

**ATTACHMENT D  
SAMPLE AGREEMENT**

**CITY OF PALO ALTO**

**MASTER LEASE AGREEMENT**

The foregoing Basic Information is incorporated into and made a part of this Agreement (to be defined below). If there is any conflict between the Basic Information and any other portion of this Agreement, the Basic Information shall govern.

This Master Lease Agreement (the "Agreement") made as of the date specified in the Basic Information in the City of Palo Alto, **a chartered city and a municipal corporation of the State of California**, by and between the Person specified in the Basic Information ("Lessor") and the City of Palo Alto, a municipal corporation ("City"), acting by and through its City Manager or designee.

**WITNESSETH:**

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

WHEREAS, City desires to have Lessor 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 Value of any Equipment; such matter shall be determined on the basis of an appraisal by an independent appraiser mutually agreed upon by Lessor and City. If Lessor and City fail to agree upon a mutually acceptable appraiser within five (5) Business Days after Lessor or City delivers a written request therefor 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 Lessor and City. (This section on appraisal may be Not applicable)

“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), leased by Lessor to City pursuant to this Agreement.

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

“Fair Market Lease Value” shall mean the fair market sales 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 buy or sell, and neither of which is related to Lessor 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: (i) 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 Lessor.

“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.

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

“Lease Lease Payment Date” means the date the Lease Lease 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.

1.2 **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.

1.3 **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.** Lessor shall cause each item of Equipment to be delivered at the delivery address specified in the Supplemental Basic Information within fourteen (14) calendar days of execution of this Agreement, or at a time agreed upon by Lessor and City.. All transportation costs and other expenses, if any, incurred in connection with the delivery of Equipment shall be the responsibility of the Lessor.

2.2 **Installation.** Any Equipment that requires installation as indicated in the Supplemental Basic Information, shall be installed by Lessor 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. Lessor shall obtain any permits or licenses required for the installation for the Equipment, unless City otherwise agrees in writing. It shall be the Lessor'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 Lessor.

Lessor agrees that the City may, upon reasonable notice to Lessor, 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 Lessor such documents which Lessor reasonably requests to protect Lessor'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 Lease of the copier and features, delivery, installation, 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 Lessor 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 Lessor'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 Lessor'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 Lessor. The replacement of a piece of equipment shall not alter the term of the Agreement. The maximum service response time shall be 2 hours for an acknowledgement of service call by phone or email, and no more than 4 working hours per call for technician to arrive on site; the maximum machine replacement time shall be 24 business hours. 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 Lessor 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.

c. **Uptime Reports.** On a quarterly basis, Lessor 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. Lessor shall keep equipment in working order 98% of the available work time. Failure by Lessor to maintain a 98% uptime standard will be grounds for termination of the Agreement by City for that piece of equipment.

2.5 **No Exclusivity.** Nothing contained in this Agreement shall be deemed to grant Lessor an exclusive right during the term of this Agreement to supply City with any equipment. City reserves the right to lease or purchase similar or different equipment from any other supplier or lessor which may be used contemporaneously with any item of Equipment leased hereunder.

### ARTICLE 3

#### TERM

3.1 **Effective Date for Each Equipment Schedule.** This Agreement shall become effective with respect to the Equipment listed in the Agreement when: (a) Agreement is signed by both parties, including all attachments and (b) City has issued a purchase order for the specified equipment.

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. Such term shall end at 11:59 P.M. Pacific Standard time on the Expiration Date certified in the applicable Equipment Schedule.

3.3 **Duration of this Agreement.** 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 Lessor nor City shall have any rights or obligations hereunder.

