



CONTRACT TO City of Billings Attorney's Office

Pricing Provided Expires: August 28, 2013

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Terms and Conditions

THESE TERMS AND CONDITIONS (this “**Agreement**”) are entered into as of _____, 2013 (the “**Effective Date**”) by and between New Dawn Technologies, Inc. (“**New Dawn**”) and City of Billings Attorney’s Office (“**Customer**”). (Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the License Agreement.)

WHEREAS, Customer desires to purchase from New Dawn, and New Dawn desires to sell and license to Customer, certain software products and services (the “**Product**” or “**Products**”) as defined in the Statement of Work of even date herewith and attached hereto (as the same may be updated and amended by the parties from time to time in writing) and incorporated herein by reference (“**Statement of Work**”), on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. Product Sale, License and Delivery

1.1 Sale and License. Pursuant to the Computer Software License Agreement (the “**License Agreement**”) and/or the Subscription Agreement (the “**Subscription Agreement**”) incorporated herein by reference, to be executed contemporaneously with this Agreement, New Dawn shall sell and license to Customer, and Customer agrees to purchase and license and/or subscribe from New Dawn, the Product, including the New Dawn Software Modules identified in the New Dawn Quotation, as both capitalized terms are defined in the Statement of Work. The license and/or subscription shall commence upon execution by both parties of the License Agreement and/or Subscription Agreement.

1.2 Delivery. Products, including software or access to software, documentation required for installation thereof and license keys, shall be delivered by New Dawn to Customer upon the execution of this Agreement; *provided, however*, Project Start Meeting will commence once the Contract Signing Payments are received by New Dawn from Customer.

2. Prices & Payment

2.1 Prices. Customer agrees to purchase the Products at the prices set forth in the Pricing Proposal. All prices exclude taxes, customs and duties. These prices will remain valid during the Term of this Agreement (as defined below). New Dawn may adjust prices thereafter.

2.2 Payment. New Dawn shall invoice Customer for the aggregate purchase price of Products ordered by Customer at the time of shipment of such Products. Each such invoice shall be due and payable within thirty (30) calendar days of the invoice date. All Product sales are final, and payments are non-refundable.

2.3 Manner and Place of Payment. All payments hereunder shall be payable in U.S. dollars. All payments owed under this Agreement shall be made by wire transfer in immediately available funds to a bank and account designated in writing by New Dawn, unless otherwise approved by New Dawn.

2.4 Taxes and Fees. All taxes and/or fees levied on account of the payments accruing to New Dawn under this Agreement shall be paid by Customer for its own account. It will be the Customer's sole responsibility to ensure that taxes are paid to the proper taxing authority. It will be the Customer's sole responsibility to ensure that fees are paid to the proper authority. Taxes and fees may be deducted from payments made to New Dawn only if Customer tax and fee obligation is identified in "Exhibit A: Pricing Proposal" of this agreement.

2.5 Late Payments. In the event that any payment due under this Agreement is not made when due, the payment shall accrue interest from the date due at the rate of one and a half percent (1.5%) per month; *provided, however*, that in no event shall such rate exceed the maximum legal annual interest rate. The payment of such interest shall not limit New Dawn from exercising any other rights it may have as a consequence of the lateness of any payment.

3. Limited Warranty and Limited Remedies

New Dawn warrants that, upon completion of delivery and installation, the Products sold under this Agreement will conform in all material respects with the Product Documentation and will be conforming and free from defects in material and workmanship until fifteen (15) months after the date of manufacture (which date of manufacture shall be clearly marked in materials provided to Customer); *provided, however*, that this limited warranty does not apply to Custom Software or the services covered by First Year Support. Notwithstanding anything contained in this Agreement to the contrary, the warranty of New Dawn as provided herein shall be void if any alterations, modifications or work have been performed on such Product, or to the extent that any alleged defect is the result of abuse, misuse, improper maintenance or storage, accident, action or inaction on the part of any party other than New Dawn. Nor shall New Dawn be responsible (a) for the quality or condition of any materials supplied by or through Customer, or (b) for any defect to the extent due to uses that do not conform to the applicable instructions. Subject to the foregoing, if a Product is not as warranted and Customer notifies New Dawn in writing within the fifteen-month warranty period noted above and returns that Product to New Dawn within thirty (30) calendar days of Customer's discovery, New Dawn will, at its option, promptly repair or replace the defective Product. Any such repaired or replaced Product shall be shipped back to Customer at New Dawn's sole expense. This remedy will not be deemed

to have failed of its essential purpose so long as New Dawn is willing and able to repair or replace a defective Product in the prescribed manner. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR USE.

4. Default

4.1 Event of Default. The occurrence of any one or more of the following shall constitute an “*Event of Default*” under this Agreement:

- a) Customer fails to pay to New Dawn any charge, costs, or other payment accruing hereunder within sixty (60) calendar days of the invoice date if such delinquency has not been corrected within ten (10) calendar days after New Dawn has given Customer written notice of such delinquency;
- b) Customer fails to perform any obligation set forth in this Agreement, repudiates any obligation set forth in this Agreement, or wrongfully rejects conforming and non-defective Products by Customer if such failure has not been corrected within sixty (60) calendar days after New Dawn has given Customer written notice of such failure;
- c) New Dawn’s failure to perform any obligation set forth in this Agreement if such failure has not been corrected within sixty (60) calendar days after Customer has given New Dawn written notice of such failure; or
- d) Customer’s failure to start Project Start Meeting on a date mutually agreed-upon by Customer and New Dawn.

