

Within 10 days after City makes this payment Contractor shall remove the terminated equipment

3.8 **Termination for Convenience – Individual Rental Agreements.** City may terminate all or any Individual Equipment Rental Agreements entered into under the Master Agreement (with or without also terminating the Master Agreement) for City's convenience and without cause at any time by giving Contractor thirty (30) days advance written notice of such termination. Equipment Rental Agreements, if any, terminated for convenience are not subject to a Termination Fee as described in Section 3.7 or any other fee.

ARTICLE 4

PAYMENTS

4.1 **Amount.** City shall pay to Contractor for the Equipment Payments in the amount set forth in Appendix A (the "Pricing Matrix" for Equipment). All pricing shall be firm for the initial term of the Agreement. Pricing during option periods, if any, shall be agreed to by both parties. Leases and Rentals shall be fixed at a monthly amount and/or 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 (including all fixtures), all maintenance (including drum replacement), service, supplies (paper and staples excluded), on-going analysis of office equipment environments, reports, implementation of fleet management, installation and training, and delivery. 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 Equipment Lease or Rental. Unless otherwise specified by Contractor in writing, each Payment shall be sent to Contractor at the address for notices specified in Article 16. If any Equipment Lease or Rental 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 thirty (30) 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 and/or electronic billing for City departments with Equipment from Contractor.

4.3 **Risk of Non-Appropriation for Funds.**

Termination upon Non-Appropriation. Every Individual Equipment Lease and Rental under this Agreement will terminate without penalty, liability, or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding

fiscal year. City has appropriated sufficient funds for the first fiscal year (July 1, 2012 -June 30, 2013) to make the payments scheduled to come due for that year under Individual Equipment Leases and Rentals. If funds are not appropriated to continue payments in a subsequent fiscal year, then the City may terminate the effected Individual Equipment Leases and Rentals as of the last day for which funds were appropriated. The parties reasonably expect that payments due under Individual Equipment Leases and Rentals will be paid from annual appropriations of the City. However, City shall incur no obligation under any Individual Equipment Lease or Rentals for any period of time for which funds are not appropriated, and such Individual Equipment Lease and Rental will terminate, without penalty, liability, or expense of any kind as of the last day for which funds were appropriated. Without limitation of the foregoing, termination of any and all Individual Equipment Leases and Rentals upon non-appropriation shall not be subject to the Termination Fee set forth in Section 3.7. Termination of Individual Equipment Leases and Rentals upon non-appropriation shall not constitute an Event of Default by City. In the event of non-appropriation, City will make best efforts to provide thirty (30) days prior written notice to Contractor.

Upon termination of Individual Equipment Leases and Rentals upon non-appropriation, City shall immediately surrender possession of all Equipment obtained thereunder. Contractor shall have the right to repossess the Equipment without being subject to an action for trespass, conversion, or recovery by City of any funds previously received under such Individual Equipment Leases and/or Rentals.

4.4 **Certification of Controller.** No City funds shall be available under this Agreement or Individual Equipment Lease and Rental 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. Sales tax is the responsibility of the City and will be billed as a separate item on the invoice.

b. Except as may be provided by City ordinances governing emergency procedures, officers and employees of the City are not authorized to request, and City is not required to reimburse the Contractor for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved by the Contractor and the City and 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 **Supersedence of Conflicting Provisions.** IN THE EVENT OF ANY CONFLICT BETWEEN SECTION 4.3 OR 4.4 ON THE ONE HAND, AND ANY OTHER PROVISION OF THIS AGREEMENT, ANY INDIVIDUAL EQUIPMENT LEASE OR RENTAL AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION

RELATING TO THIS AGREEMENT, ON THE OTHER HAND, 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 total compensation for all Individual Equipment Leases and Rentals entered into under this Agreement exceed \$6,000,000 (Six million dollars).

