



700 N. Valley Street, Suite "B"
Anaheim, CA 92801
800-710-1934

To: Mountain View Whisman School District
750-A San Pierre Way
Mountain View, CA 94043
Noemi Herrera - nherrera@mvwsd.org (650) 526-3555
Carmen Ghysels - cghysels@mvwsd.org (650) 526-3553

Date: 10-26-17

Certifix Sales and License Agreement

This Sales and License Agreement ("Agreement"), effective _____, is made by and between Certifix, Inc., a California corporation, doing business as Certifix Live Scan ("Certifix") and Mountain View Whisman School District("Licensee").

Recitals

Whereas Certifix is a duly approved Live Scan vendor, in accordance with California Department of Justice regulations, sells equipment, including fingerprinting scanners, laptop computers, drivers' license swipers ("Equipment"), and licenses certain proprietary software known as CScan ("Software") used in the performance of Live Scan fingerprinting services;

Whereas Licensee desires to purchase the Equipment and to license the Software in order to provide Live Scan fingerprinting services to the general public;

NOW, THEREFORE, in consideration of the mutual agreements and promises set forth herein, the parties agree as follows:

Live Scan Fingerprinting Service

As used in this Agreement, the term "Service" shall mean a computer-based, digitized Live Scan fingerprint service provided to the general public in compliance with California Department of Justice ("DOJ") requirements, as set forth in Attachment A to this Agreement, and incorporated by reference herein. Service also includes paper card fingerprinting and all administrative tasks required to process the fingerprints taken in compliance with the terms and conditions set forth in Attachment "A".

Equipment Sold, Delivery and Installation

A. Certifix shall sell to Licensee, and Licensee shall purchase from Certifix the Equipment set forth in Attachment "B" hereto, in the quantities and for the prices set forth in Attachment "B", for the purpose of performing the Service under the terms and conditions set forth herein.

B. The Equipment shall be delivered to customer after DOJ peer tabling connections and testing is completed..

C. Certifix shall install the Equipment and the Software at the facility designated by Licensee and connect same to the safety switches or electrical outlets, internet connection to be provided and installed by Licensee. Certifix shall be responsible for all costs associated with delivery and installation of the Equipment and the Software. Upon completion of installation, Certifix shall perform tests to determine that the Equipment is operating in conformance with DOJ requirements. Licensee shall be deemed to have accepted delivery of the Equipment upon satisfactory completion of the installation tests. Upon delivery, Certifix shall provide, at no expense to Licensee, initial training in operation of the Equipment and Software.

D. Licensee shall pay any or all taxes and third-party expenses imposed on, in connection with, or measured by the transaction contemplated by this Agreement, in addition to the price set forth in Attachment "B".

Software License

Certifix hereby grants to Licensee a non-exclusive, non-transferable, worldwide, revocable right to use the Software, solely for the purpose of providing the Service set forth in this Agreement. Certifix reserves all rights not expressly granted to Licensee. Licensee shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Software in any way; (ii) modify or make derivative works based upon the Software; or (iii) reverse engineer or access the Software for any purpose other than as provided in this Agreement.

Term of License and Termination

A. Unless earlier terminated as provided below, the license provided in paragraph 3 ("License") shall commence on the Effective Date indicated above and shall continue up to and including the calendar date 1 year from the Effective Date ("Term"). At the end of the Term, the License shall be extended for an additional 1-year period, unless either Party makes a written request for cancellation at least 30 days in advance of the expiration date.

B. Certifix may terminate this License at any time, without cause, by providing ten days' written notice to Licensee. In addition, Certifix may terminate this License immediately by providing written notice to Licensee, upon the occurrence of any of the following events:

(1) Licensee's failure to fulfill or perform any one of the duties, obligations or responsibilities of Licensee under this Agreement, including but not limited to the failure to remit payment to Certifix in any given month on a timely basis, the failure to comply with DOJ requirements, or the failure to perform any other act required under this Agreement;

(2) Any assignment or attempted assignment by Licensee of any interest in this License or the delegation of Licensee's obligations under this Agreement without Certifix' prior written consent;

(3) Any sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of any material interest in the direct or indirect ownership or any change in the management of Licensee;

(4) Failure of Licensee for any reason to function in the ordinary course of business;

(5) Conviction in a court of competent jurisdiction of Licensee, or a manager, partner, principal, officer or major stockholder of Licensee, for any violation of law tending, in Certifix' opinion, to affect adversely the operation or business of Licensee;

(6) Submission by Licensee to Certifix of false or fraudulent reports or statements, including, without limitation, claims for any refund, credit, rebate, incentive, allowance, discount, reimbursement or other payment by Certifix;

C. On termination of this License:

(1) All amounts owing by Licensee to Certifix shall become immediately due and payable,

(2) All unshipped equipment orders shall be cancelled without liability of either party to the other.

(3) Certifix will disable the Software remotely and will no longer be usable by Licensee.

