

CITY CLERK ORIGINAL

**C-8960
06/02/2014**



ImageWare Systems, Inc
10815 Rancho Bernardo Rd , Suite 310
San Diego, CA 92127
858-673-8600
858-673-1770

Invoice No.	Page
SI062113I	1

INVOICE

Bill To 10354
Glendale PD
Denise Krause
6835 N 57th Avenue
Glendale, AZ 85301

Ship To 10354
Glendale PD
Denise Krause
6835 N 57th Avenue
Glendale, AZ 85301

CUSTOMER P.O.		TERMS	SHIP VIA	ORDER DATE	SHIP DATE	INVOICE DATE	
OCT 2013 MAINT		Due on receipt		06/21/2013	10/01/13	06/21/2013	
QUANTITY		PRODUCT	DESCRIPTION	UOM	Unit Price	QUANTITY	AMOUNT
ORDERED	SHIPPED	CODE					
1	1	51 05 01	Software Maintenance, LE - Renewal	Each	\$175 00	1	\$175 00
1	1	21200	Sales Tax Applicable	Each	\$17 85	1	\$17 85

MAINTENANCE PERIOD
October 1, 2013 - September 30, 2014

NOTE See attached Terms & Conditions

Remit To:

IMAGEWARE SYSTEMS, INC 10815 Rancho Bernardo #310, San Diego, CA 92127 Phone: (858) 673-8600 Fax (858) 673-1770

Subtotal	192 85
Invoice Discount	0 00
Tax	0 00

PAY THIS AMOUNT
192 85

A 1.5% interest per month will be charged on all past due balances.

Sales Invoice SI062113I: Terms and Conditions

1 MAINTENANCE SERVICE TO BE PROVIDED.

1.1 General. IWS shall provide to AGENCY maintenance service with respect to the IWS™ Law Enforcement Solution (formerly known as C.R.I.M.E.S. System) (the "Solution or System", being the software purchased from IWS and the related hardware, whether purchased from IWS or supplied by AGENCY). The obligation of IWS to provide such maintenance service shall not extend beyond the items of software and hardware (the IWS supported items or "Supported Items" as are identified in Exhibit A) that AGENCY has purchased directly from IWS. Such maintenance service shall consist of (i) Preventive Maintenance as is described in Section 2.4, (ii) Remedial Maintenance as is described in Section 2.5, and (iii) Extra Services as is described in Section 2.6, all in accordance with and subject to the terms and conditions of this Agreement.

1.2 Obligation for Maintenance Support. AGENCY acknowledges that IWS will not be required to provide maintenance support during the time frames noted in Section 1 of the Agreement unless and until AGENCY has provided IWS with an executed copy of the Agreement.

1.3 Connectivity. Electronic communication connectivity between IWS and the System shall be via either a point-to-point Internet connection or via a dial-back modem (whereby IWS will dial AGENCY's server and the server will dial back to IWS).

Agency is required to provide a means of remote connectivity to the server components of the System, at a minimum. Connection to client machines may also be required, on an 'As Needed' basis. Agency will provide these means, in a manner which is acceptable to both Agency and IWS. Agency will cooperate with IWS in ensuring that connectivity is stable and has adequate bandwidth for remote operation. Secured VPN Connection to the Agency is recommended by IWS.

1.4 Preventive Maintenance. Preventive maintenance ("Preventive Maintenance") shall only be required for Supported Items and shall consist of all maintenance service, other than Excluded Services as defined in paragraph 2.7, performed by IWS representatives, independent of any System failure, for the purpose of maintaining the System in good working order, including, without limitation, the maintenance services described in subsection 2.4.1 below. Any additional Preventive Maintenance beyond that described in subsections 2.4.1 shall be at the sole discretion of IWS. Preventive Maintenance performed off-site from AGENCY locations may be performed by IWS representatives at any time.

