

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION**

MASTER AGREEMENT

Basic Information

Date	July 1, 2006
Contractor	Ricoh Business Systems
Contractor's Address	Ricoh Business Systems 2000 Sierra Point Parkway, 7 th Floor Brisbane, CA 94005
City's Address	Office of Contract Administration - Purchasing Department City and County of San Francisco City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685
Estimated Commencement Date	July 1, 2006
Length of Term	The Master Agreement shall be Three (3) Years with three (3) options to extend the term of the master Agreement for periods of one (1) year each.
Individual Equipment Leases Individual Rental Agreements	Individual Equipment Leases shall have a term of three (3), four (4) or five (5) years plus renewals. Individual Rental Agreements shall have a term from one (1) month to no more than twelve (12) months.
Renewal Term	In no case shall the term of the Master Agreement, any Individual Equipment Lease, or any extension or renewal exceed a combined total of 9.9 years. No Individual Rental Agreement may extend more than eleven (11) months beyond the term of the Master Agreement.
Purchase Option	As defined in Article 3, Term, 3.5, <u>Purchase Option</u> of this Master Agreement.

MASTER AGREEMENT

The foregoing Basic Information is incorporated into and made a part of this Agreement (to be defined below). Except where it is specifically stated in the Master Agreement that other terms set forth in the Proposal are more favorable to the City and therefore control, if there is any conflict between provisions, the provisions of the Master Agreement shall govern, followed in order by the provisions of the RFP, the provisions of the Equipment Schedule and finally the provisions of the Proposal.

This Master Agreement (the "Agreement") made as of the date specified in Article 3 in the City and County of San Francisco, State of California, by and between the Person specified in the Basic Information ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of Purchasing.

WITNESSETH:

WHEREAS, City desires to lease, rent or own certain Equipment (as hereinafter defined) and Contractor desires to lease, rent or sell such Equipment to City.

WHEREAS, City desires to have Contractor service and maintain such equipment.

NOW, WHEREFORE, in consideration of the promises and mutual covenants contained in this Agreement and for the other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND OTHER TERMS

1.1 **Specific Terms.** Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

"**Appraisal Procedure**" shall mean the following procedure for determining the Fair Market Sales Value of any Equipment and the Fair Market Lease or Rental Value of any Equipment; such matter shall be determined on the basis of an appraisal by an independent appraiser mutually agreed upon by Contractor and City. If Contractor and City fail to agree upon a mutually acceptable appraiser within five (5) Business Days after Contractor or City delivers a written request therefore to the other, each shall appoint, within five (5) Business Days thereafter, an independent appraiser, and such appraisers shall jointly determine such matter, or, if such appraisers cannot agree on such matter within thirty (30) days, such matter shall be determined by the two (2) independent appraisers and a third independent appraiser chosen by agreement of such first two appraisers within five (5) Business Days after such thirty (30) day period. If such three (3) appraisers fail to reach an agreement, the estimates of such three (3) appraisers shall be averaged, unless the estimate of one appraisers differs from the median of the three estimates by more than twice the amount that any other estimate differs from the median, in which case the estimate which differs from the median shall be discarded and the two remaining estimates averaged. If such third appraiser is not appointed within such period of five (5)

Business Days or such appraisal is not made within thirty (30) days of such appointment then such appraisal shall be made promptly by an appraiser appointed by the American Arbitration Association. If either party fails to appoint an appraiser within the time required, the determination of the appraiser appointed by the other party shall be final. The expenses of the Appraisal Procedure shall be borne equally between Contractor and City.

“Basic Information” shall mean the Basic Information set forth at the beginning of this Agreement.

“Business Day” means any day other than a City holiday, a Saturday, Sunday or day upon which banks in the State of California are authorized or required to be closed.

“Commencement Date” for any items or item of equipment means the commencement date specified in the applicable supplemental Basic Information.

