

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Environmental Service

AGENDA DATE: March 25, 2008

CONTACT PERSON/PHONE: Ellen Smyth, P.E., Director 621-6700 ; Terrence Freiburg,
Purchasing Manager, 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT:

Award Government Capital Corporation a Municipal Technology Lease-Purchase Agreement for the purchase of an Accela government software system for Accela Automation Implementation, License Agreement, Services Agreement (including statement of work), and Maintenance Agreement.

BACKGROUND / DISCUSSION:

This council action will provide financing for the upgrade the current software used for permitting, licensing and code enforcement from a client/server to a web-based application that will allow personnel to access and use the software from any workstation or laptop with internet connectivity. The project will customize and deploy the software to all City departments involved in Permitting, Licensing and Code enforcement.

PRIOR COUNCIL ACTION:

No. Concurrent action required for contract with Accela.

AMOUNT AND SOURCE OF FUNDING:

Total Financed Cost--\$3,985,756.60 (\$797,151.32 annual payments for 5 years at 1.99% interest)

These expenditures will be financed via Government Capital Corporation. Five annual payments in the amount of \$797,151.32 to GCC will be made by Environmental Services from Account #508010-34010289-40403.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

CITY CLERK DEPT.
08 MAR 20 AM 11:25

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: 
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

FINANCING OF AN ACCELA GOVERNMENT SOFTWARE SYSTEM

WHEREAS, the City Council desires to approve the Municipal Technology Lease-Purchase Agreement (the "Agreement"), between the City of El Paso, Texas, (the "City"), and Government Capital Corporation, (the "Lessor"), for the purchase of an Accela government software system (the "Property") to enhance the City's ability to perform its licensing, permitting and code enforcement functions and improve customer service; and

WHEREAS, it is necessary to approve the Agreement and authorize the City Manager to execute the Agreement, and to authorize City officials to make certain determinations and execute certain other documentation relative thereto.

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

THAT the Municipal Technology Lease-Purchase Agreement with Government Capital Corporation for the financing of the purchase of Accela software, together with such exhibits, attachments, additions, changes or modifications as may be approved by the City Attorney, is hereby approved; and

THAT Joyce A. Wilson, City Manager, is hereby authorized and directed to execute the agreement and related documents and to deliver it to Government Capital Corporation, the Lessor.

ADOPTED THIS 25th day of March, 2008.

CITY OF EL PASO

John Cook, Mayor

CITY CLERK DEPT.
08 MAR 20 AM 11:26

ATTEST:

Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria
Financial Services

MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT

THIS TECHNOLOGY LEASE-PURCHASE AGREEMENT No. 4863 (hereafter referred to as "Agreement") dated as of March 25, 2008, by and between Government Capital Corporation, a Texas corporation (herein referred to as "Lessor"), and the City of El Paso, a political subdivision or agency of the State of Texas (hereinafter referred to as "Lessee").

WITNESSETH: In consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. **Term and Payments.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor those software licenses and related computers and appurtenances, if applicable, described in Exhibit A hereto (hereinafter, with all replacement parts, substitutions, proceeds, increases, additions, accessions, repairs and accessories incorporated therein or affixed thereto, referred to as the "Property") for the amounts to be paid in the sums (the "Lease Payments") and on the dates (the "Lease Payment Dates") set forth in Exhibit B hereto, such payments containing an interest and principal component. Except as specifically provided in Section 2 hereof, the obligation of the Lessee to make the Lease Payments called for in Exhibit B hereto shall be absolute and unconditional in all events and shall not be subject to any set-off, defense, counterclaim or recoupment for any reason. The term of the lease hereunder shall commence upon the dated date of the lease and shall continue until the end of the Lessee's current fiscal period and thereafter for such additional fiscal periods as are necessary to complete the anticipated total lease term as set forth in Exhibit B, unless earlier terminated as provided herein.