Purchase Price

A. In exchange for the Equipment, Licensee agrees to pay Certifix the amounts set forth in Attachment "B" within 30 days of Certifix' invoice. Purchase order are accepted. In exchange for the Software License, Licensee agrees to pay a monthly license fee, as set forth in Attachment "C" hereto, incorporated by reference herein.

B. The Equipment purchase price, as set forth in Attachment "B", reflects a substantial discount from the manufacturer's' suggested retail price for the Equipment. The parties acknowledge and agree that this discount is offered in exchange for Licensee's commitment to continue providing Service and maintaining the Software License for the full 3-year term from date, and any renewal period, as specified in this Agreement ("Service Commitment").

Financial Policies

Certifix will provide Licensee with an initial invoice for the amount due for the purchase of the Equipment or any other agreed fees. Certifix will provide Licensee with an invoice at the end of each month for all amounts owed to Certifix for the License fee or any other agreed fees in that month. Payment will be due within 8 days of the invoice date or as agreed upon with our accounting manager. Licensee must promptly pay all amounts due; failure to do so will be grounds for termination of the License as set forth below. Certifix may charge interest on any past due amount at the rate of 5% per annum.

Compliance with Laws and Regulations

It is the sole responsibility of the Licensee to assure complete compliance with all international, federal, state or local laws, rules, regulations and code that affect the Equipment and Software provided under this Agreement. Licensee is solely responsible for obtaining all permits, licenses, and approvals, and for paying all taxes and government fees required for operation of the Equipment or performance of the Service.

Licensee's Representations and Warranties

A. Licensee represents and warrants that it will comply at all times with all laws, rules and regulations governing the use of the Equipment and Software, including but not limited to all DOJ guidelines as set forth in Attachment "A".

B. Licensee shall use due care in the operation and maintenance of the Equipment, and shall promptly notify Certifix of any operational problems or malfunctions of the Equipment. Licensee shall cooperate and make the equipment available to Certifix as necessary for maintenance, repairs, modification or updates, and shall not

attempt to make any such repairs or modifications on its own or through any service provider other than Certifix. Any such attempt by Licensee to make such repairs or modifications shall void the warranty given with respect to the Software and Equipment.

C. Licensee shall be responsible and shall bear the costs of seeking, obtaining, and maintaining all approvals, licenses, registrations, permits and authorizations required by any federal, state or local regulatory agency in order to use the Equipment.

Certifix' Representations and Warranties

A. In addition to the manufacturer's' warranties, if any, attached and identified with the Equipment, Certifix warrants for a period of Three years after the date of delivery that the Equipment and the Software will be free from defects in material and workmanship. Certifix' sole obligation under this warranty is to repair or replace defective parts or equipment at no charge to Licensee. All replaced parts shall become the property of Certifix.

B. **Excluded Claims.** Certifix will have no obligation under this Agreement if (1) repair or replacement of the Equipment or the Software is required as a result of normal wear and tear or necessitated in whole or in part by catastrophe or causes external to the Equipment or the Software; (2) the Equipment or the Software has been maintained, repaired, relocated, or reconfigured other than by an authorized representative of Certifix or has been modified or adapted in any manner; (3) the Equipment or the Software has not been properly used or maintained in accordance with the then applicable operating and maintenance manuals; and (4) the Licensee does not notify Certifix in writing with detail during the warranty period of any defect or error in the Equipment or the Software.

C. In exchange for payment of the licence fees paid under this Agreement, Certifix will provide routine maintenance services and periodic updates to ensure the Equipment and the Software are capable of meeting DOJ requirements throughout the term of the License. Certifix shall not be responsible for ensuring that the Equipment or the Software are operated by Licensee in compliance with DOJ requirements, and expressly disclaims any such liability or responsibility.

D. **DISCLAIMER.** Except for the warranties expressly provided herein, Certifix disclaims all warranties of quality, whether express or implied, including the warranties of merchantability and fitness for particular purpose. Licensee acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Equipment or the Software, and that no such statements or representations have been made. Licensee acknowledges that it has relied solely on the investigations, examinations, and inspections as the Licensee has chosen to make and that Certifix has afforded the Licensee the opportunity for full and complete investigations, examinations, and inspections.

Limitation of Liability

Certifix will not be liable for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this Agreement or the transactions it contemplates (whether for breach of contract, tort, negligence, or other form of action) and irrespective of whether the Licensee has been advised of the possibility of any such damages. In no event will Certifix' liability exceed the price the Licensee paid to Certifix for the specific Equipment or Software provided by Certifix giving rise to the claim or cause of action.

Limitation of Actions

No action arising out of or relating to this Agreement or the transactions it contemplates may be commenced against Certifix more than 12 months after the basis for such claim could reasonably have been discovered.

