

**AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**SHARP ELECTRONICS  
CORPORATION**

**FOR**

**MULTI-FUNCTION COPIERS, PRINTERS,  
ACCESSORIES, AND RELATED EQUIPMENT &  
SERVICES**

## AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Sharp Electronics Corporation, a New York corporation (Contractor).

### RECITALS

- A. City wishes to retain Contractor for the lease of existing multi-function copiers, printers, accessories and related equipment & services as further described in the Scope of Work, attached hereto as Exhibit A.
- B. City and Contractor (collectively, the “Parties”) wish to enter into an agreement whereby City will retain Contractor to provide the Goods and Services.
- C. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

### ARTICLE 1 CONTRACTOR SERVICES

**1.1 Scope of Services.** Contractor shall provide the goods and services at the prices stated in Exhibit A, Scope of Work, which is incorporated herein by reference.

**1.2 Contract Administrator.** The Department of IT (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Bill Walker, IT Financial Manager  
1200 3<sup>rd</sup> Avenue, Suite 1800  
Department of Information Technology  
619-533-3465, [WalkerW@sandiego.gov](mailto:WalkerW@sandiego.gov)

**1.3 General Contract Terms and Provisions.** This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**1.4 Submittals Required with the Agreement.** Contractor is required to submit all forms and information delineated in Exhibit B before the Agreement is executed.

**ARTICLE 2  
DURATION OF AGREEMENT**

**2.1 Term.** This Agreement shall be for an initial term of two (2) years beginning on October 1, 2023 and extending through September 30, 2025. City may, in its sole discretion, extend this Agreement for up to an additional twelve (12) months. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

**ARTICLE 3  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for goods and services rendered in accordance with this Agreement in an amount not to exceed \$2,800,000.

**ARTICLE 4  
WAGE REQUIREMENTS**

**4.1 Reserved.**

**ARTICLE 5  
CONTRACT DOCUMENTS**

**5.1 Contract Documents.** This Agreement including its exhibits, schedules, and attachments completely describes the goods and services to be provided.


**5.2 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

SHARP ELECTRONICS CORP.

CITY OF SAN DIEGO  
A Municipal Corporation

By: Dale Wedge  
Dale Wedge (Aug 16, 2023 10:53 PDT)

By: 

Name: Dale Wedge

Name: Claudia Abarca

Title: president SBS SoCal

Director, Purchasing & Contracting

Date: Aug 16, 2023

Date: Aug 16, 2023

Approved as to form this 16 day of  
August 2023.

MARA W. ELLIOTT, City Attorney

By: 

Deputy City Attorney

Steven Lastomirsky

Print Name

## EXHIBIT A: SCOPE OF WORK

### A. OVERVIEW

Sharp Electronics (Contractor) will provide Multi-Function Copiers, printers, and equipment applicable to scanned data & management, image duplicating, and related solutions, accessories, supplies, and services that are essential in ensuring continuity of the City's day-to-day print requirements for all employees across the organization.

Contractor will also facilitate a lease agreement between the City and De Lage Landen Financial Services (DLL) for this equipment.

### B. REQUIREMENTS AND TASKS

Contractor shall provide all the product, installation, finance options, service, reporting capabilities as outlined below and further outlined in the Master Lease Agreement and associated schedules & attachments.