3.4 **Renewal Option.** *This Section 3.4 shall be effective only if so indicated in the applicable Equipment Schedule.* 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 Lessor written irrevocable notice of its election to renew this Agreement with respect to all or any portion

of the Equipment. The number of renewal terms and the duration of each renewal shall be specified in the applicable Supplemental Basic Information but in no event shall the renewal term exceed one (1) year. Lease Payments for each renewal term shall be equal to the Fair Market lease Value determined at the commencement of such renewal term. All the provisions of this Agreement shall be applicable during each renewal term, except for the amount of each Lease Payment. Fair Market Lease Value of the Equipment in question shall be determined by mutual agreement of Lessor and City within ten (10) days after receipt by Lessor of the notice from City, or, if they shall fail to agree within such ten (10) day period, by the Appraisal Procedure. If City fails to exercise its option to renew this Agreement as herein provided, Lessor 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.** *This Section 3.5 shall be effective only if so indicated in the applicable Equipment Schedule.* 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 irrevocable written notice to Lessor 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 Lessor and City within ten (10) days after receipt by Lessor 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 Lessor'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 Lessor and all interests of Lessor. Lessor 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 Lessor 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 Exchange Option** This Section shall be effective only if so indicated in the applicable Equipment Schedule. 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 replace or exchange all or any portion of the Equipment at least thirty (30) days prior to the last day of the initial term or the current renewal term, as the case may be, if the City finds that it is necessary to replace such Equipment based on recurring performance problems or if the City finds that its needs for such Equipment are revised. The procedures outlined in Section 3.4 shall apply to Renewal Term for such an Exchange or Replacement of all or any portion of the Equipment.

## ARTICLE 4

### LEASELEASE PAYMENTS

**4.1 Amount.** City shall pay to Lessor as Lease for the Equipment, Lease Payments in the amount set forth in the Supplemental Basic Information. Lessor warrants that any prices charged for equipment or service shall not exceed those charged to any other of the Lessor's preferred customers, government or private. Each Lease Payment shall be paid on the Lease Payment Date specified in the Supplemental Basic Information. Lease payments shall include the cost for monthly Lease of the copier and features, delivery, installation, training, all maintenance, including drum replacement, and all consumable supplies. All Lease 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 Lessor in writing, each Lease Payment shall be sent to Lessor 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 Lease Payment, such Lease Payment shall be prorated on a per diem basis based on the actual number of calendar days falling within such period.

4.2 **Lease Payment Dates; Statements.** At least thirty (30) days prior to the Lease Payment date for each item of Equipment leased hereunder, Lessor shall provide to City departments listed in the Supplemental Basic Information a statement setting forth the total amount due and payable on such Lease Payment Date. Should Lessor fail to receive any Lease Payment when due and payable, Lessor shall within five (5) days of the Lease Payment Date send written notice thereof to City. Notwithstanding the foregoing requirement, City's receipt of the foregoing billing statement and notices from Lessor is not a condition precedent to City's obligation to make the required Lease Payments when due and payable. Additionally, the City may request and the Lessor shall provide for monthly, quarterly or combined billing for City departments with Equipment leased from Lessor for accounts that are in arrears or delinquent.

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. Lessor acknowledges that City budget decisions are subject to the discretion of its Mayor and City Council. Lessor 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 Lease 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 Lease Payments. Upon the termination of this Agreement hereunder, City shall immediately surrender possession of all the Equipment leased by City to Lessor. 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, Lessor shall have the right to repossess all the Equipment 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 Lessor from such sale be less than the unpaid balance under the Agreement, Lessor shall not have the right to proceed against City for the remaining balance

4.6 **Lease Payments Not a Debt.** City shall pay Lease Payments and any other payments required under this Agreement exclusively from legally available funds. City intends, and Lessor understands, that the obligations of City to make any and all Lease 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.

## **ARTICLE 5 EQUIPMENT**

5.1 **Title.** Subject to Section 3.5, title to the Equipment shall at all times be retained by Lessor. City shall not have any right, title or interest in the Equipment as expressly set forth herein. If requested by Lessor, City shall affix and maintain, at Lessor's expense, in a prominent position on each unit of Equipment, plates, tags or identifying labels indicating Lessor'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, Lessor shall have the right to take any necessary steps to defend against any and all actions or proceedings questioning or threatening the validity of Lessor'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, Lessor 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 Lessor, 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 Lessor such documents as Lessor may reasonably request to protect Lessor's right, title and interest in the Equipment.

