21	01213020-63001	Cannabis Public Benefit Fund	Cannabis Public Benefit Fund-PRCSA, Miscellaneous Operating Expenses	$35,943.25
FY 20-21	01213020-62300	Cannabis Public Benefit Fund	Cannabis Public Benefit Fund-PRCSA, Contractual Services-Professional	$13,716.34
FY 20-21	01213020-62140	Cannabis Public Benefit Fund	Cannabis Public Benefit Fund-PRCSA, Memberships, Subscriptions & Dues	$6,555.00

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Brian Sternberg, Executive Director – Library Services Agency

Exhibit: 1. Quote
               2. Kiosk Support Agreement
               3. End-User License Agreement

Exhibit 1

Java Connections, LLC
dba LaptopsAnytime
17304 Preston Road, Suite 800
Dallas, TX 75252 US
(614) 579-3057
abigail@laptopsanytime.com
www.laptopsanytime.com

Quote

ADDRESS	SHIP TO	
Lynn Nguyen	Lynn Nguyen	QUOTE # 2535
City of Santa Ana - Santa Ana	City of Santa Ana - Santa Ana	DATE 11/10/2020
Public Library	Public Library	EXPIRATION DATE 05/31/2021
26 Civic Center Plaza	26 Civic Center Plaza	
Santa Ana, CA 92701	Santa Ana, CA 92701	

SALES REP
JR

ACTIVITY	QTY	RATE	AMOUNT
Kiosk - 6 Bay Host 6-bay Laptop Host Station in a 30"w x 29" d x 60" h cabinet set for 6 default laptops. RFID 4.0 Technology. Includes Web Camera to take photo of every person checking out device. Touchscreen Monitor, Bar Code Reader. Note: Devices to be furnished by customer.	2	13,950.00	27,900.00T
Database Integration ILS Authentication (SIP-2 Protocol) and/or LDAP/Active Directory. One-time cost.	1	3,500.00	3,500.00T
Annual Hardware Svc Agreement Platinum Plus Annual Hardware Service Agreement. Cost based on total hardware purchase. Platinum Plus - 15%. (Platinum Plus provides Free SMART Bay Upgrades Once Every 3 Years). Year 1	2	2,092.50	4,185.00T
Annual Hardware Svc Agreement Platinum Plus Annual Hardware Service Agreement. Cost based on total hardware purchase. Platinum Plus - 15%. (Platinum Plus provides Free SMART Bay Upgrades Once Every 3 Years). Year 2	2	2,092.50	4,185.00T
Annual Hardware Svc Agreement Platinum Plus Annual Hardware Service Agreement. Cost based on total hardware purchase. Platinum Plus - 15%. (Platinum Plus provides Free SMART Bay Upgrades Once Every 3 Years). Year 3	2	2,092.50	4,185.00T
Ann Software Lic Agreement Annual Software Licensing Agreement per Host Station ($1000 per each Host of 6 or fewer devices plus $800 for each additional 6 devices). Year 1	2	1,000.00	2,000.00T
Ann Software Lic Agreement Annual Software Licensing Agreement per Host Station ($1000 per each Host of 6 or fewer devices plus $800 for each additional 6 devices). Year 2	2	1,000.00	2,000.00T

Thank you for your business. A 3% service charge is added if paying by credit card.

Exhibit 1

ACTIVITY	QTY	RATE	AMOUNT
Ann Software Lic Agreement Annual Software Licensing Agreement per Host Station ($1000 per each Host of 6 or fewer devices plus $800 for each additional 6 devices). Year 3	2	1,000.00	2,000.00T
Deep Freeze Software License Faronics Deep Freeze Licenses. Cost up to $50/license. Waived. Up to 12 licenses.	12	0.00	0.00
Custom Graphics Custom Kiosk Graphics. Price $1250 for one station includes front panel and two side panels + Laptop (Lid) Stickers. Price Waived for Platinum Plus.	2	0.00	0.00
On-Site Installation On-Site Assistance with Installation and Training. $1500 for 1 day.	1	1,500.00	1,500.00T
Crate Custom Wooden Crate (1 per Kiosk). $600/Crate. Price Waived for Platinum Plus.	2	0.00	0.00
Shipping Prepay and Add Shipping (1 per Crate). $700/Crate. Price Waived for Platinum Plus.	2	0.00	0.00

* At time of PO, we request 50% Down-Payment with the remaining balance paid Net 30.
* Please ship all devices and power bricks to our facility in Hayward, CA to facilitate Kiosk Set-up prior to shipping.