4.2 Effect of Default. Upon the occurrence of any Event of Default, the party adversely affected may halt all pending and/or planned activities on Project Start Meeting; and/or terminate this Agreement effective immediately. If Customer is the defaulting party, New Dawn may accelerate and declare all outstanding payments owed by Customer under this Agreement immediately due and payable as a liquidated sum. New Dawn may proceed against Customer in any lawful manner for satisfaction of amounts owed by Customer, including interest owed thereon calculated at one and a half percent (1.5%) per month; *provided, however*, that such interest amount does not exceed the maximum legal annual interest rate. New Dawn may proceed against Customer in any lawful manner to repossess Products remaining in Customer’s possession to satisfy, in whole or in part, Customer’s obligations under this Agreement.

Customer shall pay all costs of collection, including reasonable attorney's fees, whether or not a lawsuit is instituted.

5. Indemnification

5.1 Indemnification by New Dawn. New Dawn hereby agrees to save, defend and hold Customer and its directors, officers, employees and agents (each, a "**Customer Indemnitee**") harmless from and against any and all claims, suits, actions, demands, liabilities, expenses and/or loss, including reasonable legal expense and attorneys' fees (collectively, "**Losses**") to which any Customer Indemnitee may become subject as a result of (a) any claim, demand, action or other proceeding by any entity other than New Dawn or Customer ("**Third Party**") to the extent such Losses arise directly or indirectly out of the breach by New Dawn of any warranty, representation, covenant or agreement made by New Dawn in this Agreement; and/or (b) any claim alleging that any Product directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a Third Party; except to the extent such Losses result from the gross negligence or willful misconduct of any Customer Indemnitee or the material breach by Customer of any warranty, representation, covenant or agreement made by Customer in this Agreement.

5.2 Indemnification by Customer. Customer hereby agrees to save, defend and hold New Dawn and its respective directors, officers, employees and agents (each, a "**New Dawn Indemnitee**") harmless from and against any and all Losses to which any New Dawn Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party to the extent such Losses arise directly or indirectly out of: (a) the use, handling, storage, sale or other disposition of Product by Customer, including the combination of Product with any of Customer's products, hosting service, hardware, or business processes; (b) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a Third Party; or (c) the breach by Customer of any warranty, representation, covenant or agreement made by Customer in this Agreement; except, in each case, to the extent such Losses result from the gross negligence or willful misconduct of any New Dawn Indemnitee or the material breach by New Dawn of any warranty, representation, covenant or agreement made by New Dawn in this Agreement.

5.3 Control of Defense. Any entity entitled to indemnification under this Section 5 shall give written notice to the indemnifying party of any Losses that may be subject to indemnification promptly after learning of such Losses, tender control over the defense and settlement of such Losses to the indemnifying party (provided that indemnifying party may not enter into a settlement affecting indemnified party's interests without indemnified party's consent), and provide reasonable cooperation in

the defense of the Losses at indemnifying party's expense. Indemnified party may participate in the defense with counsel of its choice at its own expense.

6. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR RELIANCE DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. In addition, New Dawn shall not be liable to Customer for any damages arising from or relating to this Agreement exceeding the total of payments made by Customer to New Dawn under this Agreement, up to five hundred thousand dollars (\$500,000), even if New Dawn knew or should have known of the possibility of such damages.

7. Confidentiality

7.1 Confidentiality. Customer acknowledges and agrees that the terms of this Agreement, including any and all pricing terms, are confidential in nature and shall not be disclosed to any Third Party, including by publication on any Customer website or social media profile. Both during and after the Term (as defined below), Customer shall maintain in confidence the terms of this Agreement. Customer shall promptly notify New Dawn upon discovery of any unauthorized disclosure of the terms of this Agreement.

7.2 Authorized Disclosure. Either party may disclose the terms of this Agreement to the extent such disclosure is reasonably necessary in complying with applicable court orders or governmental regulations, including responding to any public records request; provided that if Customer is required to make (or anticipates making) any such disclosure of the terms of this Agreement, it will to the extent practicable give reasonable advance notice to New Dawn of such disclosure requirement.

8. Term & Termination

8.1 Term. The term of this Agreement (the "**Term**") will commence as of the Effective Date and, unless sooner terminated as provided hereunder, will terminate upon the completion and delivery of the Products.

8.2 Termination. Either party shall have the right to terminate this Agreement for any reason or for no reason upon thirty (30) calendar days' written notice to the other party.

8.3 Effect of Termination. Expiration or termination of this Agreement shall not relieve either party of any obligation accruing prior to such expiration or termination, including Customer's obligation to make payment of all outstanding amounts due and payable within the prescribed period for making such payment pursuant to Section 2 of this Agreement. The obligations and the rights of the parties under Sections 2, 3, 4, 5, 6 and 7 shall survive expiration or termination of this Agreement.