“Consumable Supplies” Supplies utilized in the normal use of a copier, including toner, developer, fuser agent, sumps, and preventative maintenance kits. Consumable supplies shall not include staples or paper.

“Controller” shall mean the Controller of the City.

“Equipment” shall mean the personal property (including any documentation related thereto), provided by Contractor to City pursuant to this Agreement.

“Equipment Schedule” shall mean the mutually agreed upon ordering request form and encumbrance document which includes, at a minimum, the equipment description and quantity, the lease or rental term and the price of each individual order under the Master Agreement.

“Event of Default” shall mean each of the events set forth in Sections 12.1 and 13.1.

“Fair Market Value” shall mean the fair market lease or rental value that would be obtained in an arm’s-length transaction between an informed and willing buyer and an informed and willing seller, both under no compulsion, respectively, to lease or rent, and neither of which is related to Contractor or City, for the purchase of the Equipment in question.

“Fair Market Sales Value” shall mean the value that would be obtained in an arm’s-length transaction between an informed and willing buyer and willing seller for the purchase of the Equipment in question.

“HRC” shall mean the City’s Human Rights Commission.

“Indemnified Parties” shall mean: (1) City, including all commissions, departments, agencies and other subdivisions of City; (ii) City’s elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

“Liens” shall mean all judgments, materialmen’s liens, mechanics’ liens, claims, demands, encumbrances and other liens of whatever nature or character, but excluding any liens or encumbrances created by or through Contractor.

“Losses” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatever kind and nature.

“Person” means an individual, partnership, corporation, association, trust or any other legal entity.

“Payment” means the payment for any item of Equipment that City is required to make to Contractor under this Agreement as set forth in the applicable Equipment Schedule.

“Payment Date” means the date the Payment for any item of Equipment is due.

“Supplemental Basic Information” shall mean for each item of Equipment, the Supplemental Basic Information contained in the applicable Equipment Schedule.

“Term” shall mean the length of the Master Agreement and any exercised options to renew.

“Lease Term” shall mean the length of time as designated in increments of three (3), four (4) or five (5) years for an equipment order.

“Rental Term” shall mean the length of time, as designated in increments of one (1) month and not exceeding a total of twelve (12) months, for an equipment order.

Additional Terms. The terms “approval”, “acceptable”, “consent” or “satisfactory” or similar terms shall mean approved by, acceptable to, consented to or satisfactory to City, acting through the department or commission recommending this Agreement below. The terms “include”, “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation.” The use of the term “Successor” or “assign” herein refers only to a successor or assign expressly permitted under Article 15.

1.2 **References to this Agreement.** References to this Agreement include: (a) the applicable Equipment Schedule; any and all appendices, exhibits, other schedules attachments hereto; (c) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (d) any and all amendments, modifications, or supplements hereto made in accordance with Section 18.14. References to articles, sections, subsections or exhibits refer to articles, sections or subsections of or exhibits to this Agreement, unless otherwise expressly stated. Terms such as “hereunder”, “herein” or “hereto” refer to this Agreement as a whole, including the applicable Equipment Schedule and all other items described in the first sentence of this Section 1.3.

ARTICLE 2

EQUIPMENT SCHEDULES

2.1 **Delivery of Equipment.** Contractor shall cause each item of Equipment to be delivered at the delivery address specified in the Supplemental Basic Information within fourteen (14) business days of execution of this Agreement. All transportation costs and other expenses, if any, incurred in connection with the delivery of Equipment shall be the responsibility of the Contractor, except where City and Contractor agree that delivery requires unusual and excessive rigging costs. In that case, additional charges will be negotiated at the time the order is placed. Contractor has affirmatively represented that this agreement does not include software development or require the purchase by City of any software license. If, during the term of the Master Agreement, the City orders any item from Contractor that requires a software license, the parties agree to enter in to a software license agreement in substantially the form of the City's Form P-545 as it may be amended from time to time.