2. **Renewal and Non-Appropriation.** Lessee agrees that it will take all necessary steps and make timely requests for the appropriation of funds to make all Lease Payments called for under Exhibit B, and use its best efforts and take all steps to cause such appropriations to be made. If sufficient funds are not appropriated to make Lease Payments under this Agreement, this Agreement shall terminate and Lessee shall not be obligated to make Lease Payments under this Agreement beyond the then current fiscal year for which funds have been appropriated. Upon such an event, Lessee shall, no later than the end of the fiscal year for which Lease Payments have been appropriated, terminate the use of all of any and all of the Property and deliver possession of the Property to Lessor. If Lessee fails to deliver possession of the Property to Lessor, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to the portion of Lease Payments thereafter coming due that is attributable to the number of days after the termination during which the Lessee fails to terminate use and deliver possession, and for any other loss suffered by Lessor as a result of Lessee's failure to deliver possession as required. Lessee shall notify Lessor or its assigns, in writing, at least sixty (60) days prior to the failure of the Lessee to appropriate funds sufficient for the payment of the Lease Payments.

3. **Taxes.** In addition to the Lease Payments to be made pursuant to Section 1 hereof, Lessee agrees to indemnify and hold Lessor harmless from and against and to pay Lessor, as additional rent, on demand, an amount equal to all licenses, assessments, sales, use, real or personal property, gross receipts or other taxes, levies, imposts, duties or charges, if any, together with any penalties, fines, or interest thereon imposed against or on Lessor, Lessee or the Property by any governmental authority upon or with respect to the Property or the purchase, ownership, lease, possession, operation, return or sale of, or receipt of payments for, the Property, except any Federal or state income taxes, if any, payable by Lessor. Lessee may contest any such taxes prior to payment provided such contest does not involve any risk of sale, forfeiture or loss of the Property or any interest therein. The Lease Payments payable by Lessee under this Agreement have been established to reflect the obligation of Lessee to pay amounts under this Section 3.

4. **Lessee's Covenants and Representations.** Lessee covenants and represents as follows:

(a) Lessee represents, and will provide an opinion of its counsel to the effect that, it has full power and authority to enter into this Agreement which has been duly authorized, executed, and delivered by Lessee and is a valid and binding obligation of Lessee enforceable in accordance with its terms, and all requirements for execution, delivery and performance of this Agreement have been, or will be, complied with in a timely manner;

(b) Lessee has budgeted and available for the current fiscal period sufficient funds to comply with its obligations hereunder for the current fiscal year;

(c) There are no pending or threatened lawsuits or administrative or other proceedings contesting the authority for, authorization of performance of, or expenditure of funds pursuant to, this Agreement;

(d) Information supplied and statements made by Lessee in any financial statement or current budget prior to or contemporaneously with the Agreement are true and correct;

(e) Lessee has an immediate need for, and expects to make immediate use of, substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future;

(f) There are no circumstances presently affecting the Lessee that could reasonably be expected to alter its foreseeable need for the Property or adversely affect its ability or willingness to budget funds for the payment of sums due hereunder.

5. **Use and Licenses.** Lessee shall pay and discharge all operating expenses and shall cause the Property to be operated by competent persons only. Lessee shall use the Property only for its proper purposes and will not install, use, operate or maintain the Property improperly, carelessly, or in violation of any applicable law, ordinance, rule or regulation of any governmental authority, or in a manner contrary to the nature of the Property or the use contemplated by its manufacturer, or in the case of any software portion of the Property, in a manner contrary to any license agreement applicable to said software. Lessee shall keep the Property at the location stated on the Certificate of Acceptance executed by Lessee upon delivery of the Property until Lessor, in writing, permits its removal, and the Property shall be used solely in the conduct of the Lessee's operations. Lessee shall obtain, at its expense, all registrations, permits and licenses, if any, required by law for the installation and operation of the Property.