Indemnification

Licensee agrees to indemnify, defend and hold Certifix harmless from any loss, damage or claim arising out of the negligence, gross negligence or willful misconduct of Licensee, Licensee's agents, employees or representatives in connection with the use or operation of the Equipment or the Software; including but not limited to any failure to comply with any of the DOJ guidelines, terms or conditions; failure to adequately protect the security of the Equipment; failure to maintain the privacy of information obtained from members of the public; failure to properly operate the equipment; and failure to properly perform the Services.

Relationship of the Parties

This Agreement is not intended to and does not create any employment relationship between Certifix and Licensee. Neither Licensee, nor any of its agents, employees or representatives shall, under any circumstances, be deemed employees of Certifix.

Final Agreement

This Agreement and its Attachments contain the final agreement between the parties and supersede all prior written and oral communications, negotiations and understandings between the parties regarding the subject matter hereof. This Agreement may only be modified by a written document that is duly executed by both parties.

No Assignment

Licensee may not assign any of its rights under this Agreement or delegate any performance under this Agreement, except with the prior written consent of Certifix. Any purported assignment of rights or delegation of performance in violation of this section is void.

Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the state of California, without giving effect to its conflicts of law principles. A party bringing a legal action or proceeding against the other party arising out of or relating to this Agreement or the transactions it contemplates must bring the legal action or proceeding in a court in Orange County, California. Each party to this Agreement consents to the exclusive jurisdiction of the courts in Orange County, California for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates.

Attorneys' Fees

In the event of any dispute arising out of this Agreement or the transactions it contemplates, the prevailing party in shall be entitled to recover from the other party, in addition to any other relief awarded, all expenses incurred by the prevailing party, including reasonable attorneys' fees and cost.

Non-Waiver

The failure by any party to require performance of any term of this Agreement, in whole or in part, shall not constitute a waiver of the right to require future performance of that or any other term of this Agreement, nor shall

a waiver of any breach or default under any provision of this Agreement constitute a waiver of any subsequent breach or default of that provision or of the Agreement itself.

Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then that term shall be modified to reflect the parties' intent and the remainder of this Agreement will remain in full force and effect as if such invalid or unenforceable term had never been included.

Headings

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

Notice

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to Certifix:

Certifix Live Scan
700 N Valley St. Suite B
Anaheim, CA 92801
Attention: Helmy El-Mangoury

If to Licensee:

To: Mountain View Whisman School District
750-A San Pierre Way
Mountain View, CA 94043
Attn: Carmen Ghysels - cghysels@mvwsd.org 650) 526-3553

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip.

Attachment A

[California Department of Justice Terms and Conditions - \(DOJ PSP Rules and Regulations\)](#)

Attachment B

The following equipment is being sold by Certifix and purchased by Licensee under this Agreement, for the prices listed herein: See "Equipment Pricing" section of the above proposal.

Equipment: (Gold Package) (Taxable)

15.6" Laptop with DOJ Approved Windows 10 Pro Operating System
Integrated Biometrics Kojak DOJ approved Scanner
I.D. Magnetic Card Reader, Mouse
Equipment: 3 year warranty

Total Sub Price: \$350.00 (regular retail \$4350.00)

Total with Tax: \$518.80 (tax is on equipment only)

**See attachment "C" for license and service requirement fees.*

Attachment C- Gold Package License and Service Fees

This schedule is made a part of and incorporated by reference in the Certifix Live Scan Fingerprinting Sales and License Agreement. In the event of any conflict between the terms set forth herein and the terms of the Agreement, the terms of the Agreement shall govern.

All licenses provided under the Agreement shall be governed by the following: See "Equipment Pricing" section of the above proposal.

- **\$9.00 per transaction fee. To be invoice monthly.**
- **No per year maintenance fees for IT support, DOJ & Certifix system maintenance, software and hardware support with cross ship M-F 8am to 6pm.**
- **LIFETIME Hardware Warranty**
- **3 year software license agreement**
- **Installation:** Plug-and-Play System. Certifix I.T. will set this up with Licensee.
- **Training:** All training is included with a dedicated account manager and trainer.
- **Remote Support:** Available Monday through Friday, 8:00 a.m. – 6:00 p.m., PST.
- **Maintenance:** software maintenance includes regular I.T. checks, system connections checks, hardware cross ship, remote help, software and PC support.
- **Transmission:** All transmissions to the government are securely stored and forwarded, including daily monitoring.
- **Peer setup,** tabling, testing, updates
- **Software Updates:** We take steps to ensure you are in full compliance with state rules and regulations which include software and DOJ table update
- **Account Manager** and support help team.

Counterparts

This Agreement may be signed in one or more counterparts, each of which will constitute a valid original, and all of which when taken together shall constitute one and the same agreement. This Agreement may be signed electronically.

IN WITNESS WHEREOF, the parties have executed this Agreement on:

Date: _____

Signature: _____ Printed: _____

Title: _____

Agreement submitted by:

Certifix Live Scan

Thomas Shaw - Sales Director

tom.shaw@certifixlivescan.com

10-26-17