2.2 **Installation.** Any Equipment that requires installation as indicated in the Supplemental Basic Information, shall be installed by Contractor or its authorized representative. Installation shall take place in accordance with plans and specifications approved by City and in accordance with all applicable laws, rules and regulations. Contractor shall obtain any permits or licenses required for the installation for the Equipment, unless City otherwise agrees in writing. It shall be the Contractor's responsibility to examine such delivery site specified in the Supplemental Basic Information and to advise the City of any electrical, safety, space or special requirements that are to be met prior to delivery of Equipment. It shall be the City's responsibility to have the site properly prepared for the delivery of equipment. All costs and expenses incurred in connection with installation of the Equipment shall be the responsibility of Contractor.

Contractor agrees that the City may, upon reasonable notice to Contractor, relocate the equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and at no additional charge to City. Prior to any such relocation, the City agrees to execute and to deliver to Contractor such documents that Contractor reasonably requests to protect Contractor's right, title and interest in the equipment.

2.3 **Training.** Training shall be provided to the personnel of the delivery sites on the same day, or within one day following the delivery of the equipment. Additional training shall be provided as often as required at no additional cost to the City.

2.4 **Maintenance.**

a. **Responsibility.** Price paid under this Agreement shall include the cost for the copier and features, delivery, installation, software if any, training, all maintenance, including drum replacement, and all consumable supplies. Consumable supplies shall include but not be limited to toner, developer, fuser agent, sumps and preventive maintenance kits but shall exclude staples and paper. The Contractor shall provide preventive and remedial maintenance service

from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on City holidays. All preventive maintenance shall be performed in accordance with the manufacturer's specifications. The City shall not be charged for copies made by the Contractor's technicians during maintenance service.

b. **Response Time.** Repeated service calls for the same recurring problems will not be tolerated by the City. If the Contractor's technician fails to repair a serious recurring problem the City may select to have the equipment immediately replaced with another unit that is acceptable to City, at the cost of Contractor. The replacement of a piece of equipment shall not alter the term of the Agreement. The maximum service response time shall be 4 working hours per call; the maximum machine replacement time shall be 24 business hours. If replacement takes longer than 24 hours Contractor shall provide a credit to City equal to 1/30 of the monthly lease or rental fee for that piece of equipment for each 24 business hours that the equipment was not in service. Response time shall not include the period that is not considered the City's normal working hours or the period of time in which the service technician takes to repair the equipment. Each service call shall be documented by the Contractor in the form of a service call report, a copy of which shall be left with the using department. This service call report shall, at a minimum, indicate the date and time of the service and a description of the needed repair. The response times listed in this section are minimum requirements. If the Contractor's Proposal contains response times and/or benefits that exceed these minimum requirements, the Contractor shall be bound by the terms of the Proposal which shall become the minimum required by this Agreement.

c. **Uptime Reports.** On a quarterly basis, Contractor shall provide the City a machine uptime report, which shall indicate the using department, model number, serial number, and description of each machine at that location, the install date of each machine, total number of service calls for each machine, the response time for each machine on a service call, the total downtime and the total percent uptime of each installed machine. Contractor shall keep equipment in working order 98% of the available work time. Failure by Contractor to maintain a 98% uptime standard will be grounds for requiring the Contractor to replace the equipment at Contractor's expense with a like or better unit and provide a credit to City of 1/30 of the monthly lease or rental for that piece of equipment for each 24 business hours that the equipment was not in service. The 98% standard listed in this section is a minimum requirement. If the Contractor's Proposal contains standards and/or benefits that exceed these minimum requirements, the Contractor shall be bound by the terms of the Proposal which shall become the minimum required by this Agreement.

2.5 **No Exclusivity.** Nothing contained in this Agreement shall be deemed to grant Contractor an exclusive right during the term of this Agreement to supply City with any equipment or any minimum volume of equipment. City reserves the right, at its sole discretion, to lease, rent or purchase similar or different equipment from any other supplier or contractor that may be used contemporaneously with any item of Equipment provided hereunder.