6. **Maintenance.** Lessor shall not be obligated to make any repairs or replacements. Lessee shall service, repair and maintain the Property in as good condition, repair, appearance and working order as when delivered to Lessee hereunder, ordinary wear and tear from proper use alone excepted, and shall replace any and all parts thereof which may from time to time become worn out, lost, stolen, destroyed, or damaged beyond repair or rendered unfit for intended use, for any reason whatsoever, all of which replacements shall be free and clear of all liens, encumbrances and claims of others and shall become part of the Property and subject to this Agreement. Lessor may, at its option, discharge such costs, expenses and insurance premiums necessary for the repair, maintenance and preservation of the Property, and all sums so expended shall be due from Lessee in addition to Lease Payments hereunder.

7. **Alterations.**

(a) Lessee may, at its own expense, install or place in or on, or attach or affix to, the Property such equipment or accessories as may be necessary or convenient to use the Property for its intended purposes provided that such equipment or accessories do not impair the value or utility of the Property. All such equipment and accessories shall be removed by Lessee upon termination of this Agreement, provided that any resulting damage shall be repaired at Lessee's expense. Any such equipment or accessories not removed shall become the property of Lessor.

(b) Without the written consent of Lessor, Lessee shall not make any other alterations, modifications or improvements to the Property except as required or permitted hereunder, or as otherwise permitted pursuant to any applicable software licensing agreement. Any other alterations, modifications or improvements to the Property shall immediately become part of the Property, subject to the provisions hereof. Without the prior written consent of Lessor, Lessee shall not affix or attach any of the Property to any real property. The Property shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or

any improvement thereon.

8. Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Property, title thereto or any interest therein, except the respective rights of Lessor and Lessee hereunder.

9. Damage to or Destruction of Property. Lessee shall bear the entire risk of loss, damage, theft or destruction of the Property from any and every cause whatsoever, and no loss, damage, destruction or other event shall release Lessee from the obligation to pay the full amount of the lease payments or from any other obligation under this Agreement. In the event of damage to any item of the Property, Lessee will immediately place the same in good repair, with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Property is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessee, will either (a) replace the same with like property in good repair or (b) on the next Lease Payment Date, pay Lessor (i) all amounts then owed by Lessee to Lessor under this Agreement, including the Lease Payment due on such date, and (ii) an amount equal to the applicable Early Redemption Value set forth in Exhibit B.

10. Insurance. Lessor shall have no obligation of any nature to provide any insurance in connection with Lessee's use of the Property. Lessee shall either be self-insured with regard to the Property or shall purchase and maintain insurance with regard to the Property. Lessee shall bear the entire risk of loss associated with the Property.

11. Indemnification. To the extent permitted by law, Lessee shall indemnify and save harmless Lessor and its agents and assigns, employees, officers and directors from and, at Lessee's expense, defend Lessor and its agents, employees, officers and directors against all liability, obligations, losses, damages, penalties, claims, actions, costs and expenses (including but not limited to reasonable attorneys' fees) of whatsoever kind or nature which in any way relate to or arise out of this Agreement or the ownership, lease, possession, operation, condition, sale or return of the Property. No indemnification will be made under this Section or elsewhere in this Agreement for negligence or breach of duty under this Agreement by Lessor, its directors, officers, agents, employees, successors, or assignees. Lessor's and Lessee's obligations under this Section shall remain valid and binding notwithstanding termination or assignment of this Agreement.

12. No Warranty. EXCEPT FOR REPRESENTATIONS, WARRANTIES, AND SERVICE AGREEMENTS RELATING TO THE PROPERTY MADE OR ENTERED INTO BY THE MANUFACTURERS OR SUPPLIERS OF THE PROPERTY, ALL OF WHICH ARE HEREBY ASSIGNED TO LESSEE, LESSOR HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE TITLE, MERCHANTABILITY, CONDITION, QUALITY OR FITNESS OF THE PROPERTY DESCRIBED IN EXHIBIT A FOR ANY PARTICULAR PURPOSE OR THE CONFORMITY OF THE PROPERTY TO SPECIFICATION OR PURCHASE ORDER, ITS DESIGN, DELIVERY, INSTALLATION OR OPERATION. All such risks shall be borne by Lessee without in any way excusing Lessee from its obligations under this Agreement, and Lessor shall not be liable to Lessee for any damages on account of such risks. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, upon prior written notice to Lessor. Lessor may, but shall have no obligation whatsoever to, participate in such claim or action on such warranty, at Lessor's expense. Any recovery under such a warranty shall be made payable jointly to Lessee and Lessor.