1.4.1 Preventive Software Maintenance.

(a) Subject to the availability of access through IWS approved System connectivity, IWS representatives will perform Preventive Software Maintenance for System servers purchased directly from IWS, no less frequently than monthly.

(b) If the System server(s) hardware, on which the IWS software resides, has/have not been purchased directly from IWS, IWS will not be required to provide Preventive Software Maintenance.

If the System server(s) hardware on which the IWS software resides has/have not been purchased directly from IWS, IWS will not be required to provide Hardware Maintenance, either Preventative or Remedial. IWS will carry out Software Maintenance on these servers. Agency will cooperate with IWS in addressing issues found on System Server through said Software Maintenance. Furthermore, Agency accepts full responsibility for performance, Operating System, or other conditions that may impede or limit the performance of the Software System provided. It is at the discretion of IWS to determine if any impact on System performance is outside the responsibility of IWS, in this case.

1.5 Remedial Maintenance. Remedial maintenance ("Remedial Maintenance") shall mean all maintenance, other than Excluded Services, reasonably required as a result of, and for the purpose of correcting, a System Failure. For purposes of this Agreement, "System Failure" shall mean any malfunction in the Supported Items that prevents or materially interferes with, any or all aspects of the System's intended functions.

IWS will provide Remedial Maintenance through its Customer Support Department based on three technical levels of support. IWS will make available to AGENCY a Help Desk (Tier I support), which will be continuously accessible by telephone, e-mail or the worldwide web 24 hours per day, 7 days per week (including holidays) with response time frames described in the IWS Response Schedule (Exhibit B). If so required to solve Remedial Maintenance issues, IWS, in its sole discretion, may also utilize specialized engineers and technicians (Tier II support) who are adept at solving more complex problems, as well as selected members of IWS's Research and Development Department (Tier III support). Following the identification of a System Failure by AGENCY, and AGENCY's completion of any diagnostic procedures recommended by IWS, AGENCY shall provide notification thereof to IWS. AGENCY agrees to actively cooperate with IWS in all further diagnostic testing, as determined and requested by IWS.

In the event of any software failure, IWS shall make a good faith effort to have an appropriate software support person respond to the AGENCY within the time frames described in the IWS Response Schedule (attached hereto as Exhibit B). Such response will be to provide notification with an update on possible causes and/or solutions.

In the event of the failure of any Critical Hardware Items (as defined below), IWS shall make a good faith effort to cause an authorized representative of IWS to arrive at the location where the System is installed no later than the time frames described in the IWS Response Schedule (Exhibit B).

1.5.1 Critical Hardware Items: Critical hardware items ("Critical Hardware Items") are hardware items purchased from IWS, that are specifically associated with the Server, the supplied interfaces, or the Capture Stations, and that are required for the AGENCY to perform its day-to-day duties associated with the capture and storage of mug photo images. As a point of clarification, printers are not among the Critical Hardware Items.

1.5.2 Non-critical Items: Non-critical items ("Non-critical Items") are hardware items purchased from IWS that are not mentioned in Section 2.5.1. Non-critical Items shall be repaired during IWS's normal work hours. Printers are not among Non-critical Items and are only supported by IWS during the initial 45 days after their installation.

1.5.3 Software Only Installations: If the System server(s) and/or Capture Station(s) and/or Investigative Station(s) hardware, on which the IWS software resides, has/have not been purchased directly from IWS, IWS will not be obligated to provide Remedial Maintenance via remote access software. If, however, AGENCY has installed IWS approved remote access software, IWS, at its sole discretion, may provide assistance in Remedial Maintenance via remote access software.

1.6 Extra Services. Extra services ("Extra Services") shall consist of any maintenance services with respect to the System, other than Preventive Maintenance and Remedial Maintenance, but including without limitation, Excluded Services (as defined below). IWS shall be under no obligation to perform any Extra Service but may undertake to make a good faith effort to render such services to the extent that it is capable of doing so without substantially interfering with its other obligations under this Agreement or its obligations to other customers. Extra Services will be charged to the AGENCY on a time and materials basis as determined by IWS and AGENCY will pay such charges as invoiced by IWS. If so requested by AGENCY, IWS shall provide a written estimate of the extra charges likely to be incurred as a result of the performance of such Extra Services, to the extent such charges can be reasonably ascertained in advance.