1. MFD Pricing. Contractor will continue to provide the MFDs currently in use by the City through a twenty-four (24) month Master Lease agreement that the City will execute with De Lage Landen Financial Services. The device quantities and specifications being leased at the start of this lease agreement are outlined in Exhibit D (Rate Sheet). The monthly charge for these leases will be provided at the prices based on Exhibit D, excluding applicable sales tax. Contractor, or its designed finance company, will invoice the City monthly for each MFD in the lease and will include applicable sales tax in the invoice. MFDs added subsequent to the equipment currently onsite will co-terminate at the end of the twenty-four (24) month lease term.
2. Services Pricing. Contractor will provide managed print services for each MFD leased by the City at no additional cost above the CPC rate. The service shall be inclusive of all consumables except paper (e.g. toner, staples, drum kits, etc.), preventative and as-needed hardware and software maintenance, patching, customer service, training, and support necessary to keep MFDs operating in accordance with Service Level Requirements.
3. Business Hours. City business hours are 7am to 6pm -Pacific Time, Monday through Friday, excluding official City holidays.
4. MFD Availability. Both parties agree that MFDs should be operating during Business Hours at a rate of 95% uptime (less than 16.5 hours down per month). Contractor also has the responsibility to provide supplies under this agreement. If Contractor fails to provide supplies in time and the MFD cannot function as a result, then that downtime will also count against the availability of the device. Contractor is not responsible for proactively providing supplies for units that are not networked and can't be remotely monitored.

5. MFD Replacements. If for any three consecutive months, an MFD falls below the MFD Availability of 95% then the City would be entitled to require Contractor to replace at no cost to the City, and within 15 business day of official notice by the City, the MFD. Additionally, for each MFD that has been down for a full business days, Contractor will provide the City a loaner device on the second business day until the existing MFD is repaired.
6. MFDs Additions. The City may add up to 15% additional MFDs at the same rates memorialized in the rate sheet to co-terminate with the contract end date of September 30, 2025. Contractor will have 10 business days to deliver and install any unit upon receipt of a new or revised Purchase Order and a completed order form with all relevant installation and invoicing details.
7. MFD Deletions. City may remove up to 9.9% of the new, leased MFDs on the contract with no penalty to the City. Contractor will have 15 business days from receipt of official notice (email notice is acceptable) to remove the device from the City location. The City will be responsible for paying for that month's lease charges and usage based on the counter at removal. Contractor will invoice these outstanding charges on the next monthly billing cycle. Sharp must purge on-site the memory of any MFD it is removing.
8. Trade-ins. Contractor will allow trade-ins of existing desktop printers that the City owns for a credit towards the cost to provide MFD or MPS services. Contractor and the City will work in good faith to determine a fair wholesale market price for each trade in for each unit. If the parties are unable to agree on FMV, a mediation process shall be enacted utilizing an independent third party. Contractor may collect the traded in equipment up to 5 business days in advance of delivering a new unit or at the same time as installation of the new MFD.
9. MFD Moves. Contractor will move MFDs between City business locations within 10 business days of request for moves occurring during Business Hours. After-hour moves or moves that involve more than 5 units at one time may be billable to the City. In the cases where work is billable, Contractor will provide the City a quote. No billable work shall be performed without a valid Purchase Order from the City. For emergencies, Sharp may perform billable work, provided it has received written authorization from the Contract Administrator.
10. MFD Service and Support. During Business Hours, Contractor will respond to all requests for support within one hour, by phone, to all requests for support. Requests may be made by phone, by email, or as otherwise mutually agreed. During Business Hours, if Contractor is unable to resolve the issue within 2 hours by phone, then it must dispatch a technician onsite to the MFD location to arrive within 4 hours of initial request. Contractor may charge for after-hour support, provided Contractor and Department (e.g. Police Department) has established a mutually agreed upon fee schedule beforehand and a valid Purchase Order has been issued to cover any such

billable work. Any after-hours work performed without a Purchase Order or the prior written authorization of the Contract Administrator will not be compensated, and Contractor is under no obligation to perform.