13. Early Redemption. Provided Lessee has complied with the terms and conditions of this Agreement, Lessee shall have the right to pre-pay the scheduled Lease Payments upon the payment of the Early Redemption Value set forth on Exhibit B by giving written notice to Lessor not less than sixty (60) days prior to the date specified in Exhibit B for the exercise of such early redemption right; provided that upon Lessee's timely payment of all Lease Payments specified in Exhibit B, Lessee shall be deemed to have paid in full the Early Redemption Value and shall be deemed to have acquired all of Lessor's right, title and interest in and to the Property, as is, free of any lien, encumbrance or security interest created by Lessor, or its successors or assigns. Payment of the applicable Early Redemption Value shall occur on the applicable Lease Payment Date specified in Exhibit B hereto, at which time Lessor shall, unless not required hereunder, deliver to Lessee a bill of sale transferring Lessor's interest in the Property to Lessee, as is, free from any lien, encumbrance or security interest created by Lessor, or its successors or assigns. Upon Lessee's actual or constructive payment of the Early Redemption Value and Lessor's actual or constructive delivery of a quitclaim bill of sale covering the Property, this Agreement shall terminate except as to obligations or liabilities accruing hereunder prior to such termination.

14. Default and Lessor's Remedies.

- (a) The occurrence of one or more of the following events shall constitute an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:
- (1) Lessee fails to make any payment hereunder within ten (10) days after its due date;
 - (2) Lessee fails to comply with any other covenant, condition or agreement of Lessee hereunder for a period of the ten (10) days after notice thereof;
 - (3) Any representation or warranty made by Lessee hereunder shall be untrue in any material respect as of the date made;
 - (4) Lessee makes, permits or suffers any unauthorized assignment, transfer or other disposition of this Agreement or any interest herein, or any part of the Property or any interest therein; or
 - (5) Lessee becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for the Lessee or a substantial part of its property; or, in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Lessee and, if instituted against Lessee, is consented to or acquiesced in by Lessee or is not dismissed within sixty (60) days.
- (b) Upon the occurrence of any Event of Default specified herein, Lessor may, at its sole discretion, exercise any or all of the following remedies:
- (1) Enforce this Agreement by appropriate action to collect amounts due or to become due hereunder, by acceleration of amounts due during the current fiscal year, or to cause Lessee to perform its other obligations hereunder in which event Lessee shall be liable for all costs and expenses incurred by Lessor;
 - (2) Cause all license agreements pertaining to the Property to be terminated and revoked, thereby preventing and prohibiting Lessee's continued use of the Property;
 - (3) Repossess and re-take possession, ownership and control of any and all computers, tangible personal property and related equipment and furnishings that comprise a portion of the Property and liquidate same and apply the liquidation proceeds, net costs of liquidation, against sums otherwise owing by Lessee to Lessor hereunder; or
 - (4) Pursue and exercise any other remedy available at law or in equity, in which event Lessee shall be liable for any and all costs and expenses incurred by Lessor in connection therewith. "Costs and expenses," as that term is used in this Section 14, shall mean, to the extent allowed by law: (i) reasonable attorneys' fees if this Agreement is referred for collection to an attorney not a salaried employee of Lessor or the holder of this Agreement; (ii) court costs and disbursements including such costs in the event of any action necessary to secure possession of the Property; and (iii) actual and reasonable out-of-pocket expenses incurred in connection with any repossession or foreclosure, including costs of storing, reconditioning and reselling the Property, subject to the standards of good faith and commercial reasonableness set by the applicable Uniform Commercial Code. Lessee waives all rights under all exemption laws.
 - (5) Under no circumstances shall Lessee be liable under this subsection 14 (b) for any amount in excess of the sum appropriated pursuant to Section 1 hereof for the previous and current fiscal years and costs and expenses of exercising remedies under this Agreement, less all amounts previously due and paid during such previous and current fiscal years from amounts so appropriated.