4.8 **Pricing.** Contract pricing for each Equipment model under this Agreement is set forth in Appendix A (the "Pricing Matrix" for Equipment), which is hereby incorporated into this Agreement. If Contractor replaces listed models with new models during the term of the Agreement, Contractor shall promptly notify City so that Appendix A can be updated with the new model information. Equipment pricing shall be fixed for the initial three year term of the Agreement. Any substitutions of new models must be approved by the City and priced at the original model price. If the new model will offer significantly different functionality, the parties shall negotiate appropriate price adjustments upward or downward. During the term of this Agreement, including any extensions thereof, Contractor represents that it will use best efforts to ensure that the prices set forth in Appendix A (as it may be amended from time to time) does not exceed the pricing that it offers to other customers of similar size, volume and service.

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 except the right to quiet enjoyment as expressly set forth in Section 5.11 while under lease or rental. 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, Contractor shall transfer title to such equipment 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. Contractor shall relocate Equipment outside the City's geographic boundaries at prevailing hourly rates. 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.

Contractor shall provide a separate price quote for any Equipment relocation prior to performing the actual service. All Equipment relocations must be arranged and/or approved in advance by Contractor (which approval shall not be unreasonably withheld) unless the relocation is associated with City's exercise of its Equipment purchase option and City receives title to the Equipment to be moved. While the Equipment is being relocated, the City remains responsible for all lease or rental payments associated with the unit, if any.

5.5 **Presentation and Demonstration of Equipment.**

a. Contractor shall, upon request, provide the City a complete catalog of products and services offered to the City in an electronic format that, at a minimum, displays model and brief description of the model, optional accessories for that model, average monthly volume, cost per copy, if any, and if applicable, excess per copy charge.

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 5.6 (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.

5.7 **Efficiency and Conservation.**

a. **Energy Star**

All Equipment provided under this Agreement shall comply with Version 1.1 ENERGY STAR Imaging Equipment specifications (effective July 1, 2009) at the time the equipment is installed. To address regulatory lag time, Contractor shall have up to 12 months after installation date to demonstrate that the installed Equipment met such standards at the time of installation. The specifications may be found by selecting the link below.

http://www.energystar.gov/ia/products/fap/IE_Prog_Req.pdf

Contractor shall immediately replace any Equipment found installed which does not meet these standards at no cost to City and shall either immediately replace the noncomplying Equipment with complying Equipment or refund all lease or rental payments attributable to the nonconforming Equipment to City.

b. **Paper Content**

The City intends to use whenever possible paper consisting of 100% postconsumer content. Equipment provided under this Agreement must meet the performance standards of this Agreement while using recycled as well as multiple weights of virgin paper. City may designate any unit that is unable to function reliably with 100 postconsumer waste recycled content paper as Equipment with a “serious recurring problem” subject to the remedies set forth in Section. 2.4.b.

c. **Duplex Mode**

Contractors shall install all Equipment in duplex mode as a default.

d. **Indoor Air Requirements**

All products must meet emissions rate thresholds at the time of installation, as defined by RAL-UZ 122. To address regulatory lag time, Contractor must have up to 12 months to demonstrate that the installed Equipment met such standards at the time of

installation. Vendor must provide upon request a full test report of the RAL-UZ 122 standard test in accordance with ISO/IEC 28360:2007 from a laboratory that is ISO 17025 accredited. Contractor shall immediately replace any Equipment found installed which does not meet these standards at no cost to City and shall either immediately replace the noncomplying Equipment with complying Equipment or refund all lease or rental payments attributable to the nonconforming Equipment to City.

5.8 **Return of Equipment.** Upon expiration or termination of the applicable Individual Equipment Lease or Rental 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 5.6. (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 City 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 Equipment Leases.** 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 unit, the City shall pay an increased City contract rate reflecting the added accessories to the existing Equipment for 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. Pricing for upgrades of existing technology or new technology not set forth in Appendix A shall be negotiated on a case by case basis.

5.10 **High Speed Equipment.** The City intends to limit the number of high-speed units to applications requiring that level of output. For the purposes of this section, high speed shall mean Equipment capable of producing copies at a rate greater than seventy-five (75) copies per minute. These machines may be installed only upon express prior approval of the Office of Contract Administration. Any Equipment found installed without such prior approval shall be returned to Contractor at no cost to City and all lease payments shall be refunded.