#### 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 for demonstration of any copiers prior to the Lease 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 Lessor's form relieving the City from any liabilities for this period of time.

#### 5.6 **Alterations, Additions and Attachments.**

(a) Lessor, 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, Lessor shall retain title to all parts incorporated into the Equipment pursuant to this Section 5.5 (a).

(b) With Lessor'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.epa.gov/appdstar/esoe/mous.html> Providing equipment which does not meet these standards shall be cause for cancellation of an Agreement for the lease of equipment, and will be grounds for the elimination of a vendor from the cost per copy program.

### 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 the Lease or lease purchase of equipment and will be grounds for the elimination of a vendor from the cost per copy program.

5.8 **Return of Equipment.** Upon expiration or termination of the Agreement, City shall return possession of the Equipment to Lessor 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 Lessor otherwise agrees in writing) and shall repair any damage to the Equipment caused by such removal. At Lessor's sole expense, Lessor shall cause the Equipment to be removed and transported from the applicable City location. If Lessor 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 Lessor's sole expense. Lessor shall hold City free and harmless from any expense or damage of any kind associated or occasioned thereby or arising therefrom.

5.9 **Upgrades.** 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 catalog rate exists for the new machine. In the event of a downgrade, the department shall pay whatever City catalog rate exists for the new machine. .

5.10 **High Speed Equipment.** It is the City's intention to limit the number of high-speed copiers and colored 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 sixty five (65) copies per minute. These machines may be installed only upon express consent of the City's Print Shop Supervisor. Any equipment found installed without such consent shall be returned to Lessor at no cost to City.

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

5.12 **Inspection by Lessor.** With at least five (5) business days prior notice, Lessor 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.

**AUDITS; NOTICE OF CHANGES**  
**PENALTIES FOR FALSE CLAIMS**

6.1 **Inspection and Audit.** Lessor 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. Lessor 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, Lessor 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.** Lessor 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.** Lessor acknowledges and agrees that it is a "contractor" under and is subject to Palo Alto Administrative Code. Pursuant to Palo Alto Administrative Code, the covenant of good faith and fair dealing is contained in every City commodities or services contract, 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. 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 **Lessor to Pay All Taxes.** Lessor 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 Lessor obtains any right to the possession, occupancy or use of City real property for private gain, the following provisions shall apply:

(a) Lessor, 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 Lessor, and any subcontractor, successor or assign, may be subject to the payment of such taxes.

(b) Lessor, 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. Lessor 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.

Lessor 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

Lessor 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.** Lessor is a duly formed legal entity, validly existing and in good standing under the laws of the jurisdiction of its formation. Lessor 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 Lessor's obligations hereunder.

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

8.3 **No Misstatements.** No document furnished or to be furnished by Lessor 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.** Lessor is familiar with the provisions Palo Alto's municipal code, and Section 87100 *et seq.* of the California Government Code, and knows of no facts which constitute a violation of such provisions.

8.5 **Vendor Warranties.** If Lessor is not a manufacturer, dealer or vendor of the Equipment, then Lessor 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 Lessor may have against the manufacturer, dealer or vendor of the Equipment. City shall have the right to exercise any rights it may have under this Section 8.5 only so long as no Event of Default by City has occurred and is continuing.

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

## ARTICLE 9

### INDEMNIFICATION AND GENERAL LIABILITY

9.1 **Indemnification.** Lessor 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) a material breach of this Agreement by Lessor; (b) a material breach of any representation or warranty of Lessor contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Lessor or its employees, subcontractors or agents; (d) any property damage caused, directly or indirectly by any act or omission of Lessor or its employees, subcontractors or agents; (e) the use, misuse or failure of any equipment (other than the Equipment) or facility used by Lessor, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Lessor by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Lessor is responsible under Article 7; or (g) 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, Lessor 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 Lessor or its employees, subcontractors or agents.