SUBTOTAL	51,455.00
TAX (9.25%)	4,759.59
TOTAL	**$56,214.59**

Accepted By

Accepted Date

25J-4

Exhibit 2

Kiosk Support Agreement

This Kiosk Support Agreement (this *"Agreement"*) is a legal contract between you (the party identified on the last page of this Agreement who has signed this Agreement, referred to herein as *"you"* or *"your"* or *"City"*), as either an individual or a single business or government entity, and Java Connections LLC / LaptopsAnytime and its affiliates (*"LaptopsAnytime"*, *"we"*, or *"our"*) and is dated for identification purposes, December 1, 2020.

1. SCOPE OF WORK & FEES FOR SERVICES

1.1 Initial Setup. With respect to any kiosks ordered by you and covered by an End User License Agreement between you and LaptopsAnytime (*"Kiosks"*), LaptopsAnytime will set up the Kiosks at your designated locations. The initial setup will be accomplished by one of our trained specialists and will include assistance with unpacking the Kiosk(s), laptop/device integration, networking setup, and on-site training for your support staff and administrators.

1.2 Fees for Initial Setup. You agree to pay Laptops Anytime for charges related to its Initial Setup. Said charges are based on geographical area, current travel rates, and number of devices, Kiosks, and locations, and will be invoiced to you [when] and are based on LaptopsAnytime's rates at the time of Initial Setup. You agree to pay the Initial Setup charges within forty-five (45) days following the receipt of a proper invoice evidencing work performed, subject to the City accounting procedures. Payment need not be made for work that fails to meet the standards of performance set forth in the Recitals, which may reasonably be expected by the City.

1.3 Service Plan. LaptopsAnytime currently offers three different Service Packages, each of which is described on Exhibit A hereto. LaptopsAnytime will provide maintenance service and support to the Kiosks in accordance with the particular Service Plan you choose. To elect a particular Service Plan, complete, sign, and return to LaptopsAnytime a copy of Exhibit A.

1.4 Annual Fee for Service Plan. Following your selection of a Service Package, LaptopsAnytime will invoice you for the applicable annual fee. The annual fee is a non-refundable payment for twelve (12) months of service (*"Service Package Period"*); payment of the entire annual fee is due within thirty (30) days of your receipt of the invoice.

1.5 Service Plan Particulars.

A. In all events and under all Service Plans, replacement parts that are provided to you pursuant to this Agreement are provided on an exchange basis, and the parts that were replaced become the property of LaptopsAnytime.

B. For Customers pre-November 1, 2019, the default rate for SmartBay upgrades is $1,000 per bay. You benefit from the reduced rate for SmartBay upgrades under the Gold Plan or Platinum Plus Plan only if you have selected and paid for three (3) consecutive years of the particular plan (e.g., only after you have selected and paid for 3 years of the Gold Plan are you entitled to the Gold Plan price of $700 per by for SmartBay upgrades). Starting on November 1, 2019, revised Service Plans include a 3-year, 4-year and 5-year refresh programs. In all cases, you have to be on the same plan for either 3, 4 or 5 years to get the benefit of the refresh. It is possible to upgrade from one plan type to another by paying the differential going backwards and the new amount going forward.

C. On-site support is available on regular business days (Monday to Friday and excluding federal holidays) from 7:00 a.m. to 7:00 p.m. PST.

Exhibit 2

2. **YOUR RESPONSIBILITIES**

You agree to:

2.1 Use Kiosks in accordance with LaptopsAnytime's specifications.

2.2 Correct any discrepancy(s) in use that is not compliant with LaptopsAnytime's specifications.

2.3 Provide electrical work external to the Kiosks.

2.4 Provide a hazard-free environment for the Kiosks. Damage due to hazardous environmental conditions are not the responsibility of LaptopsAnytime. Hazardous environmental conditions include, but are not limited to, corrosive atmospheres, electrical spikes or noise, or severe ambient temperature changes.

2.5 Be responsible for certain routine maintenance tasks such as external cleaning of the Kiosks, performing operational checks, and replacing parts as recommended by LaptopsAnytime.