9. Dispute Resolution

9.1 Initial Resolution by Meeting. PARTIES SHALL ATTEMPT TO RESOLVE AMICABLY ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY ALLEGED BREACH OR FRAUD IN THE INDUCEMENT HEREOF, BY MEETING WITH EACH OTHER WITHIN THIRTY (30) CALENDAR DAYS AFTER WRITTEN NOTICE OF A DISPUTE IS DELIVERED FROM ONE PARTY TO THE OTHER PARTY. SUBSEQUENT MEETINGS MAY BE HELD UPON MUTUAL AGREEMENT OF THE PARTIES.

9.2 Mediation of the Dispute. IF THE DISPUTE IS NOT RESOLVED WITHIN SIXTY (60) CALENDAR DAYS OF COMMENCEMENT OF SUCH MEETINGS, THE PARTIES SHALL SUBMIT THEIR DISPUTE, IN GOOD FAITH, TO MEDIATION BY AN ORGANIZATION OR COMPANY SPECIALIZING IN PROVIDING NEUTRAL, THIRD-PARTY MEDIATORS. THE MEDIATION SHALL BE CONDUCTED IN ENGLISH AND SHALL BE HELD IN LOGAN, UTAH, OR SUCH OTHER LOCATION AS MUTUALLY AGREED BY THE PARTIES WITHIN SIXTY (60) CALENDAR DAYS OF THE DATE THE DISPUTE IS SUBMITTED TO MEDIATION, UNLESS THE PARTIES MUTUALLY AGREE ON A LATER DATE.

9.3 Binding Arbitration. ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT THAT IS NOT OTHERWISE AMICABLY SETTLED BETWEEN THE PARTIES BY MEETING OR MEDIATION SHALL BE EXCLUSIVELY RESOLVED BY ARBITRATION BETWEEN THE PARTIES IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, WITH THE ARBITRATION TO BE CONDUCTED WITH ONE ARBITRATOR IN THE ENGLISH LANGUAGE TAKING PLACE IN LOGAN, UTAH, OR SUCH OTHER LOCATION AS MUTUALLY AGREED BY THE PARTIES. THE RESULTS OF SUCH ARBITRATION PROCEEDINGS SHALL BE BINDING UPON THE PARTIES HERETO, AND JUDGMENT MAY BE ENTERED UPON THE ARBITRATION AWARD IN ANY COURT HAVING JURISDICTION THEREOF. NOTWITHSTANDING THE FOREGOING, EITHER PARTY MAY SEEK INTERIM INJUNCTIVE RELIEF FROM ANY COURT OF COMPETENT JURISDICTION.

9.4 Jury Trial Waiver. CUSTOMER HEREBY WAIVES ITS RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER CUSTOMER AGAINST NEW DAWN OR NEW DAWN AGAINST CUSTOMER ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE LICENSE AGREEMENT, THE PRODUCTS, THIS AGREEMENT OR ANY

CLAIM OR THE ENFORCEMENT OF ANY CLAIM OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW NOW OR HEREAFTER IN EFFECT. THE PROVISIONS OF THIS SECTION 9 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

10. Miscellaneous

10.1 Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld); *provided, however,* that New Dawn may assign this Agreement and its rights and obligations hereunder without Customer's consent in connection with the transfer or sale of all or substantially all of New Dawn's business to which this Agreement relates to a Third Party, whether by merger, sale of stock, sale of assets or otherwise. The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

10.2 Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement (other than with respect to the payment of money owed) when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including, without limitation, fire, floods, earthquakes, natural disasters, embargoes, war, acts of war (whether war be declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party.

10.3 Injunctive Relief. The parties hereby acknowledge and agree that in the event of any breach of this Agreement by either party, the other party will suffer an irreparable injury, such that no remedy at law will afford it adequate protection against or appropriate compensation for, such injury. Accordingly, the parties hereby agree that the non-breaching party shall be entitled to specific performance of the other party's obligations under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

10.4 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without regard to its choice of law provisions.

10.5 Waiver. Except as specifically provided for herein, the waiver from time to time by either party of any right or failure to exercise any remedy shall not operate or

be construed as a continuing waiver of the same right or remedy or of any other of such party's rights or remedies provided under this Agreement.

10.6 Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.7 Independent Contractors. It is expressly agreed that Customer and New Dawn shall be independent contractors and that the relationship between the two parties shall not constitute a partnership, joint venture or agency of any kind. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other party, without the prior written consent of the other party.

10.8 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one party to the other shall be in writing, addressed to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor, and shall be effective: (a) if sent by registered or certified mail return receipt requested, upon receipt; (b) if sent by internationally recognized express air courier (such as DHL or Federal Express), two (2) business days after mailing; (c) if sent by facsimile transmission, with a copy mailed on the same day in the manner provided in clauses (a) or (b) of this Section 7.7, when transmitted and receipt is confirmed by telephone; and (d) if otherwise actually personally delivered, when delivered:

If to New Dawn: New Dawn Technologies, Inc.
843 South 100 West
Logan, Utah 84321
United States of America

Attention: Frank Felice
Facsimile: 801-760-3407

If to Customer: _____

10.9 Amendment. Except as expressly set forth in this Agreement, no subsequent amendment, modification or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the respective authorized officers of the parties.

10.10 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

10.11 No Third Party Beneficiaries. The representations, warranties, covenants, and undertakings contained in this Agreement are for the sole benefit of the parties and the parties' permitted successors and assigns and shall not be construed as creating any Third Party beneficiaries of this Agreement or as conferring any rights whatsoever on any Third Party.