9.2 **Duty to Defend; Notice of Loss.** Lessor 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 Lessor by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Lessor prompt notice of any Loss under Section 9.1 and Lessor 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 Lessor if representation of such Indemnified Party by the counsel retained by Lessor would be inappropriate due to conflicts of interest between such Indemnified Party and Lessor. An Indemnified Party's failure to notify Lessor promptly of any Loss shall not relieve Lessor of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs Lessor's ability to defend such Loss. Lessor shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Lessor 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. 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 **Incidental and Consequential Damages.** Lessor shall be responsible for incidental and consequential damages resulting in whole or in part from Lessor's acts or omissions. Nothing in this agreement shall constitute a waiver or limitation of any rights which City may have under applicable law.

## ARTICLE 10

### INSURANCE

10.1 **Types and Amounts of Coverage.** Without limiting Lessor's liability pursuant to Article 9, Lessor shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (a) Property insurance on an all-risk form (excluding earthquake coverage) in an amount equal to the amount specified in the *Supplemental Basic Information*, which is one hundred percent (100%) of the replacement value of the Equipment. Such amount shall be adjusted annually upon renewal of the policy to ensure consistent full replacement value. Any deductible under such policy shall not exceed five thousand dollars (\$5,000), each loss.
- (b) Commercial General Liability Insurance with limits not less than the amount of one million dollars (\$1,000,000), each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- (c) Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (d) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

10.2 **Additional Requirements.** Such policies shall:

- (a) Name as additional insured City and its officers, agents and employees.
- (b) Provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- (c) Provide at least thirty (30) days' advance written notice to City of cancellation or modification mailed to City's address for notices pursuant to Article 16.

10.3 **Required Post-Expiration Coverage.** Should any of the insurance required hereunder be provided under a claims-made form, Lessor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

10.4 **General Annual Aggregate Limit/Inclusion of Legal or Defense Costs.** Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

10.5 **Evidence of Insurance.** Before commencing any operations under this Agreement, Lessor shall furnish to City certificates of insurance, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request.

10.6 **Effect of Approval.** Approval of any insurance by City shall not relieve or decrease the liability of Lessor hereunder.

10.7 **Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, Lessor and City each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Equipment, or any portion thereof, for any loss or damage maintained by such other party, whether or not such loss is caused by the fault or negligence of the other party. If any policy of insurance relating to the Equipment does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessor shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## ARTICLE 11

### DAMAGE, DESTRUCTION AND CONDEMNATION

11.1 **Liability for Damage to Equipment.** It is understood and agreed that the City is responsible for loss of or damage to any Lessor-owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

11.2 **Condemnation.** If all the Equipment or so much thereof as to render the remainder unusable for the purposes for which it was used or intended to be used by City shall be taken under the power of eminent domain, this Agreement shall cease as of the day on which possession is taken. City shall take or cause to be taken such action as is reasonably necessary to obtain compensation at least equal to the value of the Equipment or portion thereof taken by eminent domain and all condemnation proceeds shall be transferred by City to Lessor. If less than all the Equipment shall be taken under the power of eminent domain and the remainder is usable for the purposes for which it was used by City at the time of such taking, then this Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the Lease Payments due under this Agreement in an amount equal to the proportion which the fair market sales value (as of the applicable Commencement Date) of that portion of the Equipment taken under the power of eminent domain bears to the fair market sales value (as of the applicable Commencement Date) of the Equipment taken.

## ARTICLE 12

### EVENTS OF DEFAULT BY CITY; REMEDIES

12.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" by City under this Agreement:

(a) **Failure to Pay Rent.** City fails to make any Lease Payment when due and payable, and such failure continues for more than fifteen (15) Business Days after notice and opportunity to cure thereof from Lessor; provided, however, that no Event of Default shall occur if such failure to pay was due to City's failing to appropriate sufficient funds to make the required Lease Payment.