11. MFD Monitoring. Contractor has agreed to remotely monitor each accessible networked MFD. Contractor shall use remote monitoring to proactively identify and perform preventative maintenance and provide just-in-time consumable supplies, except paper (e.g. toner, drum maintenance kits, staples, etc.). For high usage or critical needs areas, Contractor shall provide spare consumables to prevent outages. If Contractor fails to timely provide consumables resulting in unreasonable downtime, City shall have the right to assess a penalty of \$500 a day until the issue is resolved. Remote monitoring shall also provide near real-time usage data (e.g. mono and color page counts to date and per month by det). For non-networked MFDs, Contractor shall facilitate reporting and billing statistics (e.g. mono and color pages). Based on usage data, Contractor shall timely provide consumables (except paper) and ensure preventative maintenance is timely performed. City may also contact Contractor to request the provision of consumables, as needed.
12. MFD Software and Firmware. Contractor is responsible for the upkeep of the software and firmware provided with the MFDs. For networked MFDs, Contractor shall provide software and firmware upgrades related to identified security issues according to the following timetables: Critical (10 business days), High (30 calendar days), and all others (90 calendar days). Non-networked MFDs will be upgraded within 10 business days in accordance with industry best practices and upon request by the City.
13. Critical Security Issues or Vulnerabilities. Upon notification by the City of a critical security issue or vulnerability of any Contractor MFDs, the issue will be treated as a support ticket, and Contractor will address it according to the MFD Service and Support requirements. If the issue is causing an impact to the City's network, then the City reserves the right to remove the MFD from its network until the issue can be resolved by Contractor. Contractor may elect to replace the MFD with a different model with the same or better specifications if it can't resolve the security issue with the MFD.
14. MFD Model Changes. Any subsequent changes to models, accessories, or services shall be memorialized through a change order process and signed off by Contract Administrator.
15. Large Capacity Trays. Large Capacity Trays (LCTs) will have a minimum capacity of 3,000 sheets and will be compatible with Tier 2, 2A, 3, 3A, and 4 devices at a rental cost of no more than \$10 per month.

#### C. ADDITIONAL INSURANCE REQUIREMENTS

Contractor shall provide the following insurance coverages in addition to the requirements

outlined in Exhibit C. General Contract Terms and Provisions, Section 7.2:

1. Cyber Liability – must be for a minimum of \$1,000,000
  - Acord certificate required



## **EXHIBIT B: SUBMITTALS REQUIRED WITH THE AGREEMENT**

Contractor Standards Pledge of Compliance Form

Work Force Report

Insurance Requirements

Business Tax License



**THE CITY OF SAN DIEGO**  
**GENERAL CONTRACT TERMS AND PROVISIONS**  
**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

**ARTICLE I  
SCOPE AND TERM OF CONTRACT**

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

**1.2 Effective Date.** A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

**ARTICLE II  
CONTRACT ADMINISTRATOR**

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

**2.2 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent  
City of San Diego, Purchasing and Contracting Division  
1200 3rd Avenue, Suite 200  
San Diego, CA 92101-4195

### ARTICLE III COMPENSATION

**3.1 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

#### **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 Reserved.**

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Reserved.**

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

**5.3 Responsibility for Damages.** Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.



**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.10 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.8 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.9 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## **ARTICLE VIII BONDS**

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result



in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**9.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE XII MANDATORY ASSISTANCE**