2.6 Refrain from altering, modifying, or changing any Kiosks, and from reverse engineering the Kiosk.

2.7 Allow LaptopsAnytime full and free access to the Kiosks for purposes of corrective and/or preventive maintenance.

2.8 Provide safe access to Kiosks for service and maintenance.

2.9 Abide by the terms of the End User License Agreement.

3. **TERM OF AGREEMENT.** The term of this Agreement begins after the installation of the Kiosk(s) by LaptopsAnytime and shall remain effective until November 30, 2023. Notwithstanding the foregoing, you may terminate this Agreement at any time; however, there is no refund of any portion of the annual fee paid in the event of a termination of this Agreement prior to the expiration of any Service Package Period.

4. **LIMITATION OF LIABILITY. In no event shall LaptopsAnytime be liable for any warranties that are not specifically set forth in this Agreement. Specifically, you agree that LaptopsAnytime is not liable for any warranties implied by law or otherwise, including any warranty of merchantability or fitness for a particular purpose.**

5. **GENERAL TERMS**

5.1 **Governing Law and Choice of Forum.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of California without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this Agreement shall be resolved in the federal or state courts situated within Orange County, California to the maximum extent permitted by law, you hereby consent to the jurisdiction and venue of such courts and waive any objections to the jurisdiction or venue of such courts.

5.2 **Severability.** If any term or provision of this Agreement is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity of enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

5.4 **Headings.** The headings contained in this Agreement are incorporated for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Exhibit 2

5.5   No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

5.6   Amendment. We reserve the right, in its sole discretion, to amend the terms of the Service Levels and/or to other terms of this Agreement following the expiration of one year from the date of the start of a particular Service Level, provided we provide you at least thirty (30) days advanced notice of the proposed changes. If you do not accept amendments made to the Service Levels or any other terms of this Agreement, then this Agreement will be immediately terminated, along with the End User License Agreement.

5.7 Force Majeure. Neither party shall be liable for any delay in performance of its obligations under this Agreement to the extent such delay in performance of its obligations is caused by involuntary plant shutdown, acts of God, fires, floods, earthquake, wars, riots, terrorism, sabotage, labor disputes or shortages, government actions, the inability to obtain materials or transportation, or any other circumstances beyond the reasonable control of the affected party (each, a "Force majeure Event"). In the event of a Force Majeure Event, the non-performing party will be excused from further performance during the period that the Force Majeure Event prevails and shall resume performance at such time as the impairment caused by such circumstances ends or would have ended had the affected party taken reasonable steps to remedy the Force Majeure Event.

5.8   Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received (i) when personally delivered with a receipt obtained, (ii) on the date noted as the date received, refused or uncollected if sent by certified or registered mail, return receipt requested, postage prepaid or (iii) the earlier of receipt or two (2) business days after deposit with a nationally overnight delivery service (e.g., Federal Express), at the addresses set forth below each Party's name on the signature page, or to such other address that a party provides to the other party pursuant to the provisions of this paragraph.

5.9   Counterparts and Facsimiles. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, this Agreement may be executed by facsimile signatures and such signatures shall be deemed an original.

5.10 Insurance. Prior to undertaking performance of work under this Agreement, Laptops Anytime shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

A.   Commercial General Liability Insurance. Laptops Anytime shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property without any exclusion for claims of sexual molestation, resulting from any act or occurrence arising out of Laptops Anytime's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of $1,000,000 per occurrence, with $2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

B.   Business automobile liability insurance, or equivalent form, with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

Exhibit 2

C. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Laptops Anytime, if Laptops Anytime has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Laptops Anytime agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

D. Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than $2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Laptops Anytime in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

1) The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of Laptops Anytime. If not covered under Laptops Anytime's liability policy, such "property" coverage of the City may be endorsed onto the City's Cyber Liability Policy as covered property as follows:

2) Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of Vendor.

3) The Insurance obligations under this agreement shall be the greater of 1—all the Insurance coverage and limits carried by or available to Laptops Anytime; or 2— the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to City. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of Laptops Anytime under this agreement.

E. The following requirements apply to the insurance to be provided by Laptops Anytime pursuant to this section:

1) LaptopsAnytime shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.

2) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.

3) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

4) Where the amounts or coverage provided by the certificates of insurance provides coverage greater than those listed by this Agreement, the amounts provided by the certificates of insurance shall be incorporated by reference into the Agreement.

5) LaptopsAnytime shall supply City with a fully executed additional insured endorsement.