ARTICLE 3

TERM

3.1 **Effective Date for Each Equipment Schedule.** This Agreement shall become effective with respect to the Equipment listed on each Equipment Schedule when: (a) each party hereto has executed and delivered to Contractor the Equipment Schedule; and (b) the Controller has certified to the availability of funds for such Equipment Schedule as set forth in Section 4.4.

3.2 **Term for Each Equipment.** The term of this Agreement shall commence with respect to such Equipment on the later of (a) the Commencement Date certified in the applicable Equipment Schedule or (b) the effective date specified in Section 3.1, or (c) the vendor has installed the equipment, the equipment has successfully run all diagnostic routines and production checks, and made the equipment available for use by the City. Such term shall end at 11:59 P.M. San Francisco time on the Expiration Date certified in the applicable Equipment Schedule.

3.3 **Duration of this Agreement.** The Master Agreement shall have a 3-year term with the option to renew, in the sole discretion of the City, for up to 3 additional 1-year terms. Individual Equipment Leases shall have a term of 3, 4 or 5 years plus renewals. Individual Rental Agreements shall have a term of 1 month not to exceed a total of 12 months. In no case shall the term of the Master Agreement, any Individual Equipment Lease, or any Individual Equipment Rental including any authorized extension or renewal exceed a combined total of 9.9 years. This Agreement shall remain in effect until all Equipment Schedules have expired or been terminated. If no Equipment Schedule has been executed and delivered within one (1) year after the date of this Agreement specified in the Basic Information, then this Agreement shall automatically be terminated and neither Contractor nor City shall have any rights or obligations hereunder.

3.4 **Renewal Option.** Unless an Event of Default by City shall have occurred and be continuing at the time of giving notice referred to in this Section 3.4 or an Event of Default by City shall have occurred and be continuing at the end of the initial term hereof or the current renewal term, as the case may be, City may, at least thirty (30) days prior to the end of the initial term or renewal term, as the case may be, give Contractor written irrevocable notice of its election to renew this Agreement. At the conclusion of the lease, the City may renew the in place equipment under one of these two options as mutually agreed to with the Contractor:

1: Payments for the term of any renewal shall not exceed 50 percent of the original lease rate; or

2: Upon expiration, the City has the option to have Contractor provide a quote on a 12 or 24 month lease extension on the in place equipment. The quote shall be based upon a calculation of at most 60% of the Fair Market Value of the in-place unit at the end of the lease multiplied by the prevailing State and Local interest rates for a Fair Market Value

lease, and shall include the same base monthly Full Service maintenance component that was in effect during the original lease.

If City fails to exercise its option to renew as herein provided, Contractor shall, subject to Section 3.5, be free to lease or to sell the Equipment on or after the end of the initial term or current renewal term, as the case may be.

3.5 Purchase Option. Unless an Event of Default by City shall have occurred and be continuing at the end of the initial term or the current renewal term, as the case may be, City shall have the option to purchase all or any portion of the Equipment on the last day of the initial term or current renewal term, as the case may be, for a purchase price equal to the Fair Market Sales Value thereof as of the date of purchase. Such option shall be exercised by written notice to Contractor at least thirty (30) days prior to the last day of the initial term or current renewal term, as the case may be, Fair Market Sales Value of the Equipment in question shall be determined by mutual agreement of Contractor and City within ten (10) days after receipt by Contractor of the notice from City, or, if they shall fail to agree within such ten (10) day period, by the Appraisal Procedure. City shall be obligated to pay for such Equipment on the last day of the initial term or the current renewal term, as the case may be. Upon the purchase of any item of Equipment pursuant to this Section 3.5, all of Contractor's right, title and interest in and to such Equipment, and any improvements or additions to such Equipment, shall be automatically transferred directly to City, free and clear of all liens or other encumbrances created by or through Contractor and all interests of Contractor. Contractor shall execute and deliver, upon the request of City, such bills of sale and any other documents, certificates or statements reasonably necessary in connection with such transfer. If City fails to exercise its option under this Section 3.5, the Contractor shall, subject to Section 3.4, be free to sell or lease the Equipment on or after the end of the initial term or the current renewal term, as the case may be.