Contract Signing

City of Billings Attorney's Office Authorized Signature, Title and Date

New Dawn Authorized Signature, Title and Date

Exhibit A: Pricing Proposal

City of Billings Attorney's Office 210 North 27th Street Billings MT, 59101	Proposal Number: QT-3883/5 Proposal Creation Date: June 14, 2013 Proposal Expiration Date: 8/28/2013
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Software		Quoted Price	Total
13 named user licenses	JustWare Defender	\$1,084.00	\$14,092.00
1 developer license	Document Author Software	\$338.00	\$338.00
5 named user licenses	Document Imaging with Barcoding	\$293.00	\$1,465.00

Total Software: \$15,895.00

Services	Total
Initiating Phase Services	\$2,940.00
Training Phase Services	\$8,620.00
Configuration Phase Services	\$23,660.00
Go-Live Phase Services	\$5,680.00

For detailed services provided during each phase see Statement of Work section of this contract.

Total Services: \$40,900.00

Support & Subscription Fees		Quoted Price	Total
13 named user licenses	JustWare Support and Upgrades	\$271.00	\$3,523.00
5 named user licenses	Document Imaging with Barcoding annual support	\$59.00	\$295.00

Total Support & Subscription Fees: \$3,818.00

Travel & Per Diem

Travel and Per Diem is NOT included in the pricing for any onsite services. The customer will be invoiced for travel expenses as incurred. Hotel and transportation fees will be invoiced per receipts. Meals & Incidental Expenses will be billed at the current GSA rates for the area. See www.gsa.gov for current Meal & Incidental Expense rates.

Total Proposal Cost: \$60,613.00

Exhibit B: Payment Milestones

Implementation Milestones			
Milestone	Description	Cost Inclusions	Amount
1	Contract Signing	<ul style="list-style-type: none"> Software Licenses 60% of Initiating Phase Services Annual Support 	\$21,477.00
2	Training Phase Start	<ul style="list-style-type: none"> 40% of Initiating Phase Services 60% of Training Phase Services 	\$6,348.00
3	Configuration Phase Start	<ul style="list-style-type: none"> 40% of Training Phase Services 60% of Configuration Phase Services 	\$17,644.00
4	Go-Live Phase Start	<ul style="list-style-type: none"> 40% of Configuration Phase Services 60% of Go-Live Phase Services 	\$12,872.00
5	Project Closure	<ul style="list-style-type: none"> 40% of Go-Live Phase Services 	\$2,272.00
		Total	\$60,613.00

Note: Milestone payments must be received prior to phase start.

Annual Support will be billed annually on the anniversary of contract signing date.

Total Payments	\$60,613.00
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Exhibit C: Contract Signing Invoice

Remit Payment To:

New Dawn Technologies
843 South 100 West
Logan, Utah 84321
1.877.587.8927



Bill To: City of Billings Attorney's Office 210 North 27th Street Billings, MT 59101	Invoice Number: QT-3883/5- INV1 Invoice Date: June 14, 2013 Terms: Due on Receipt Account Executive: Scott Jardine
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Item	Total
JustWare Defender	\$14,092.00
JustWare Support and Upgrades	\$3,523.00
Document Imaging with Barcoding	\$1,465.00
Document Author Software	\$338.00
Document Imaging with Barcoding annual support	\$295.00
Initiating Phase Services	\$1,764.00
Contract Signing Amount	\$21,477.00
Thank you for your business. We look forward to working with you.	

Exhibit D: Services Statement of Work

Each phase of this project will commence when a formal Notice to Proceed document has been signed by the New Dawn Project Manager (NDPM) and the Customer Project Manager (CPM). The Project Start Date will be the signing date of the Initiating Phase Notice to Proceed or first phase listed in the SOW. No phase will begin until the previous phase has been concluded. **Once a phase is completed and authorized individuals have signed the appropriate notice to proceed documents approving the start of the next phase, we will not continue or restart work on the completed phase. All phases have a maximum duration length.**

1. Initiating Phase

The Project will commence upon receipt by New Dawn of the signed Notice to Proceed for the Initiating. The objective of this phase is to gather or construct the necessary inputs for the next phase. The Initiating Phase shall not exceed 120 days, beginning with the Project Start date.

New Dawn Deliverables:

- Software License keys
- Deliver Implementation Quick-start Workbooks
- Installation of New Dawn developed software

Phase Completion Criteria:

- Finalized Quick-start Workbooks
- New Dawn software installations
- Signed Notice to Proceed document by both NDPM and CPM signifying completion of the Initiating Phase and the start of the Training Phase

2. Training Phase

During the Training Phase, customer JustWare Administrators will receive instruction as specified in the New Dawn Deliverables section below. The Training Phase shall not exceed 240 calendar days from Project Start date and will begin with the signing date of the Notice to Proceed.

New Dawn Deliverables:

- Deliver JDA Development Training Plan
- Facilitate one Online JDA Development Training (not to exceed eight hours)
- Deliver JustWare Administration Training Plan
- Facilitate one Onsite JustWare Administration Training (not to exceed four working days in a single trip)

Completion Criteria:

- Delivery of specified Training Plans and Trainings
- Signed Notice to Proceed document by both NDPM and CPM signifying completion of the Training Phase and the start of the Configuration Phase

3. Configuration Phase

During the Configuration Phase, the customer will configure New Dawn software for specific office workflows. The Phase Plan will define a Work Order System to authorize New Dawn to work on the New Dawn deliverables listed below. The Configuration Phase shall not exceed 420 calendar days from Project Start date and will begin with the signing date of the Notice to Proceed.