F. If Laptops Anytime fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in

Exhibit 2

force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Laptops Anytime's right to be paid for its time and materials expended prior to notification of termination. Laptops Anytime waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

5.11   Indemnification. LaptopsAnytime hereby agrees to indemnify, hold harmless, and defend City, its officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the services provided in this Agreement, except for liability arising out of the sole negligence or willful misconduct of City, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom. In the event City is named as co-defendant, LaptopsAnytime shall notify City of such fact and shall represent City, with counsel approved by City, in such legal action unless City undertakes to represent itself as co-defendant in such legal action, in which event LaptopsAnytime shall pay to City its litigation costs, expenses and attorneys' fees.

5.12 Entire Agreement. The parties agree: (i) that this Agreement contains the entire agreement between the parties with respect to the maintenance and support of the Kiosks and supersedes any and all prior oral or written agreements, arrangements, or understandings between the parties relating to the subject matter of this Agreement; (ii) that no oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist, and no evidence of prior, contemporaneous, or future oral agreements may be used to contradict the terms of this Agreement; and (iii) that any reliance on oral agreements or statements in entering into this Agreement will be unjustifiable and unreasonable.

IN WITNESS WHEREOF, the parties identified below have executed this Agreement as of _____, 2020 (the "Effective Date").

Java Connections, LLC   **City of Santa Ana**
d/b/a LaptopsAnytime

By: _Jonath Ruhlg_   By: _____
Printed Name: _Jonathan Ruttenberg_   Printed Name: Kristine Ridge
Title: _VP_   Title: City Manager
17304 Preston Road, Suite 800   Address: 20 Civic Center Plaza, Santa Ana, CA
Dallas, TX 75252   92702

                                                                     ATTEST:

                                                                     _____
                                                                     Daisy Gomez
                                                                     Clerk of Council

APPROVED AS TO FORM: RECOMMENDED FOR APPROVAL:

Sonia R. Carvalho
City Attorney

By: _Laura A Rossini_   _____
Laura A. Rossini   Brian Sternberg
Acting Chief Assistant City Attorney   Library Services Director

Exhibit 2

EXHIBIT A: SERVICE PLANS

CHOOSE ONE, INSERT START DATE, AND SIGN TO THE RIGHT WHERE INDICATED

Client hereby elects   the Platinum Plus Plan (3 Year Refresh Program) to start on _____ Agreed to by: _____

the Platinum Plan (4 Year Refresh Program) to start on _____ Agreed to by: _____

the Gold Plan (5 Year Refresh Program) to start on _____ Agreed to by: _____

the Silver Plan "Smart Door/Drawer Only" to start on _____ Agreed to by: _____

Platinum Plus Plan (3 Year Refresh Program): Annual Fee = 15% of the Total Kiosks Cost

This package is the most comprehensive plan, which includes additional services at no cost, and the lowest costs for services

- The ability to remotely monitor, trouble shoot, and perform repairs on the Kiosks with remote assistance from one of our knowledgeable support staff
- A dedicated support engineer assigned to your account
- Maintenance of on-site inventory for minor spare parts
- Free installation of upgrades
- Free installation of newly designed Smart-Bay hardware
- Free installation of New Smart-Bays
- On-site support at $65/hour
- Smart-Bay Non-Recurring Engineering (NRE) at $2,000 per design
- Includes next-day shipping for replacement parts

Platinum Plan (4 Year Refresh Program): Annual Fee = 12% of the Total Kiosks Cost

This package offers maximum value, offering the same benefits of our Gold coverage with additional discounts.

- The ability to remotely monitor, trouble shoot, and perform repairs on the Kiosks with remote assistance from one of our knowledgeable support staff
- Free installation of upgrades
- Free installation of newly designed Smart-Bay hardware
- Free installation of New Smart-Bays
- On-site support at $75/hour
- Smart-Bay Non-Recurring Engineering (NRE) at $2,500 per design
- Includes next-day shipping for replacement parts

Exhibit 2

Gold Plan (5 Year Refresh Program): Annual Fee = 9% of the Total Kiosks Cost
This package is the most economical plan with reduced costs for services:
- The ability to remotely monitor, trouble shoot, and perform repairs on the Kiosks with remote assistance from one of our knowledgeable support staff
- On-site support at $100/hour
- Smart-Bay Non-Recurring Engineering (NRE) at $4,000 per design
- Includes two-day shipping for replacement parts

Silver Plan "SmartDoor/Drawer Only": Annual Fee = 6% of the Total Kiosks Cost
Our most affordable plan, the Silver Plan includes:
- The ability to remotely monitor, trouble shoot, and perform repairs on the Kiosks with remote assistance from one of our knowledgeable support staff
- On-site support at $125/hour
- Includes free shipping via ground shipping for replacement parts
- Since SmartDoors/Drawers are available in multiple sizes and configurations, please contact us for information on upgrades.