3.6 Termination for Convenience.

a. City shall have the option, in its sole discretion, to terminate the Master Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items. Not delivering any Individual Equipment Leases or Rental Agreements which have not been delivered as of the date of termination.

(3) Terminating all subcontracts except those required for the continued performance of continuing Orders pursuant to section b above.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination

employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

3.7. Termination for Convenience – Individual Equipment Leases or Rental Agreements. In the event the City decides to terminate all or part of any Individual Equipment Lease or Rental Agreement the following payment formula shall apply: City shall pay the remaining balance due on the Lease or Rental less any unearned charges, including but not limited to interest, and/or maintenance. Within 10 days after City makes this payment Contractor shall remove the terminated equipment.

ARTICLE 4

PAYMENTS

4.1 **Amount.** City shall pay to Contractor the Equipment Payments in the amount set forth in the Supplemental Basic Information. All pricing shall be firm for the term of each original Equipment Lease or Rental. Leases and Rentals shall be fixed at a monthly amount and a cost per copy charge for the term of the lease or rental, plus any equipment options or upgrades. The lease or rental price shall include, but not be limited to, preorder assistance with a needs assessment and analysis for departments, recommendations, equipment, maintenance, service, supplies (paper and staples excluded), on-going analysis of office equipment environments, reports, and the implementation of fleet management. Any renewals or extensions shall be charged as set forth in Section 3.4. Each Payment shall be paid on the Payment Date specified in the Supplemental Basic Information. Payments shall include the cost per month of the copier and features, delivery, installation, training, all maintenance, including drum replacement, and all consumable supplies. All Payments shall be made in lawful money of the United States of America, by warrant drawn on the Treasury of City. Unless otherwise specified by Contractor in writing, each Payment shall be sent to Contractor at the address for notices specified in Article 16. If this Agreement should expire or terminate before the end of any period covered by the applicable Payment, such Payment shall be prorated on a per diem basis based on the actual number of calendar days falling within such period.

4.2 **Payment Dates; Statements.** At least fifteen (15) days prior to the Payment date for each item of Equipment hereunder, Contractor shall provide to City departments listed in the Supplemental Basic Information a statement setting forth the total amount due and payable on such Payment Date including any applicable discounts. Should Contractor fail to receive any Payment when due and payable, Contractor shall within five (5) days of the Payment Date send written notice thereof to City. Notwithstanding the foregoing requirement, City's receipt of the foregoing billing statement and notices from Contractor is not a condition precedent to City's obligation to make the required Payments when due and payable. Additionally, the City may request and the Contractor shall provide for monthly, quarterly or combined billing for City departments with Equipment from Contractor.

4.3 **Risk of Non-Appropriation for Funds.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Contractor acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. Contractor assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement. If for any budgetary period of City, City fails to appropriate sufficient funds for the payment of all Payments during that budgetary period, then this Agreement shall terminate at the end of the last fiscal period of City for which funds have been appropriated for the Payments. City will use good faith efforts to notify Contractor promptly of non-appropriation. Upon the termination of this Agreement hereunder, City shall immediately surrender possession of all the Equipment obtained under this Agreement and not purchased by City to Contractor. The termination for this Agreement for non-appropriation shall not constitute an Event of Default by City under this Agreement. In the event of termination of this Agreement for non-appropriation, Contractor shall have the right to repossess all the Equipment which has not been previously purchased by City without being subject to an action for trespass, conversion or the recovery by City of any sums previously received under this Agreement. The proceeds of any sale or leasing of any Equipment repossessed pursuant to this Section 4.3 will be applied to the payment of unpaid balance of City's obligations under this Agreement. Should the amount received by Contractor from such sale be less than the unpaid balance under the Agreement, Contractor shall not have the right to proceed against City for the remaining balance.