(b) **Failure to Pay Other Charges.** City fails to make any other payment required under this Agreement when due and payable, and such failure continues for more than forty-five (45) days after notice and opportunity to cure thereof from Lessor; provided, however, that no Event of Default shall occur if such failure to pay was due to City failing to appropriate sufficient funds to make the required payment.

(c) **Nonmonetary Breach.** City fails to keep, observe or perform any material term, covenant or condition (other than as specifically enumerated in Subsections 12.1(a) and 12.1(b)) contained in this Agreement to be kept or performed by City and such failure shall have continued for more than sixty (60) days after City receives written notice thereof from Lessor.

(d) **Voluntary Insolvency.** City (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of City or of any substantial part of City's property or (v) takes action for the purpose of any of the foregoing.

(e) **Involuntary Insolvency.** Without consent by City, a court or government authority enters an order, and such order is not vacated within sixty (60) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessor or with respect to any substantial part of Lessor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of City.

12.2 **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default by City, Lessor may do any of the following, individually or in combination with any other remedy:

(a) Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of City under this Agreement.

(b) Lessor may retake possession of the Equipment with respect to which there is an Event of Default by City, and sell or lease such Equipment, holding City liable for all Lease Payments on such Equipment up to the effective date of repossession.

12.3 **Remedies Nonexclusive.** Each of the remedies provided for in this Article 12 may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations, including the right to bring suit for damages. The remedies contained herein are in addition to all other remedies available to Lessor at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

## ARTICLE 13

### EVENTS OF DEFAULT BY LESSOR; REMEDIES

13.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" by Lessor under this Agreement:

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement or in any other document submitted to City under this Agreement is found by City to be false or misleading.

(b) **Failure to Perform Other Covenants; Breach of Warranty.** Lessor fails to perform or breaches any warranty, agreement, provision or covenant of this Agreement to be performed or observed by Lessor as and when performance or observance is due and such failure or breach continues for a period of fifteen (15) days after the date on which such performance or observance is due.

(c) **Voluntary Insolvency.** Lessor (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessor or of any substantial part of Lessor's property or (v) takes action for the purpose of any of the foregoing.

(d) **Involuntary Insolvency.** Without consent by Lessor, a court or government authority enters an order, and such order is not vacated within fifteen (15) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessor or with respect to any substantial part of Lessor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Lessor.

13.2 **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default by either party hereto, the non-defaulting party may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** Non-defaulting party may terminate this Agreement. Such termination shall not waive any rights or remedies of City hereunder.

(b) **Legal Action.** Whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Non-defaulting party under this Agreement.

(c) **Right to Cure.** The non-defaulting party shall have the right (but no obligation) to cure any Event of Default by the defaulting party. All amounts expended by the non-defaulting party in

effecting such cure shall be deemed Losses hereunder and shall accrue interest from the date of incidence at the maximum rate permitted by law.

13.3 **Remedies Nonexclusive.** Each of the remedies provided for in this Article 13 may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations, including the right to bring suit for damages. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

## ARTICLE 14

### DISCLOSURE OF INFORMATION AND DOCUMENTS

14.1 **Proprietary or Confidential Information of City.** Lessor understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Lessor may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. Lessor agrees that all information disclosed by City to Lessor shall be held in confidence and used only in the performance of this Agreement. Lessor shall exercise the same standard of care to protect such information as a reasonably prudent Lessor would use to protect its own proprietary data.

## ARTICLE 15

### ASSIGNMENTS

15.1 **No Assignment.** Neither Lessor nor City shall, either directly or indirectly, assign, transfer, hypothecate, sublet or delegate all nor any portion of this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Lessor involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Lessor or a sale or transfer of substantially all of the assets of Lessor shall be deemed an assignment for purposes of this Agreement.