15. Assignment. Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Agreement or the Property or any interest in this Agreement or the Property; or (ii) sublet or lend the Property or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in

and to this Agreement, the Property and any other documents executed with respect to this Agreement and/or grant or assign a security interest in this Agreement and the Property, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Agreement. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. No assignment or reassignment of any of Lessor's rights, title or interest in this Agreement or the Property shall be effective with regard to Lessee unless and until Lessee shall have received a copy of the document by which the assignment or reassignment is made, disclosing the name and address of such assignee. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge receipt of such assignments in writing if so required. During the term of this Agreement, Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with the United States Internal Revenue Code of 1986, Section 149 (a), and the regulations, proposed or existing, from time to time promulgated thereunder.

16. Personal Property. Lessee agrees and acknowledges that any and all computers, tangible personal property and related equipment and furnishings that comprise a portion of the Property are hereby deemed and considered to comprise personal property.

17. Title to Property. Upon its acceptance of the Property, Lessee shall be deemed and considered to be the owner of all assets that comprise the Property, and shall be deemed to be the license holder of all software and related licenses that comprise the Property during the term of this Agreement; provided, however, that (i) upon the occurrence of an Event of Default and during the continuation thereof, or (ii) upon the termination of this Agreement pursuant to Section 2, hereof, then title to the licenses and assets that comprise the Property shall be reverted immediately to and in favor of Lessor absent any further action required by either party hereto, and free and clear of any right, title or interest of Lessee therein, unless Lessor elects otherwise, and Lessee shall have no further right to use or access all license agreements that are a part of the Property.

18. Lessor's Right to Perform for Lessee. If Lessee fails to make any payment or perform or comply with any of its covenants or obligations hereunder, Lessor may, but shall not be required to, make such payment or perform or comply with such covenants and obligations on behalf of Lessee, and the amount of any such payment and the expenses (including but not limited to reasonable attorneys' fees) incurred by Lessor in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the highest lawful rate, shall be payable by Lessee upon demand.

19. Interest on Default. If Lessee fails to pay any Lease Payment specified in Section 1 hereof or any other amount due hereunder within ten (10) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the highest lawful interest rate.

20. Notices. Any notices to be given or to be served upon any party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, and shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their respective addresses designated on the signature page of this Agreement or at such other address as either party may hereafter designate.

21. Security Interest. As security for Lessee's covenants and obligations hereunder, Lessee hereby grants to Lessor, and its successors, a security interest in the Property, all accessions thereto and proceeds therefrom, and, in addition to Lessor's rights hereunder, all of the rights and benefits of a secured party under the Uniform Commercial Code as in effect from time to time hereafter in the State in which the Property is located or any other State which may have jurisdiction over the Property. Lessee agrees to execute, acknowledge and deliver to Lessor in recordable form upon request financing statements or any other instruments with respect to the Property or this Agreement considered necessary or desirable by Lessor to perfect and continue the security interest granted herein in accordance with the laws of the applicable jurisdiction. Lessee hereby authorizes Lessor or its agent/assigns to prepare and file, any and all UCC-1 forms Lessor or its successor or assigns shall deem necessary to perfect the security interest herein granted to Lessor.

22. Tax Exemption. Lessee acknowledges and agrees that the Lease Payments have been calculated by Lessor assuming that the interest portion of each Lease Payment is exempt from Federal Income Taxation. Lessee will comply with all applicable provisions of the Internal Revenue Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Lease Payments and will not use or permit the use of the Property in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it 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, and that no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor 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 regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the this Agreement. The Lessee shall pursuant to Section 149 of the Code maintain a system with respect to this Agreement, which tracks the name, and ownership interest of each assignee who has an ownership interest in this Agreement.

23. Continuing Disclosure. Specifically and without limitation, Lessee agrees to provide audited financial statements, not later than eight (8) months after and as of the end of each fiscal year. Periodic financial statement shall include a combined balance sheet as of the end of each such period, and a combined statement of revenues, expenditures and changes in fund balances, from the beginning of the then fiscal year to the end of such period, certified as correct by one of Lessee's authorized agents. If Lessee has subsidiaries, the financial statements required will be provided on a consolidated and consolidation basis.