New Dawn Deliverables:

- Up to eight (8) JDA Templates (not to exceed ten (10) hours of work per template with up to one (1) specification revision per template)
- Up to two (2) JXML Screens (not to exceed ten (10) hours of work per screen with up to one (1) specification revision per screen)
- Up to three (3) SSRS Reports (not to exceed ten (10) hours of work per report with one (1) specification revision per report)

Completion Criteria:

- Signed Notice to Proceed document by both NDPM and CPM signifying completion of required configuration, and completion of the Configuration Phase and the start of the Go-Live Phase

4. Go-Live Phase

The primary objective of this phase is to verify or complete the setup of the customer's production environment, train end users, and have end users begin using JustWare in a live capacity. The Go-Live Phase shall not exceed 480 calendar days from Project Start date and will begin with the signing date of the Notice to Proceed.

New Dawn Deliverables:

- Onsite consultation to assist and support Customer JustWare Administrator(s) in preparation for system Go-Live (not to exceed three working days in a single trip)

Completion Criteria:

- Delivery of specified consultation and/or assistance
- Signed Notice to Proceed document by both NDPM and CPM signifying completion of the Go-Live Phase

Exhibit E: License and Support Agreements

JustWare Defender license agreement

This License Agreement is between New Dawn Technologies, Inc. (“New Dawn”) and City of Billings Attorney's Office (“Customer”) with regards to the use of JustWare Defender (“the Software”). Customer is granted a non-exclusive, non-transferable license to install and use the Software. All amounts due under this Agreement are non-cancelable and non-refundable immediately upon the delivery of the Software.

1. License

This Agreement allows you, the Customer to:

- a. Install and use the Software on any computer or device for each named user license purchased and make one copy of the Software in machine-readable form solely for backup purposes. Customer must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software.
- b. Install and use the Software in a testing and staging environment.
- c. Install the Software on a storage device, such as a network server, and run the Software on an internal network, provided the number of named users running the Software does not exceed the number of named user licenses of the Software purchased.
- d. Use the Software either directly or indirectly or through commands, data or instructions from or to a computer not part of your internal network, for Internet or Web-hosting services only by a named user licensed to use this copy of the Software through a valid license. A copy of the Software must be purchased for each named user.
- e. Reproduce documentation, online help, and screen capture images solely for internal use as reference material and training literature.

2. Terms and Conditions

Customer must agree to the Terms and Condition of this agreement if you wish to use this software.

3. License Restrictions and Rights

The Software and Software Documentation are protected by United States Copyright Laws and international Copyright treaties, as well as other intellectual property laws. The Software is licensed and not sold to Customer. New Dawn hereby retains sole and exclusive ownership of all right, title and interest in and to all intellectual property rights in the Software, Software Documentation. Customer acknowledges that all enhancements provided by New Dawn, either provided for a contracted cost

or included at no cost, are added into New Dawn's proprietary core JustWare platform, therefore, any enhancements will remain the sole property of New Dawn. Customer may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network other than to make backup copies of the Software. You may not release proprietary Software information such as Software database schemas or Software technical specifications. You may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. You may not rent, lease or sublicense the Software. You may not modify the Software or create derivative works based upon the Software. You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations there under.

4. Data

New Dawn Technologies does not own any data, information or material in the course of Customer using or accessing the Software. Customer, not New Dawn Technologies, shall have sole responsibility and ownership for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership or right to use of all Customer data and New Dawn Technologies shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer data.

5. Upgrades

- a. If this copy of the Software is an upgrade from an earlier version of the Software, it is provided to you, the Customer on a named user license exchange basis. You agree by your installation and use of this copy of the Software to voluntarily terminate your earlier named user license and that you will not continue to use the earlier version of the Software nor transfer it to another.
- b. This Agreement will remain in effect for all future upgrades to the Software unless otherwise stated by a new License Agreement executed between New Dawn and the Customer.
- c. Customer will receive all future upgrades to the Software as long as a current Support Agreement is maintained.

6. Ownership

The foregoing license gives you, the Customer:

- a. Limited rights to use the Software. Although you own the media on which the Software is recorded, you do not become the owner of, and New Dawn retains title to, the Software, any New Dawn run time libraries, and all copies thereof. All rights not specifically granted in this Agreement, including Federal and International Copyrights, are reserved by New Dawn.

- b. Responsibility for the data entered and modified while using the Software. New Dawn shall not be held liable for the data contained in the system including without limitation the accuracy, responsibility for archival, loss of, use or misuse of any data entered by the Customer.