1.7 Excluded Services. For the purpose of this Agreement, "Excluded Services" are those services that IWS is not obligated to perform for the Maintenance Fee, but may perform for extra compensation as set forth in Section 2.6. Excluded Services shall be defined as: (a) the replacement of any hardware as is required by age, duty cycle, obsolescence or excessive use; (b) the replacement of any hardware or the support of third-party software where service or support for such hardware or such third-party software is no longer provided by the original equipment manufacturer of such hardware or the original vendor of such third-party software; (c) the update or upgrade of third-party software, including operating system(s); (d) the replacement of supplies or expendable items (e.g. ink rollers, ribbon cartridges, toner cartridges, fusers, paper, film, diskettes, tape cassettes, lamps, etc.); (e) any maintenance services to be performed on any software, hardware or other item not furnished by IWS to AGENCY or any other work external to the System by anyone other than IWS; or (f) any maintenance services necessary or appropriate in order to correct any System Failure, or potential failure, attributable in whole or in part to any of the following factors, or any combination thereof:

1.7.1 Failure by AGENCY to provide or maintain a suitable installation environment as the System site in accordance with the operations documentation, and any other reasonable requirements thereafter communicated in writing by IWS to AGENCY, including without limitation, any electrical power, air conditioning, or humidity control failure or changes to the environment of the System site,

1.7.2 Use of supplies or materials not approved by IWS, or by the equipment manufacturer,

1.7.3 Use or attempted use of the System or any component thereof for any purpose other than that for which it was acquired,

1.7.4 Alterations to the System hardware or software (including operating system(s), operating system service packs, drives, or applications) other than alterations installed by, provided by, or approved in writing by IWS,

1.7.5 System failure caused by alterations to the System performed by non-IWS representatives using the NT server administrator password,

1.7.6 Connection of the System by mechanical or electrical means to any other machine, equipment or device, other than those installed by or approved in writing by IWS,

1.7.7 Any changes in the AGENCY network or in IP addresses that relate to or affect the System, other than those approved in writing by IWS,

1.7.8 The removal, transportation or relocation of the System by any person other than IWS's personnel,

1.7.9 Neglect or misuse of the System by AGENCY or any third party,

1.7.10 Any other intentional or negligent damage to the System by the AGENCY or third party,

1.7.11 Any other failure by AGENCY to comply with its obligations under this Agreement or the Purchase and License Agreement, or

1.7.12 Any damage caused by other than normal operating conditions or events, including without limitation, accident, transportation, neglect, misuse, lightning, failure or fluctuation of electrical power, temperature or humidity changes, telephone equipment or line failure, failure of foreign interconnect equipment and acts of God.

1.8 Replacement or Repair. In performing Preventive Maintenance and Remedial Maintenance, IWS shall be entitled to exercise reasonable discretion in determining whether to replace or repair any malfunctioning item; provided, however, that any such replacement shall be a functional equivalent.

1.9 Diagnostic Software. In order to facilitate rapid analysis of a System Failure involving software, IWS will provide trained staff, at its company location, capable of handling software failures in an expedient manner. In addition they will have diagnostic software for the purpose of identifying the cause of System Failures, temporarily patching around the problem if necessary or temporarily disabling the use of the malfunctioning software module so that the System can be returned to use for other activities with minimal degradation in operation.

1.10 Off-Site Maintenance: Any maintenance services required to be performed under this Agreement which cannot, in IWS's reasonable judgment, be performed effectively at or near the System site shall be performed at such other location(s) as IWS may determine, at no extra cost to Customer. However, a loaned part(s) from IWS's warehouse may be installed into the System prior to the shipping of the item(s) being removed for maintenance.