15.2 **No Public or Private Offerings.** Without limiting the scope of Section 15.1, Lessor shall not effect a private or public offering of certificates of participation, municipal securities or other debt instruments representing fractionalized interest in this Agreement without first obtaining the written consent of City, as such consent shall be approved as to form by City Attorney. City shall have the right to require Lessor to satisfy any conditions City imposes before it consents to any offering of any such certificates, securities or instruments, including approval by City's Board of Supervisors.

15.3 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 15.1 or 15.2 shall confer no rights on any Person and shall automatically be null and void.

15.4 **Assignor Retains Responsibility.** No assignment or transfer pursuant to this Article 15 shall relieve the assigning party of liability for the performance by any assignee or transferee of all of the covenants, terms and conditions contained in this Agreement.

## ARTICLE 16

### NOTICES AND OTHER COMMUNICATIONS

16.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications which may affect either party's performance hereunder shall be in writing, shall be addressed to the person and address set forth in the ***Basic Information*** and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided in the ***Basic Information***). Any other non-essential communications may be by telephone or email.

16.2 **Notice to City Clerk/Controller.** Whenever Lessor delivers to City any notice, certificate or other communication relating to an Event of Default by City or an event which (after notice or any grace period) may become an Event of Default, Lessor shall also concurrently provide a copy of such notice to the Office of City Clerk at the address set forth in the ***Basic Information*** by the same means as that used for sending the original notice.

16.3 **Effective Date.** All communications that must be in writing pursuant to Section 16.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. Postal Service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

16.4 **Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 16 by notice to the other party.

## ARTICLE 17

### COMPLIANCE

#### 17.1 **Nondiscrimination; Penalties.**

(a) **Lessor Shall Not Discriminate.** In the performance of this Agreement, Lessor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessor, in any of Lessor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessor.

(b) **Non-Discrimination in Benefits.** Lessor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in Palo Alto or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between

the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration.

17.5 **Drug-Free Workplace Policy.** Lessor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Lessor and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

## ARTICLE 18

### MISCELLANEOUS

18.1 **No Waiver.** No waiver by either party of any default or breach of this Agreement by the other party shall be implied from any failure to take action on account of such default if such default persists or is repeated. No express waiver by either party shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

18.2 **Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Director of Purchasing, who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

18.3 **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Palo Alto.

18.4 **Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

18.5 **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions, other than any express warranty contained in any written materials (including any bid or proposal documents) delivered to City in connection herewith. The following exhibits or appendices are attached to and are a part of this Agreement:

*Exhibit A*      Equipment Price Schedule

18.6 **Certified Resolution re Signatory Authority.** Upon request of City, Lessor shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Lessor.

18.7 **Time.** Time is of the essence in this Agreement.

18.8 **Further Assurances.** From and after the date of this Agreement, Lessor agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be

reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

18.9 **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

18.10 **Successors; No Third-Party Beneficiaries**. Subject to the terms of Article 15, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

18.11 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

18.12 **Waiver of Personal Liability**. No member of City's City council nor any elected official, officer, agent or employee of City shall be individually or personally liable for the Lease Payments or any other payments coming due hereunder or be subject to any personal liability or accountability by reason of this Agreement.

18.13 **Survival of Terms**. The obligations of Lessor and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 6.1, 6.3, Article 9, Section 10.3, Article 14, Article 15, Article 16 and this Article 18.

18.14 **Modification**. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date specified in the *Basic Information*.

**CITY**

**LESSOR**

**Recommended:**

\_\_\_\_\_

\_\_\_\_\_

Authorized Signature

By: \_\_\_\_\_

Title \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_

Printed Name

City Attorney

\_\_\_\_\_

Title

By: \_\_\_\_\_

Deputy City Attorney

\_\_\_\_\_

Company Name

**Approved:**

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

City, State, Zip

\_\_\_\_\_

Phone Number

\_\_\_\_\_

Federal Employer ID Number