24. Miscellaneous.

(a) Lessee shall, whenever requested, advise Lessor of the exact location and condition of the Property and shall give the Lessor immediate notice of any attachment or other judicial process affecting the Property, and indemnify and save Lessor harmless from any loss or damage caused thereby. Lessor may, for the purpose of inspection at all reasonable times enter upon any job, building or place where the Property and the books and records of the Lessee with respect thereto are located.

(b) Time is of the essence. No covenant or obligations hereunder to be performed by Lessee may be waived except by the written consent of Lessor, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee's cure of the condition giving rise to such remedy. Lessor's rights hereunder are cumulative and not alternative.

(c) This Agreement shall be construed in accordance with, and governed by, the laws of the State in which the Property is located.

(d) This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, altered or changed in any respect except by a written document signed by both Lessor and Lessee.

(e) Any term or provision of this Agreement found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

(g) The Lessor hereunder shall have the right at any time or times, by notice to Lessee, to designate or appoint any person or entity to act as agent or trustee for Lessor for any purposes hereunder.

(h) Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(i) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(j) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, where permitted by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____ in the year 2008.

Lessor: Government Capital Corporation

Marti Harger

Authorized Signature

Marti Harger
Director of
Operations

Print Name:

Print Title: Director of Operations

345 Miron Dr.
Southlake, TX 76092

Witness Signature: *Patricia Barraco*

Print Name:

PATRICIA BARRACO

Lessee: City of El Paso

Joyce A. Wilson
City Manager

2 Civic Center Plaza
El Paso, Texas 79901

Witness Signature: _____

Print Name: _____

Print Title: _____

CITY CLERK DEPT.
09 MAR 20 AM 11:27

EXHIBIT A DESCRIPTION OF PROPERTY

MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT No. 4863

BY AND BETWEEN

Lessor, Government Capital Corporation and Lessee, City of El Paso

QTY **DESCRIPTION**

Deliverables	Quantity
Accela Automation® Land Management - Additional Licenses	Software may be used by an unlimited number of named users employed by Customer, regardless of the departmental assignments of said users.
Accela Automation Land Management - Upgrade Licenses	Software may be used by an unlimited number of named users employed by Customer, regardless of the departmental assignments of said users.
Accela Automation Public Health & Safety™	Software may be used by an unlimited number of named users employed by Customer, regardless of the departmental assignments of said users.
Accela Automation Licensing	Software may be used by an unlimited number of named users employed by Customer, regardless of the departmental assignments of said users.
Accela Automation Asset Management™	Software may be used by an unlimited number of named users employed by Customer, provided that said users are assigned exclusively or predominately to the following departments: Environmental Services, Fire and Health
Accela Automation Service Request™	Software may be used by an unlimited number of named users employed by Customer, provided that said users are assigned exclusively or predominately to the following departments: Environmental Services, Development Services, Health, Fire, and Police.
Accela Citizen Access™ - Upgrade Licenses	Additional Named User Licenses Based Upon Population of 584,113
Accela Wireless™ - Additional Licenses	Software may be used by an unlimited number of named users employed by Customer, provided that said users are assigned exclusively or predominately to the following departments: Environmental Services, Development Services, Health, Fire, and Police.
Accela Wireless - Upgrade Licenses	Software may be used by an unlimited number of named users employed by Customer, provided that said users are assigned exclusively or predominately to the following departments: Environmental Services, Development Services, Health, Fire, and Police.
Accela GIS™ – Additional Licenses	Software may be used by an unlimited number of named users employed by Customer, provided that said users are assigned exclusively or predominately to the following departments: Environmental Services, Development Services, Health, Fire, and Police.
Accela GIS – Upgrade Licenses	Software may be used by an unlimited number of named users employed by Customer, provided that said users are assigned exclusively or predominately to the following departments: Environmental Services, Development Services, Health, Fire, and Police.