Please Note: It is mandatory to complete the duration of a Service Plan cycle (i.e. 3-, 4- or 5-years) before qualifying for the benefits of a Free Kiosk Refresh. If you decide to upgrade from one Plan Level to another, this can be done at any time by paying the differential between your current plan and the new plan for previous plan years and then paying the higher rate going forward. For those on previous Plan Levels prior to 11.1.19, you have the option to upgrade. Contact us at 877.836.3727 for more information.

Exhibit 3

End-User License Agreement
<u>Annual Software & Hardware License Agreement</u>

This End-User License Agreement (this *"Agreement")* is a legal contract between you (the party identified on the last page of this Agreement and who has signed this Agreement, referred to herein as *"you"* or *"your"*), as either an individual or a single business or government entity, and Java Connections LLC / LaptopsAnytime and its affiliates *("JAVA CONNECTIONS, LLC")*.

READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING JAVA CONNECTIONS LLC'S PROPRIETARY SOFTWARE[1] (the *"SOFTWARE")* OR OBTAINING A LICENSE TO THE SOFTWARE OR USING THE SOFTWARE.

THE SOFTWARE IS COPYRIGHTED AND IT IS LICENSED TO YOU UNDER THIS AGREEMENT, NOT SOLD TO YOU. BY DOWNLOADING THE SOFTWARE OR OBTAINING A LAPTOPSANYTIME KIOSKTO THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU ACCEPT AND AGREE TO BE BOUND BY ITS TERMS. IF YOU ARE NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, YOU SHOULD REFRAIN FROM ACCESSING OR USING THE SOFTWARE. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN YOU AND JAVA CONNECTIONS LLC CONCERNING THE SOFTWARE, AND THIS AGREEMENT SUPERSEDES AND REPLACES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING YOU MAY HAVE HAD WITH JAVA CONNECTIONS LLC RELATING TO THE SOFTWARE. THE TERMS OF THIS AGREEMENT, THE QUOTATION(S) AND ANY EXHIBITS THERETO SUPERSEDE ANY AND ALL CLICKWRAP OR CLICK-THROUGH AGREEMENTS REQUIRED OF ANY END USER TO ACCESS AND USE THE SOFTWARE AND KIOSK.

1. License

- **1.1. Grant of License**. Java Connections LLC hereby grants to you, and you accept, a limited, nonexclusive license to use the Kiosk Software in machine-readable, object code form only, and the user manuals accompanying the Software (the *"Documentation")*, only as authorized in this Agreement. For purposes of this Agreement, the "Software" includes any updates, enhancements, modifications, revisions, or additions to the Software made by Java Connections LLC and made available to end-users through Java Connections LLC's web site. Java Connections LLC shall provide you any and all updates, enhancements, modifications, revisions, or additions to the Software that it releases to other customers, at no additional cost; any updates, enhancements, modifications, revisions or additions that Java Connections LLC elects to provide will not, however, be provided to you if you fail to pay the applicable license fee.

- **1.2. Scope of Use**. You may use one (1) copy of the Software activated by a LaptopsAnytime Kiosk Host on a single server (virtual or physical) owned, leased, or otherwise controlled by you. If you have multiple kiosks and towers connected together, you may make and use as many copies of the Software as permitted in the purchase order. For purposes of this

Exhibit 3

Agreement, *"use"* of the software means loading the Software into the temporary or permanent memory of a computer controlling the rental of devices. Installation of the Software on a network server solely for controlling the rental or check out of computers is "use" of the Software, and is permitted, as long as you have a license for each server (virtual or physical) to which the Software is distributed. The Software may not be used on, or distributed to, a greater number of kiosk towers than you have licensed. If you exceed the number of licenses you have obtained you will be in breach of this Agreement.

- **1.3. Copies and Modifications.** You may not reverse engineer, decompile, disassemble, or otherwise translate the Software or kiosk hardware material, components, or any kiosk hardware or software you have obtained. You may not modify or adapt the Software or any kiosk hardware that you have obtained in any way. You may not copy the Software, the Documentation, and any kiosk software or hardware that you have obtained, for backup or archival purposes. Except as authorized in this Section, no copies of the Software, Documentation, or kiosk hardware, or any portions thereof, may be made by you or any person under your authority or control.