5.11 **Quiet Enjoyment.** Provided the City is not in default of this Agreement or any Individual Equipment Lease or Rental Agreement, Contractor shall not disturb the City's quiet

use and enjoyment of the Equipment during the term of this Agreement and each applicable Equipment Lease or Rental 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. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until final audit has been resolved, whichever is later.

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.** Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for three times the amount of damages that the City sustains because of the false claim; a civil penalty of up to \$10,000 for each false claim; and City's costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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 the 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 the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

ARTICLE 7

TAXES

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use 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, 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 the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created hereunder. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

d. 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.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

8.1 **Valid Existence; Licenses and Permits.** Contractor is a duly formed legal entity, validly existing and in good standing under the laws of the jurisdiction of its formation.

Contractor is qualified to do business in the State of California and has obtained all necessary licenses, permits, approvals and authorizations necessary or proper in order to perform Contractor's obligations hereunder.

8.2 **Authorization; Enforceability.** Contractor has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Contractor has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with the terms hereof.

8.3 **No Misstatements.** No document furnished or to be furnished by Contractor to City in connection with this Agreement, or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

8.4 **No Conflict of Interest.** Contractor is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, knows of no facts which constitute a violation of such provisions, and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

8.5 **Vendor Warranties.** If Contractor is not a manufacturer, dealer or vendor of the Equipment, then Contractor hereby assigns to City during the term of this Agreement, and irrevocably appoints City its agent and attorney-in-fact during the term of this Agreement to assert from time to time, whatever claims and rights, including warranties of the Equipment, which Contractor may have against the manufacturer, dealer or vendor of the Equipment.

8.6 **Warranty – Merchantability and Fitness.** Contractor warrants that all Equipment furnished to the City under this Agreement are merchantable and fit for the particular purpose for which Contractor knows, or has reason to know City sought to procure them.

ARTICLE 9

INDEMNIFICATION AND GENERAL LIABILITY

9.1 **Indemnification.** Contractor shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: [(a), (b) omitted], (c) the use, misuse or failure of any equipment (other than the Equipment) or facility used by Contractor, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Contractor by an Indemnified Party; (d) any tax, fee, assessment or other charge for which Contractor is responsible under Article 7; or (e) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any Person in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Notwithstanding the foregoing, Contractor shall have no obligation under the immediately preceding sentence with respect to any Loss that is caused

solely by the active negligence or willful misconduct of the Indemnified Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or its employees, subcontractors or agents.

9.2 **Duty to Defend; Notice of Loss.** Contractor acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Contractor by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Contractor prompt notice of any Loss under Section 9.1 and Contractor shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Contractor if representation of such Indemnified Party by the counsel retained by Contractor would be inappropriate due to conflicts of interest between such Indemnified Party and Contractor. An Indemnified Party's failure to notify Contractor promptly of any Loss shall not relieve Contractor of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs Contractor's ability to defend such Loss. Contractor shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Contractor contends that such Indemnified Party shares in liability with respect thereto.

9.3 **LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENTS REQUIRED UNDER ARTICLE 4.1. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES OR GOODS FURNISHED IN CONNECTION WITH THIS AGREEMENT.

9.4 **LIMITATION ON LIABILITY OF CONTRACTOR.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND EXCEPT AS PROVIDED IN THIS SECTION 9.4, CONTRACTOR'S LIABILITY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OR FOR DAMAGES CAUSED BY CONTRACTOR'S NEGLIGENCE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED SIX MILLION DOLLARS (\$6,000,000). CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9.1 OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS EXPRESSED THEREIN, (2) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE OR INTENTIONAL OR WILLFUL MISCONDUCT, (3) LIMIT CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (4) STATUTORY DAMAGES SPECIFIED IN THIS AGREEMENT, AND (5) WRONGFUL DEATH CAUSED BY CONTRACTOR.