PROPERTY LOCATION:
2 Civic Center Plaza
El Paso, Texas 79901

CITY CLERK DEPT.
03 MAR 20 AM 11:27

Exhibit B Schedule of Payments and Early Redemption

MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT No.4863

BY AND BETWEEN

Lessor, Government Capital Corporation and Lessee, City of El Paso

Effective interest cost 1.99% net of vendor incentives

PMT NO.	PMT DATE MO. DAY YR	TOTAL PAYMENT	TAX-EXEMPT COMPONENT	Early Redemption Option after pmt on this line
1	03/25/2008	\$ 797,151.32		
2	03/25/2009	\$ 797,151.32		
3	03/25/2010	\$ 797,151.32		
4	03/25/2011	\$ 797,151.32		
5	03/25/2012	\$ 797,151.32		

Total of All Scheduled Payments \$ 3,985,756.59

CITY CLERK DEPT.
08MAR 20 AM 11:27

Lessee: City of El Paso

Joyce A. Wilson
City Manager

INCUMBENCY, INSURANCE, AND ESSENTIAL USE CERTIFICATES

MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT No. 4863

BY AND BETWEEN

Lessor, Government Capital Corporation and Lessee, City of El Paso

I, Richarda D. Momsen, do hereby certify that I am the duly elected or appointed and acting City Clerk of the City of El Paso, a political subdivision or agency duly organized and existing under the laws of the State Texas, that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) named below are the duly elected or appointed officer(s) of such entity holding the office(s) set forth opposite their respective name(s). I further certify that (i) the signature(s) set opposite their respective name(s) and title(s) are their true and authentic signature(s), and (ii) such officers have the authority on behalf of such entity to enter into that certain Municipal Technology Lease-Purchase Agreement dated as of March 25, 2008, between such entity and Government Capital Corporation.

Name	Title	Signature
Joyce A. Wilson	City Manager	_____

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such entity hereto this ____ day of _____ 2008.

BY: _____
Richarda D. Momsen, City Clerk

Lessee certifies that property and liability insurance have been secured in accordance with the Agreement and such coverage will be maintained in full force for the term of the Agreement. "Lessor or its Assigns" should be designated as loss payee until Lessee is notified, in writing, to substitute a new loss payee. The following information is provided about insurance and is **only applicable if the City is not self insured:**

INSURANCE COMPANY/AGENT'S NAME: _____

INSURANCE COMPANY ADDRESS: _____

PHONE NUMBER: _____

POLICY NUMBER: _____

I, Joyce A. Wilson, City Manager of the City of El Paso ("Lessee"), do hereby certify that the Property to be leased to the undersigned under the certain Lease Agreement, dated as of March 25, 2008, will be used by the undersigned Lessee for the following purpose:

The undersigned hereby represents that the use of the Property is essential to its proper, efficient and economic operation.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 2008.

By: _____
Joyce A. Wilson, City Manager

For Lessee: City of El Paso

08 MAR 20 AM 11:27
CITY CLERK DEPT.

CERTIFICATE OF ACCEPTANCE

MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT No. 4863

BY AND BETWEEN

Lessor, Government Capital Corporation and Lessee, City of El Paso

1. **ACCEPTANCE:** City of El Paso, Texas, as Lessee under that certain MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT dated as of March 25, 2008, hereby acknowledges for the purpose of this Agreement, acceptance and/or pre-payment of all of the Property described on the attached Exhibit "A". The Lessee understands that pursuant to the terms and conditions of the Agreement, the Lessee is obligated to make lease payments commencing March 25, 2008. Lessee hereby certifies that such Property is fully insured in accordance with Section 10 of the Lease and that such Property constitutes all or a portion of the Property as that term as defined in the Agreement.

2. **PROPERTY:**

SEE EXHIBIT A to Agreement

3. **PROPERTY LOCATION:**

2 Civic Center Plaza
El Paso, Texas 79901

4. **INVOICING:** Invoices shall be sent to the following address, including to whose attention invoices should be directed:

City of El Paso
Attn: William F. Studer, Jr
2 Civic Center Plaza
El Paso, Texas 79901

5. **INSURANCE:** Lessee certifies that property and liability insurance have been secured in accordance with the Agreement and such coverage will be maintained in force for the term of the Agreement. Lessor will be designated as loss payee until Lessee is notified, in writing, to substitute a new loss payee.