4.4 **Certification of Controller.** No City funds shall be available under this Agreement until prior written authorization certified by Controller. In addition, as set forth in San Francisco Administrative Code Section 21.19:

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by City ordinances governing emergency procedures, officers and employees of the City are not required to request, and City is not required to reimburse the Contractor for, commodities or services (as these terms are defined in San Francisco Administrative Code Section) beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

4.5 **Supercedure of Conflicting Provisions.** IN THE EVENT OF ANY CONFLICT BETWEEN SECTION 4.3 OR 4.4. AND ANY OTHER PROVISION OF THIS AGREEMENT, ANY EQUIPMENT SCHEDULE OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF SECTIONS 4.3 AND 4.4 SHALL GOVERN.

4.6 **Payments Not a Debt.** City shall pay the Payments required under this Agreement exclusively from legally available funds. City intends, and Contractor understands, that the obligations of City to make any and all Payments and other additional payments shall constitute a current expense of City and shall not in any way be construed to be a debt of City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by City, nor shall any terms or conditions contained herein constitute a pledge of the general tax revenues, funds or monies of City.

4.7 **Maximum Compensation.** In no event shall the amount of this Agreement exceed \$6,000,000.00 (Six million dollars and zero cents.)

4.8 **Pricing.** Pricing under this Agreement is that set forth in the Equipment and Pricing Schedule in Contractor's Response to Proposal 96101 and that Equipment and Pricing Schedule in hereby incorporated into this Agreement. Contractor agrees that this pricing is its most favored customer pricing and that it meets or is more advantageous than Contractor offers its other customers for similar products, quantities, services and terms and conditions.

ARTICLE 5

EQUIPMENT

5.1 **Title.** Subject to Section 3.5, title to the Equipment shall at all times be retained by Contractor. City shall not have any right, title or interest in the Equipment as expressly set forth herein. If requested by Contractor, City shall affix and maintain, at Contractor's expense, in a prominent position on each unit of Equipment, plates, tags or identifying labels indicating Contractor's ownership of the Equipment. If, however, the City exercises its option to purchase any of the Equipment as specified in Section 3.5, title to such equipment shall transfer to the City.

5.2 **Liens.** City shall keep the Equipment and all parts thereof free from any and all Liens. Should a Lien attach to any Equipment, Contractor shall have the right to take any

necessary steps to defend against any and all actions or proceedings questioning or threatening the validity of Contractor's interest in the Equipment by providing the City thirty (30) days written notice to comply therewith; provided, however, that, in defending against any such actions or proceedings, Contractor shall not be deemed to have waived or released City from liability of or on account of any of its covenants contained herein, or from its liability hereunder to defend the validity hereof and to perform such covenants.

5.3 **Personal Property.** During the term of this Agreement, the Equipment shall remain personal property and shall not be deemed to be affixed to or a part of real property on which the Equipment may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter becomes in any manner physically affixed or attached to real property or any building thereon.

5.4 **Relocation.** City may upon reasonable notice to Contractor, relocate all or any portion of the Equipment to any location within the geographic boundaries of City, at City's sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Contractor such documents as Contractor may reasonably request to protect Contractor's right, title and interest in the Equipment. City shall be responsible for any loss or damage to equipment caused by relocation, unless the relocation services are provided by the Contractor.