7. Limited Warranty and Limited Remedies

New Dawn warrants that, upon completion of delivery and installation, the Products sold under this Agreement will conform in all material respects with the Product Documentation and will be conforming and free from defects in material and workmanship until fifteen (15) months after the date of manufacture (which date of manufacture shall be clearly marked in materials provided to Customer); *provided, however*, that this limited warranty does not apply to Custom Software or the services covered by First Year Support. Notwithstanding anything contained in this Agreement to the contrary, the warranty of New Dawn as provided herein shall be void if any alterations, modifications or work have been performed on such Product, or to the extent that any alleged defect is the result of abuse, misuse, improper maintenance or storage, accident, action or inaction on the part of any party other than New Dawn. Nor shall New Dawn be responsible (a) for the quality or condition of any materials supplied by or through Customer, or (b) for any defect to the extent due to uses that do not conform to the applicable instructions. Subject to the foregoing, if a Product is not as warranted and Customer notifies New Dawn in writing within the fifteen-month warranty period noted above and returns that Product to New Dawn within thirty (30) calendar days of Customer's discovery, New Dawn will, at its option, promptly repair or replace the defective Product. Any such repaired or replaced Product shall be shipped back to Customer at New Dawn's sole expense. This remedy will not be deemed to have failed of its essential purpose so long as New Dawn is willing and able to repair or replace a defective Product in the prescribed manner. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR USE.

8. Escrow

New Dawn provides software escrow services as part of this Agreement. The Release Condition shall be deemed to have occurred in the event of the following:

- a. New Dawn discontinues business because of insolvency or bankruptcy, and no successor assumes obligations under this Agreement.

- b. The following applies to Deposit Materials released to Customer in accordance with this Agreement:
- c. Customer may only use the Deposit Materials to maintain, modify and enhance the Software upon Release Condition. The maintained, modified and enhanced Software may only be used in accordance with this Agreement.
- d. Customer may not disclose the Deposit Materials to any third party and shall keep the Deposit Materials confidential, except as provided below.
- e. Customer may engage the services of independent contractors to assist Customer in exercising its rights according to this Agreement. Each such independent contractor must agree in writing that they will not disclose or transfer the Deposit Materials to any other person, and will not use the Deposit Materials for any purpose other than to assist Customer in exercising its rights according to this Agreement.

JustWare Defender Support Agreement

This Support Agreement is between New Dawn Technologies, Inc. (“New Dawn”) and City of Billings Attorney's Office (“Customer”) with regards to the software support and upgrades of JustWare Defender (“the Software”).

1. Definitions

- a. Support
“Support” is defined as technical assistance with the Software, including but not limited to, questions about the functionality of the Software, assistance with the resolution of error message and installation questions. Support may include troubleshooting the Software as needed to resolve issues.
- b. Version
“Version” refers to a variation, either minor or major, from an earlier version of the Software. A version could refer to a minor and/or major version change.
- c. Major version
A Major version refers to the first number in the software release, i.e. 4.x, 5.x. The numbers “4” and “5” represent the Major version.
- d. Minor version
A minor version refers to the second number in the software release, ie x.1, x.2. The numbers “1” and “2” refer to the minor version. Software releases have both a Major and a Minor version number in them.
- e. Current Version
“Current Version” is the most recent publically released version of the Software.
- f. Enhancement
“Enhancement” refers to features and/or functionality that are not included in the Current Version of JustWare. Much of the Software’s feature set has been driven by enhancement requests from customers.
- g. Service Release
“Service release” is the method New Dawn uses to resolve critical issues that may be identified with the Software.
- h. Critical
“Critical” is defined as an issue for which there is no workaround AND one of the following statements is true:
 - i. Defect causes data loss
 - ii. Defect affects a mission critical task
 - iii. Security risk causing possible system compromise

2. New Dawn Responsibilities

During the Term of this Agreement, New Dawn shall render the following services in support of the Software, during Hours of Operation, subject to the compensation fixed for each type of service in New Dawn's current Fee Schedule:

- a. Provide response to requests to our Support Department made by a JustWare Application Administrator through any of the standard methods of contact within four (4) hours during the Hours of Operation (7am – 6pm MST for standard support).

- b. Use all reasonable diligence in correcting verifiable and reproducible errors when reported to New Dawn. New Dawn shall, after verifying that such an error is present, initiate work in a diligent manner toward development of a solution. If the error is categorized as Critical, New Dawn shall provide the solution through a Service Release to the most recent released minor version and one minor version previous when applicable. New Dawn shall include the solution in all subsequent versions of the Software. New Dawn shall not be responsible for correcting errors in any version of the Software other than the most recent minor version with the exception of those categorized as critical. The service release process for critical bugs will be limited to the current minor version release and one minor version previous. New Dawn shall not be responsible for correcting errors as a result of hardware failure including, but not limited to, failure caused by wiring, networks, modems, phone lines, power, or connectors. New Dawn shall not be responsible for any errors caused by hardware limitations due to insufficient memory, disk storage or processing power, problems caused by hardware failure, any loss of data or problem deemed as a result of an operator, any problems caused by incorrectly installed, configured, or maintained operating system, or versions of the operating system not supported by New Dawn. New Dawn shall not be responsible for problems with, or caused by any hardware or third party software not supported by New Dawn. New Dawn shall not be responsible for problems with, or caused by software, processes, or interfaces not provided by New Dawn that interact with the Software or Software database.
- c. New Dawn shall not be responsible for configuring, maintaining, and upgrading the operating system including, but not limited to, backups and restores, fixes, and patches.
- d. Provide recommendations on the configuration and use of the Software and related hardware or software to meet the Customer's operational needs.
- e. New Dawn shall be responsible for maintaining and administrating a certification process for JustWare Application Administrators.
- f. Provide regular versions of the Software including select enhancements, and Service Releases for the most recent minor version and one minor version prior at no additional cost to the Customer. These versions may contain new functionality and Service Releases not specifically requested by the Customer. New Dawn will provide supplemental software and hardware requirements, recommendations and documentation per version of the Software.
- g. New Dawn shall treat all information, data or files provided by Customer as confidential, maintaining secure access to such material only for New Dawn support personnel for purposes of investigating or solving a support request.