_____ Company Insured _____ Election to self-insure (provide self-insurance certificate).

ACCEPTED on this the _____ day of _____, 2008.

By Lessee:

Joyce A. Wilson, City Manager

For Lessee: City of El Paso

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[Opinion of Counsel to be on letterhead of lessee's counsel]

Municipal Technology Lease-Purchase Agreement No. 4863

Government Capital Corporation
345 Miron Drive
Southlake, TX 76092

Ladies and Gentlemen:

As counsel for the City of El Paso, Texas ("Lessee"), I have examined the Municipal Technology Lease-Purchase Agreement No. 4863 ("Lease") and the related exhibits and attachments, herein collectively referred to as the "Transaction Documents", each between Lessee and Government Capital Corporation ("Lessor"), and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Transaction Documents. Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a duly organized and legally existing agency of a political subdivision, municipal corporation, or other local government unit under the Constitution and laws of the State of Texas with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid and binding obligation of Lessee enforceable in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Property to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
4. Lessee has complied with all procurement laws in connection with the Property to be acquired thereunder.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the governing body of lessee from annually appropriating sufficient funds to pay the lease payments or other amounts contemplated by the Lease.
6. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
7. The entering into and performance of the Transaction Documents do not and 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 upon any assets of Lessee or on the Property (as such term is defined in the Lease) 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.
8. The above opinions may be relied upon by the Lessee, Lessor, or its Assigns.

Respectfully submitted,

Attorney

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TAX AND ARBITRAGE CERTIFICATE

MUNICIPAL TECHNOLOGY LEASE-PURCHASE AGREEMENT No. 4863

BY AND BETWEEN

Lessor, Government Capital Corporation and Lessee, City of El Paso

This **Tax and Arbitrage Certificate** is executed on this ____ day of _____, _____, 2008 by the undersigned ("Lessee") and pertains to that Property lease or financing agreement as is more fully described above (the "Lease"). This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulation Section 1.103-14 and 1.103-15 (the "Regulations"). Lessee hereby agrees that: (a) proceeds derived from the issuance of the Lease shall only be used to acquire Property that has a governmental purpose and will not be used to acquire Property that will benefit any private business activity; (b) proceeds derived from the issuance of the Lease shall never be invested in instruments yielding an interest rate return in excess of the rate of interest set forth in the Lease; (c) proceeds derived from the issuance of the Lease shall be fully and completely expended for their anticipated purpose within one year from the date of the Lease; (d) proceeds derived from the issuance of the Lease shall not be used to finance any acquisition other than the purchase of that Property identified in the Lease along with related costs and costs of issuance; (e) the repayment of the Lease is not guaranteed directly or indirectly by the federal government; (f) Lessee shall execute a Form 8038-G and allow for such to be filed of record with the Internal Revenue Service; (g) the Lease is in registered form and that the Lessee shall maintain a record regarding the ownership of the Lease and the payment of all sums payable under the Lease; (h) the proceeds derived from the issuance of the Lease are not in excess of the sum required in order to acquire the property that is the subject of the Lease and to fund the costs associated with the issuance of the Lease; (i) Lessee does not currently contemplate the sale or disposition of the Property that is the subject of the Lease prior the expiration of the Lease's payment terms; and (j) the Lessee shall otherwise abide by all applicable rules and regulations related to the issuance of the Lease.

To the best of the knowledge and belief of the undersigned, the expectations as set forth above, are reasonable; and there are no present facts, estimates, and circumstances which would change the foregoing expectations. Lessee has not been notified of the listing, or proposed listing of it, by the Internal Revenue Service as an Issuer whose arbitrage certificates may not be relied upon.

Executed on the date first referenced above.

Lessee: City of El Paso

Joyce A. Wilson, City Manager

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