5.5 **Presentation and Demonstration of Equipment.**

a. Vendor shall provide the City a complete catalog of products and services offered in a format that, at a minimum, displays model and brief description of the model, optional accessories for that model, average monthly volume, cost per copy, and if applicable, excess per copy charge and option to purchase price. This catalog may be updated quarterly upon approval by the City, which shall not be unreasonably withheld.

b. The City may request at any time, a demonstration of any copiers prior to the ordering of the equipment. Demonstration units requested shall be at no cost to the City and must be offered for a maximum of 30 calendar days. In addition, there shall be no delivery and removal cost to the City. The City shall sign the Contractor's form relieving the City from any liabilities for this period of time.

5.6 **Alterations, Additions and Attachments.**

a. Contractor, at its own expense, shall make such alterations, additions or attachments to the Equipment as may be required from time to time to comply with the requirements of the law as soon as practicable after any such requirements. Unless City purchases the Equipment pursuant to Section 3.5, Contractor shall retain title to all parts incorporated into the Equipment pursuant to this Section 5.5 (a) except as set forth below.

b. With Contractor's prior written consent, which shall not be unreasonably withheld, City may, at its own expense, from time to time, make such alterations, additions or

attachments to the Equipment as City deems desirable in the proper conduct of its business, including, without limitation removal of parts which City deems obsolete or no longer suitable or appropriate for use on the Equipment; provided, however, that no such alteration, addition or attachment shall change the nature or use of the Equipment from that for which it was originally designed, impair the operation of the Equipment or decrease the then-current value, estimated residual value, remaining useful life or utility of the Equipment as determined immediately prior to the alteration, addition or attachment. Any parts to be incorporated in the Equipment as a result of any such alterations, additions or attachment by City must be in addition to, and not in replacement of or substitution for, any parts originally included in the Equipment or required to be incorporated in the Equipment pursuant to the terms of Section 5.6 (a) or Section 6. City shall retain title to all such parts and shall remove such parts at the end of the term of the applicable Equipment Schedule pursuant to section 5.6.

5.7 **Efficiency and Conservation**

a. Energy Star.

Any equipment provided under this Agreement shall meet the standards and guidelines as set forth in the Memorandum of Understanding between the United States Environmental Protection Agency and manufacturers and suppliers of copiers, inclusive of revisions and amendments, in effect at the time the equipment is installed. This MOU may be found at:

http://www.energystar.gov/ia/partners/product_specs/program_reqs/copier.mou.v2.0.pdf

Providing equipment which does not meet these standards shall be cause for cancellation of an Agreement for equipment, and will be grounds for the elimination of a vendor from the Agreement.

b. Paper Content

Notwithstanding the above section, the City intends to use whenever possible paper consisting of a minimum of 30% (or the current U.S. Government standard) post-consumer content. Any machine provided under this Agreement must be reliable as defined in this Agreement to use recycled as well as virgin paper at the time of installation. Providing equipment that is unable to function reliably as defined in this Agreement using both 30% post-consumer recycled and virgin paper shall be cause for cancellation of a commitment made for equipment and will be grounds for the elimination of a vendor from the Agreement.

5.8 **Return of Equipment.** Upon expiration or termination of the Agreement, City shall return possession of the Equipment (except Equipment that has been purchased by City) to Contractor in the condition in which the Equipment is required to be maintained according to this Agreement, normal wear and tear excepted. City shall remove all parts attached to the Equipment, pursuant to Section 5.5. (b) (unless Contractor otherwise agrees in writing) and shall repair any damage to the Equipment caused by such removal. At Contractor's sole expense, Contractor shall cause the Equipment to be removed and transported from the applicable City location. If Contractor fails to accept and remove the Equipment within fifteen (15) days after such termination or expiration, City shall have the right (but no obligation) to remove the Equipment and place it in any storage facility within the geographical boundaries of the City, at

Contractor's sole expense. Contractor shall hold City free and harmless from any expense or damage of any kind associated or occasioned thereby or arising therefrom.