- h. New Dawn will provide maintenance and upgrades to the current publically released version of the Software. Only the most recent released minor version and one minor version prior will be eligible for Service Releases. Technical support will be provided for other eligible versions. Upgrading to the most recent version may be required to be eligible for a Service Release.
- i. New Dawn reserves the right to request an alternate or replacement application administrator. Any request for an alternate or replacement administrator will be made in writing, and a replacement administrator will be assigned within 90 days of formal request.
- j. New Dawn will provide upgrades of new version releases and may halt a version upgrade installation if Customer hardware and software systems do not meet the most current system requirements and recommendations.
- k. Standard methods of contact include:
 - Telephone: 877.587.8927 ext. 2
 - Email: support@newdawn.com
 - Web and support forums: <http://community.newdawn.com>
 - Written: ATTN: Support 843 South 100 West, Logan, UT 84321
 - Fax: 603.308.8138
- l. Hours of Operation are from 7:00 a.m. to 6:00 p.m. Mountain Standard Time except weekends and United States holidays.
- m. New Dawn will only provide support to JustWare Application Administrator(s). It is the responsibility of the Customer to instruct system users to route support requests to JustWare Application Administrator(s). If New Dawn is required to provide support to non-JustWare Application Administrator(s), a \$225 hourly rate will be applied.

3. Customer Responsibilities

- a. Retain one or more certified JustWare Application Administrator(s) on staff responsible for the regular maintenance and configuration of the Software. New Dawn must be provided the name and contact information for any JustWare Application Administrator. These individuals must receive JustWare Application Administrator Training and certification testing within 90 days of notice to qualify for support. If turnover occurs for Customer's designated JustWare Application Administrator(s), Customer must arrange with New Dawn for certification and re-training. Support requests by anyone not identified and qualified as a certified JustWare Application Administrator are subject to higher support fee increases.
- b. Provide and maintain a dedicated connection, approved by New Dawn, to the Software's database and/or application server. This connection is to be available

and accessible by New Dawn support personnel during the Hours of Operation for the purposes of providing software support and upgrades. This connection must provide full screen access to the server with full administrative rights to publish information and make changes to the JustWare database and one or more network file locations.

- c. Provide New Dawn support personnel with accurate configuration information, screen shots, or other files and documentation as required for a support request.
- d. Maintain all Customer data including but not limited to the backup of data stored in the JustWare database, custom documents and reports, and configuration files.
- e. Maintain all related hardware and software systems required for the operation of the Software including but not limited to hardware, operating systems, security, network and storage based on the most current system requirements and recommendations.
- f. Keep current with the latest versions of the Software.
- g. All communications by Customer to New Dawn must be in the English language.

4. Disclaimer of Warranty and Limitation of Liability

- a. New Dawn disclaims all other warranties, either expressed or implied and representations with respect to the Software, except as stated in the Terms and Conditions.
- b. In no event shall New Dawn be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever and however caused, even if New Dawn has been advised of the possibility of such damages. The cumulative liability of New Dawn to the Customer for all claims arising in connection with this agreement shall not exceed the total fees and charges paid to New Dawn by the Customer within the last 12 months.

5. Term and Termination of Service

- a. Many support services will occur immediately upon the signing of this Agreement and version releases and upgrades occur on a regular basis regardless of installation of software; therefore this Agreement will commence immediately upon the signing of this Agreement and continue in effect during the initial term for a period of one (1) year. This Agreement will automatically renew for successive, one (1) year terms unless terminated by either New Dawn or Customer in accordance with this section, subject to Customer's payment of the applicable JustWare Support fee.
- b. This Agreement shall immediately terminate upon the violation of the JustWare License Agreement.

- c. This Agreement may be terminated by either party upon 30 days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

6. Fees

- a. Customer shall pay New Dawn the JustWare Support fee as defined in the Payment Terms.
- b. New Dawn shall invoice Customer at the beginning of each JustWare Support term as defined above for the JustWare Support fee unless otherwise stated in the Payment Terms.
- c. Customer shall pay invoiced amounts immediately upon receipt of such invoices.
- d. Any amount not paid within 30 days after the invoice date shall bear interest at one and a half percent (1.5%) per month or the highest rate allowed by applicable law.
- e. Customers with outstanding JustWare Support invoices that exceed 90 days will be required to pay an hourly rate for support and will be required to purchase any upgrades or enhancements to the Software and this Agreement is suspended until the JustWare Support fee and interest fees are paid.
- f. Hourly rates for services and cost of software are determined by New Dawn.
- g. Support fee increases will not exceed 5% per year for Customers with certified JustWare Application Administrator(s).
- h. Support fee increases will not exceed 10% per year for Customers without certified JustWare Application Administrator(s).
- i. Support fee increases will not exceed 30% per year for Customer without JustWare Application Administrator(s) or who does not comply with Section 3a of this agreement.
- j. Annual support fees will increase upon the purchase of additional named user licenses, software and services. This increase and any additional purchases will be identified in additional Terms and Conditions and Payment Terms and signed by New Dawn and Customer.