- **1.4. Assignment of Rights.** You will not sublicense, assign, redistribute, encumber, lease, rent, lend, or otherwise transfer your rights and obligations in the Software, Documentation, or kiosk hardware, as granted by this Agreement, to any party without prior written consent of Java Connections LLC. Notwithstanding anything to the contrary in the preceding sentence, you may assign this Agreement to the purchaser of all or substantially all of your assets or to any successor by merger, consolidation, or similar corporate action ("Assignee") provided, however, the Assignee agrees in writing to this Agreement.

2. Intellectual Property and Confidentiality and Privacy

- **2.1. Use Reporting, License Violations and Remedies.** Java Connections LLC reserves the right to gather only the following data on Kiosk usage: the number of device rentals, server IP addresses, and domain counts necessary to ensure that our products are being used in accordance with the terms of this End-User License Agreement. Notwithstanding the foregoing, Java Connections LLC shall not have access to confidential patron information. Java Connections LLC expressly prohibits simultaneous, multiple installations of our Software and domain count overrides without prior written approval by Java Connections LLC. Any unauthorized use shall be considered by Java Connections LLC to be a violation of this End-User License Agreement. Java Connections LLC reserves the right to remedy violations immediately upon discovery, by charging the then current list price of unauthorized keys to the credit card used to make the original, authorized purchase, or by any other means necessary. You agree not to block, electronically or otherwise, the outgoing transmission of data to an agreed upon IP address or addresses required for compliance with this Agreement. Any blocking of data required for compliance under this Agreement is considered to be violation of this Agreement and will result in immediate termination of this Agreement pursuant to Section 4.

- **2.2. License Automatic Update and Expiration.** Your kiosk software may include an expiration date that can result in the termination of the license. For continued annual license

Exhibit 3

renewal, the license updates automatically except if Java Connections LLC determines that a license is used in violation of the terms of this Agreement or the annual fee is not paid or until expiration under the terms of the service contract. If your kiosk is stolen, or if you suspect any improper or illegal usage of your software outside of your control you should promptly notify Java Connections LLC of such occurrence. A replacement software download will be issued to you and the suspect software will be overwritten. For lease licenses, your monthly or annual payment for each kiosk and tower must be processed prior to the expiration date in order for software to be valid. For your convenience Java Connections LLC provides license expiration warnings in the product interface should there be any issues that would cause the product license to eventually expire. It is your responsibility to contact Java Connections LLC regarding any potential expiration that you deem inappropriate. Java Connections LLC shall not liable for any damages or costs incurred in connection with the expired licenses or licenses in which the annual fee has not been paid.

- **2.3. Proprietary Rights to Software and Trademarks.** You acknowledge that the Software and the Documentation are proprietary to Java Connections LLC, and the Software and Documentation are protected under United States copyright law and international treaties. You further acknowledge and agree that, as between you and Java Connections LLC, Java Connections LLC owns and shall continue to own all right, title, and interest in and to the Software and Documentation, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. This Agreement does not grant you any ownership interest in or to the Software or the Documentation, but only a limited right of use that is revocable in accordance with the terms of this Agreement. Any and all trademarks or service marks that Java Connections LLC uses in connection with the Software or with services rendered by Java Connections LLC are marks owned by Java Connections LLC. This Agreement does not grant you any right, license, or interest in such marks, and you shall not assert any right, license, or interest in such marks or any words or designs that are confusingly similar to such marks.

- **2.4. Confidentiality.** You shall permit only authorized users, who possess rightfully, obtained passwords, to use the Software or to view the Documentation. Except as expressly authorized by this Agreement, you shall not make available the Software, Documentation, or any passwords to any third party. You will use reasonable efforts to cooperate with and assist Java Connections LLC in identifying and preventing any unauthorized use, copying, or disclosure of the Software, Documentation, or any portion thereof.

- **2.5 Privacy/Compliance with Laws.** Java Connections LLC will use appropriate administrative, technical, and physical security measures to safeguard the data provided by you and your users against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure, access, use or processing. Java Connections LLC will not rent or sell personally identifiable data to third parties. Java Connections LLC will comply with all applicable laws, including privacy or data security laws, including but not limited to the Family Educational Rights and Privacy Act, 20 USC 1232g ("FERPA"), in connection with performing the services under this Agreement. To the extent Java Connections LLC has access to Education Records as that term is defined in FERPA, Java Connections LLC is deemed a "school official" as that term is defined in FERPA.