1.11 Log Entries: AGENCY, after its request, shall be provided with IWS records regarding System failures, and any other malfunctions, problems, or defects in the System, in accordance with a format to be provided by IWS.

1.12 Network Connections: Although IWS will provide some guidance and direction, IWS is not responsible for resolving problems relating to networks.

1.13 Data Back-ups: It is the AGENCY's responsibility to keep adequate System data back-ups. IWS is not responsible for loss of data.

1.14 Proprietary Information: AGENCY acknowledges that the database structure contains IWS trade secrets and intellectual property rights, which are the property of IWS. AGENCY agrees that the database structure may not be copied, modified or reproduced in whole or in part, for any purpose whatsoever. The database structure may not be reverse engineered, de-compiled, disassembled, or otherwise reverse engineered in whole or in part.

2. CUSTOMER RESPONSIBILITIES

2.1 General: AGENCY agrees to provide IWS with the contact information for their System Administrator(s), and their backup(s), who generally will be available during the AGENCY's normal Monday through Friday daytime business hours. AGENCY acknowledges that it is important for the AGENCY's System Administrator to take an active role in the management of the Crime Capture System and that image quality and consistency are very important in general and especially important with regard to any centralized repositories.

2.2 Periodic Routines: AGENCY agrees that it is the responsibility of the AGENCY's System Administrator to perform the following tasks.

2.2.1 Periodically inspect images for quality.

2.2.2 Use manufacturer approved consumable supplies.

2.2.3 Manage System data back-ups.

2.2.4 Maintain studio lighting with prescribed lamps.

- 2.2.5 Label stations with machine name and trouble reporting instructions.
- 2.2.6 Manage supporting network.
- 2.2.7 Manage users, groups, passwords, and access rights.
- 2.2.8 Train users as necessary.
- 2.2.9 Ensure problems are reported in a timely fashion to the IWS Help Desk.
- 2.2.10 Utilize most recent IWS provided software when required by IWS.
- 2.2.11 Provide reliable and continuous connectivity for remote entry.
- 2.2.12 Provide suitable environment for stations and especially for the servers.
- 2.2.13 Provide stable and adequate power.
- 2.2.14 Maintain effective communications with IWS.

IWS RESPONSE SCHEDULE

Tier I Software Support on Standard Business Hours - one (1) hour call back, Monday through Friday, 8AM-5PM PST.

Non-Standard Business Hours and Holidays - Tier I eight (8) hour call back, Sunday through Saturday.

Tier II software support on eight (8) hour response.

Hardware - next IWS business day on all Critical Hardware Items.

IWS TECHNICAL SUPPORT CONTACT INFORMATION

Telephone: (858) 683-7940
Email: support@iwsinc.com

ADDENDUM

The City of Glendale, Arizona ("City") and Imageware Systems, Inc. ("Contractor") further agree as follows:

I. Conflicts. The **Maintenance Service Terms and Conditions** (the "Agreement") between the parties is subject to cancellation for conflicts of interest under the provisions of Arizona Revised Statutes ("A.R.S.") § 38-511.

II. Immigration Law Compliance.

- A. Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- C. City retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under the Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this **Paragraph II**.
- E. Contractor agrees to incorporate into any subcontracts under the Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under the Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. Contractor's warranty and obligations under this **Paragraph II** to the City are continuing throughout the term of the Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

III. Governing Law. The Agreement will be governed by the laws of the State of Arizona, and venue for any legal action brought relating to the Agreement is proper only in Maricopa County, Arizona.

IV. Entire Agreement. The Agreement and this Addendum constitute the entire understanding between the parties with respect to the subject matter of the Agreement and Addendum.

V. Addendum and Agreement Conflict. In the result of any conflict between the Agreement and this Addendum, the terms of this Addendum prevail.

[SIGNATURES ON NEXT PAGE]


Contractor


City

5/27/14
Date

6/2/14
Date

ATTEST:

City Clerk

Approved as to form


City Attorney