5.9 Upgrades

a. **Upgrades of 12 Month Rental Plans.** City may, after an initial six months of any commitment for any machine, choose to upgrade or downgrade equipment. In the event of an upgrade, the department will pay whatever contract rate exists for the replacement machine for the remaining term of the original agreement. In the event of a downgrade, the department shall pay the contract rate applicable to the replacement equipment for the remaining term of the original agreement.

b. **Upgrades to In-Place Individual Leases (applicable to 36, 48, and 60 month FMV lease plans)**. City may choose to upgrade leased equipment. If the upgrade of the equipment is the addition of new features and / or accessories and does not require the replacement of the existing equipment, the end-user may finance the new or added accessories to the existing equipment and lease them over the remaining term of that individual lease agreement. The calculation for the added features and/or accessories would be determined by calculating a payment that is coterminous with the remaining months on the existing lease. The resultant lease payment would be based on the same price level of the accessory established at the commencement of the contract and would be based on the prevailing State and Local interest rate for a Fair Market Value lease. The lease payment for the new accessory would be calculated over the remaining number of months on the in-place unit for which the accessory was being added.

5.10 **High Speed Equipment.** It is the City's intention to limit the number of high-speed copiers installed throughout its operations. For the purposes of this section, high speed shall mean copiers capable of producing copies at a rate greater than seventy-five (75) copies per minute. These machines may be installed only upon express consent of the City. Any equipment found installed without such consent shall be returned to Contractor at no cost to City.

5.11 **Quiet Enjoyment.** Provided the City is not in default of this Agreement, Contractor shall guarantee and shall not disturb the City's quiet use and enjoyment of the Equipment during the term of this Agreement.

5.12 **Inspection by Contractor.** With at least five (5) business days prior notice, Contractor shall have the right, during normal business hours (9:00 AM to 5:00 PM PST), subject to applicable law, to enter upon the premises where the Equipment is located to inspect or to observe use of the Equipment.

ARTICLE 6

AUDITS; NOTICE OF CHANGES PENALTIES FOR FALSE CLAIMS

6.1 **Inspection and Audit.** Contractor shall make available to City, its employees and authorized representatives, during regular business hours, all files, records, books, invoices, documents and other data relating to this Agreement or the Equipment. Contractor shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. To the extent any of the foregoing are not located within ten (10) miles of the geographic boundaries of City, Contractor shall make them available, within forty-eight (48) hours after any request by City within such physical boundaries or within ten (10) miles thereof.

6.2 **Notification of Changes in Circumstances.** Contractor shall notify City immediately of any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

6.3 **Submitting False Claims; Monetary Penalties.** Contractor acknowledges and agrees that it is a "contractor" under and is subject to San Francisco Administrative Code Section 21.35(e). Pursuant to San Francisco Administrative Code Section 21.35, the covenant of good faith and fair dealing is contained in every City commodities or services contract (as defined in S.F. Admin. Code §21.01(e)(f)), and contractors and subcontractors shall at all times deal in good faith with the City and shall submit all claims, requests for equitable adjustments, requests for change orders, requests for contract modifications or requests of any kind seeking increased compensation on a City contract only upon a good-faith, honest evaluation of the underlying circumstances and a good-faith, honest calculation of the amount sought. Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to City for three times the amount of damages which City sustains because of the act of the contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim (as defined in S.F. Admin. Code §21.35(f)). A contractor, subcontractor or consultant will be deemed to have submitted a false claim to City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

ARTICLE 7

TAXES

7.1 **Contractor to Pay All Taxes.** Contractor shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Equipment or any of the activities contemplated by this Agreement.

7.2 **Use of City Real Property.** If at any time under this Agreement or the Services Agreement Contractor obtains any right to the possession, occupancy or use of City real property for private gain, the following provisions shall apply:

a. Contractor, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Contractor, and any subcontractor, successor or assign, may be subject to the payment of such taxes.

b. Contractor, on behalf of itself and any subcontractors, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Contractor shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the County Assessor within sixty (60) days after such assignment, transfer, renewal or extension.

c. Contractor shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.