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3. License Fees

The Software will be available to you for use upon receipt of annual or monthly payments to Java Connections LLC. Upon acceptance of this Agreement, you may obtain one or more kiosks by paying the requisite license fees and hardware cost, using the procedure set forth on Java Connections LLC web site and or written documentation. The license fees paid by you are paid in consideration of the license granted under this Agreement.

4. Term and Termination

This Agreement is effective upon your acceptance of the Agreement, or upon your downloading, accessing, and using the Software, even if you have not expressly accepted this Agreement. This Agreement shall continue in effect for three years from the date of the installation of the Kiosk as specified in the Kiosk Support Agreement. Without prejudice to any other rights, this Agreement will terminate automatically if you fail to comply with any of the limitations or other requirements described herein. If you are leasing the Software, and fail to pay the applicable license fees, Java Connections LLC shall have the right to shut down your server. You may terminate this License Agreement at any time by: (i) providing written notice of your decision to terminate the Agreement to Java Connections LLC and (ii) either returning the Software, Documentation, all copies thereof, and all license keys that you have obtained to Java Connections LLC or destroying all such materials and providing written verification of such destruction to Java Connections LLC. Java Connections LLC may terminate this License Agreement if you breach any term of the Agreement by giving you written notice of your breach, a reasonable opportunity to cure the breach (not to exceed thirty (30) days), and in the event of your failure to cure the breach, Java Connections LLC' decision to terminate the Agreement; provided, however that Java Connections LLC may automatically terminate the Agreement as specified herein. Upon termination of the Agreement by Java Connections LLC, you agree to either return to Java Connections LLC the Software, Documentation, all copies thereof, and all license keys that you have obtained, or to destroy all such materials and provide written verification of such destruction to Java Connections LLC.

5. **Insurance**. Prior to undertaking performance of work under this Agreement, LaptopsAnytime shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

A. Commercial General Liability Insurance. LaptopsAnytime shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property without any exclusion for claims of sexual molestation, resulting from any act or occurrence arising out of LaptopsAnytime's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of $1,000,000 per occurrence, with $2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not

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contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

B. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

C. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, LaptopsAnytime, if LaptopsAnytime has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, LaptopsAnytime agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

D. Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than $2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by LaptopsAnytime in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

1) The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of Laptops Anytime. If not covered under LaptopsAnytime's liability policy, such "property" coverage of the City may be endorsed onto the City's Cyber Liability Policy as covered property as follows:

2) Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of Vendor.

3) The Insurance obligations under this agreement shall be the greater of 1—all the Insurance coverage and limits carried by or available to LaptopsAnytime; or 2—the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to City. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of LaptopsAnytime under this agreement.

E. The following requirements apply to the insurance to be provided by Laptops Anytime pursuant to this section:

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1)   LaptopsAnytime shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.

2)   Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.

3)   Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

4)   Where the amounts or coverage provided by the certificates of insurance provides coverage greater than those listed by this Agreement, the amounts provided by the certificates of insurance shall be incorporated by reference into the Agreement.

5)   LaptopsAnytime shall supply City with a fully executed additional insured endorsement.

F.   If LaptopsAnytime fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect LaptopsAnytime's right to be paid for its time and materials expended prior to notification of termination. LaptopsAnytime waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6.   Indemnification

Each party (Indemnifying Party) agrees to indemnify, defend, and hold harmless the other party (Indemnified Party) and its affiliates and their respective officers, employees, directors, agents, licensees (excluding the Indemnifying Party), sublicensees (excluding the Indemnifying Party), successors, and assigns from and against any and all liability, costs, losses, damages, and expenses (including reasonable attorneys' fees and expenses) arising out of any claim, suit, or cause of action relating to and/or arising from (a) Indemnifying Party's breach of any term of this Agreement; (b) Indemnifying Party's violation of any rights of any third party. The indemnification obligations set forth in the immediately preceding sentence shall survive the termination of this Agreement.