Exhibit F: System Requirements

JustWare System Requirements

General requirements info:

Important: A Microsoft Active Directory domain is required.

- JustWare roles must be divided into at least two separate physical or virtual servers: Application (Webserver and Reporting Services) and Database server.
- All hardware requirements assume that ONLY JustWare is running on the server. Performance will be affected if hardware is shared with other applications.
- Several factors affect the performance of JustWare. Among them are: JustWare view configuration, report utilization and workflows, database size, network bandwidth and architecture, server speed (including processor, hard drive and system speeds), memory, and number and function of concurrent users. The hardware requirements listed are the minimum. For performance scaling, high availability, or disaster recovery we recommend working with your local IT group or IT contractor to ensure best results.
- Kerberos Delegation is required. It can be set up before or after Microsoft SQL Server is installed.

Backend Architecture flexibility

JustWare is designed around Microsoft Server and Application roles that use multi or N-tier architecture to provide scalable performance. JustWare is compatible with Microsoft strategies for performance scaling, high availability, and fault tolerance in each server role. Examples: (Windows Server Clustering, SQL Clustering and Mirroring, IIS web farms, etc.)

JustWare Server Roles (All server roles can be virtualized)

- Web
- Database
- Reporting
- Documents

Minimum JustWare Minimum Client Requirements

- Processor Intel Celeron or AMD 2.0 GHz
- Memory 2 GB
- Hard disk space 100 MB
- Microsoft .NET Framework 3.5 Service Pack 1
- Microsoft .NET Framework 4

Recommendation

A monitor size of 19 inches or greater is strongly recommended for optimum usability of JustWare, dependent upon configuration and layout. Minimum supported resolution is 1024 x 768 and 120 DPI.

JustWare Webserver Minimum Requirements

Component	Minimum Requirement
Processor	2 GHz , 64-bit, 2 core
RAM	4 GB
Hard Disk	80 GB
Network	TCP/IP, port 443
Software / Framework	Windows Server 2008 (64 bit), IIS 7.0, Full .NET 3.5 Service pack 1, Full .NET 4.0, WSE 3.0, MSDTC

JustWare Database Server Minimum Requirements

Note: SQL Database Server and Full Text Search must be installed. A case-insensitive string collation setting must also be used. By default, nested triggers will be enabled on SQL Server 2008. However, JustWare will only run properly when nested triggers are disabled. JustWare cannot reside on a SQL instance with other SQL databases that require nested triggers to be enabled.

The following SQL Server settings must be applied:

- Enable local and remote connections.
- Set server authentication to SQL Server and Windows Authentication mode.
- The Microsoft Distributed Transaction Coordinator service (MSDTC) must be running at all times.

Component	Minimum Requirement
Processor	2 GHz , 64-bit, 2 core
RAM	8 GB
Hard Disk	80 GB
Network	TCP/IP
Software / Framework	Windows Server 2008 (64 bit), Microsoft SQL Server 2008 64-bit, Full .NET 3.5 Service pack 1

JustWare Reporting Services Minimum Requirements

Component	Minimum Requirement
Processor	2 GHz , 64-bit, 2 core
RAM	4 GB
Hard Disk	80 GB
Network	TCP/IP, port 443
Software / Framework	Windows Server 2008 (64 bit), Microsoft SQL Server Reporting Services 2008, Full .NET 3.5 Service pack 1

JustWare Document Server Requirements

Required Software

To use indexing in JustWare to search the filing cabinet, Microsoft's Search Server Express must be installed. Currently Microsoft offers Search Server 2010 Express as a free download, which requires Windows Server 2008 (64-bit edition). Search Server 2010 Express requires 64-bit Windows Server 2008 SP2, or Windows Server 2008 R2.

This JustWare Service Role should be installed on its own operating system.

Hardware Requirements

Must meet the requirements for Microsoft Search Server 2010 Express

Other:

Barcode Scanner

JustWare provides native barcoding functionality that is part of the base application without the incurrence of additional New Dawn costs for barcoding software. Organizations wishing to implement the barcode scanning functionality in JustWare are required to purchase barcoding hardware and are responsible for its installation and setup.

Required Hardware

- USB or serial port compatible
- Has one of the following scanner interfaces: HID, Keyboard wedge, RS232
- ASCII Extended Code 3 of 9 enabled (Also referred to as extended Code 39 programmable)
- Able to read a start character of \$A as an Insert key and an end character of \$Z as a F12 key

Signature Pad

JustWare uses Microsoft Word 2007 functionality to allow electronic signing of documents. Organizations wishing to electronically sign documents in JustWare are required to purchase signature pad hardware and are responsible for its installation and setup.

Required Hardware

Any Microsoft Word compatible signature pad device

Document Scanner

JustWare's document scanning functionality uses TWAIN technology to regulate communication with name and case records in JustWare. Documents can be scanned and then directed to the filing cabinet in JustWare. Organizations wishing to implement document scanning functionality in JustWare are required to purchase scanner hardware and are responsible for its installation and setup. The Document Scanning utility in JustWare is an additional, paid service.

Required Hardware

Any TWAIN-compliant document scanning device