7.   Disclaimer

THE SOFTWARE AND DOCUMENTATION ARE LICENSED "AS IS," AND JAVA CONNECTIONS LLC DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT AUTHORIZED BY LAW. WITHOUT LIMITATION OF THE FOREGOING, JAVA CONNECTIONS LLC EXPRESSLY WARRANTS THAT THE SOFTWARE WILL OPERATE IN ACCORDANCE WITH THE REPRESENTATIONS MADE IN DOCUMENTATION PROVIDED TO THE CUSTOMER, BUT DOES NOT WARRANT

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THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM YOUR USE OF THE SOFTWARE. JAVA CONNECTIONS SHALL NOT BE RESPONSIBLE FOR THE OPERATION OF SOFTWARE WHICH HAS BEEN MODIFIED OR RECONFIGURED BY YOU.

8. General Terms

- **8.1. Severability.** If any term or provision of this Agreement is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity of enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

- **8.2. Survival.** Articles 2, 6, 7, and 8 of this Agreement and all Sections thereof, shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding indefinitely.

- **8.3. Headings.** The Article and Section headings contained in this Agreement are incorporated for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

- **8.4. No Waiver.** The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

- **8.5. Amendment.** Java Connections LLC reserves the right, in its sole discretion, to amend this Agreement from time to time upon at least thirty (30) days advanced written notice to your duly authorized signatory noted below. Notice shall also be sent to the individuals named on the Purchase Quotations. If there is a conflict between this Agreement and the most current version of this Agreement posted on the kiosk management software and must be acknowledged prior to each remote manage session and the most current version will prevail. Notwithstanding anything to the contrary herein and in an avoidance of doubt, no material amendment of this Agreement will be effective against you unless you have received at least thirty (30) days advanced written notice to your duly authorized signatory noted below. If you do not accept amendments made to this agreement, then this license will be immediately terminated pursuant to Section 4.

- **8.6. Taxes.** You are a tax-exempt entity and shall not pay any applicable sales, use, transfer, or other taxes and all duties, whether national, state, or local, however designated, that are levied or imposed by reason of the transaction contemplated under this Agreement, excluding income taxes on the net profits of Java Connections LLC. You shall provide a tax-exempt certificate to Java Connections LLC upon request.

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- **8.7 Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received (i) when personally delivered with a receipt obtained, (ii) on the date noted as the date received, refused or uncollected if sent by certified or registered mail, return receipt requested, postage prepaid or (iii) the earlier of receipt or two (2) business days after deposit with a nationally overnight delivery service (e.g., Federal Express), at the addresses set forth below each Party's name on the signature page, or to such other address that a party provides to the other party pursuant to the provisions of this paragraph.

- **8.8 Counterparts and Facsimiles.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, this Agreement may be executed by facsimile signatures and such signatures shall be deemed an original.

- **8.9 Entire Agreement.** The parties agree: (i) that this Agreement contains the entire agreement between the parties with respect to the settlement of the claims and the transactions described herein and supersedes any and all prior oral or written agreements, arrangements, or understandings between the parties relating to the subject matter of this Agreement; (ii) that no oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist, and no evidence of prior, contemporaneous, or future oral agreements may be used to contradict the terms of this Agreement; and (iii) that any reliance on oral agreements or statements in entering into this Agreement will be unjustifiable and unreasonable.

9. United States Government Restricted Rights. The Software, kiosk hardware, and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(f)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. S:52.227-19, as applicable.

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Any of JAVA CONNECTIONS LLC KIOSK SOFTWARE, JAVA CONNECTIONS LLC KIOSK HARDWARE, JAVA CONNECTIONS LLC BUSINESS AUTOMATION KIOSKS, JAVA CONNECTIONS LLC, JAVA CONNECTIONS LLC SYSTEM AUTOMATION, and any other Java Connections LLC software products as may be offered by Java Connections LLC from time to time on www.LAPTOPSANYTIME.com OR www. LAPTOP SANYTIME.net.

IN WITNESS WHEREOF, the parties identified below have executed this Agreement as of _____, 2020 (the "*Effective Date*").

Java Connections, LLC **d/b/a LaptopsAnytime**	**City of Santa Ana**
By: _Jonathan Ruttberg_ (signature)	By: _____
Printed Name: Jonathan Ruttenberg	Printed Name: Kristine Ridge
Title: VP	Title: City Manager
17304 Preston Road, Suite 800 92702 Dallas, TX 75252	Address: 20 Civic Center Plaza, Santa Ana , CA
	ATTEST:
	_____ Daisy Gomez Clerk of Council
Approved as to Form:	**Recommended for Approval:**
Sonia R. Carvalho City Attorney	
By: _Laura A. Rossini_ (signature) Laura A. Rossini Acting Chief Assistant City Attorney	_____ Brian Sternberg Library Services Director