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

### **ARTICLE XIII MISCELLANEOUS**

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

## EXHIBIT D: RATE SHEET

Tier 1: Economy Level - <b>DESKTOP DEVICES</b>			
Requirement	Description	Current Contract	24 Month Term
<b>TIER 1 (Desktop device)</b>			
1	Supports Mono Printing/Coping/Scanning (List Model(s))	Sharp AR208D /B201D	<b>MXB350W</b>
2	Minimum Pages Per Month: 0	Yes	<b>0</b>
3	Recommended Max Volume per Month: 1000	Yes	<b>5000</b>
4	Manufacturer maximum monthly volume: 1500	Yes	<b>100,000</b>
5	Copy Speed >=16 Pages Per Minute (PPM) @ 600 DPI single sided (Specify Actual)	Yes (20)	<b>YES (35)</b>
6	Supports Duplex Printing; 64gb RAM or greater	Yes	<b>YES</b>
7	Resolution => 600 DPI	Yes	<b>YES</b>
8	Must support USB 2.0 as direct connect	Yes	<b>YES</b>
9	Network Enabled; RJ-45 Ethernet (10/100Base-T)	Yes	<b>YES</b>
10	Supports PCL6 with Drivers for Windows 7 (32 & 64 bit), and 10 (32 and 64bit), Mac OS (9) and OSX (10).	Yes	<b>YES</b>
11	Scan to Email as PDF, JPG, and TIFF	Yes	<b>YES</b>
12	Scan to Fax, File Share, FTP, and Print	Yes	<b>YES</b>
13	Fax Enabled	Yes	<b>YES</b>
14	Paper Capacity >= 250 sheets letter	Yes	<b>YES</b>
15	50 sheet bypass (8.5" by 5.5" up to 8.5" by 14" as well as envelopes)	Yes	<b>YES</b>
16	>= 1 Tray	Yes	<b>YES</b>
17	2/3-Hole Punch	<b>No</b>	<b>NO</b>
18	Stapling	<b>No</b>	<b>NO</b>
19	Minimum Original Size <= 5.5 by 8.5 inches	Yes	<b>YES</b>
20	Maximum Paper Size => 8.5 by 14 inches	Yes	<b>YES</b>
21	Auto Paper Selection / Tray Switching	Yes	<b>YES</b>
22	Auto Exposure Control w/ Override	Yes	<b>YES</b>
23	Pre-Set Reduction & Enlargement (w/ manual adjustment capabilities)	Yes	<b>YES</b>
24	Auto magnification selection	Yes	<b>YES</b>

## EXHIBIT D: RATE SHEET

25	Zoom reduction and enlargement (pre-set ratios 50%-200% & manually adjustable in increments of 1%)	Yes		YES
26	Energy Saving Mode(s)	Yes		YES
27	120V AC 15AMP Circuit; 60Hz; NEMA 5-15R Type Plug; 14 amps or less usage max	Yes		YES
28	web based management with LDAP validation	Yes		YES
29	Specify Weight	<=75 pounds		41.7 LB
30	Dimensions <= 22" (w) by 20" (d) by 24" (h)	Yes		25 1/8" x 19 3/8" x 20 3/8"
31	Has Optional Document Feeder => 250 sheets	No		YES STD
32	Installed Quantity	73		59
33	Average Monthly Volume Mono per unit	580.49		580.49
34	Average Monthly Volume Color per unit	NA		N/A
35	Average Monthly Volume Total per unit	580.49		580.49
<b>Cost Model 1: Per Page Cost Only</b>				
TIER 1	Price per Mono Page	Not Disclosed		
TIER 1	Price per Color Page	NA		
TIER 1	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 1	Estimated Color Cost based on Average Monthly Volume	NA		
TIER 1	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 1	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 1	Minimum Cost Per Month Fee	Not Disclosed		
<b>Cost Model 2: Per Device Cost With Fee for over allocated pages per Month</b>				
TIER 1	Monthly Cost per Installed Device	NA		\$ 11.94
TIER 1	Allotted Pages per Month	NA		0
TIER 1	Price per Mono Page over Allotted	NA		\$ 0.0029
TIER 1	Price per Color Page over Allotted	NA		\$ 0.034
TIER 1	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		\$ 1.68
TIER 1	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		N/A
TIER 1	Total of Mono and Color Costs over Allotted Pages	NA		\$ 1.68
TIER 1	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		\$ 13.62
TIER 1	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		\$ 803.58



TIER 1A (Desktop Devices with color)				
1	Supports Mono & Color Printing/Coping/Scanning (List Model(s))	Sharp MFX-C2700		<b>MX-C300W / MX-303WH</b>
2-28	<b>Same Requirements as Tier 1 for Items 2-28 (no staple and no hole punch)</b>	Yes		<b>YES</b>
29	Weight <=100 pounds	Yes		<b>63.93 LB</b>
30	Dimensions <= 22" (w) by 20" (d) by 24" (h)	Yes		<b>16 3/4" x 17" x 20"</b>
31	Has Optional Document Feeder => 250 sheets	Yes		<b>YES STD</b>
32	Installed Quantity	33		<b>93</b>
33	Average Monthly Volume Mono per unit	378.21		<b>378.21</b>
34	Average Monthly Volume Color per unit	250.79		<b>250.79</b>
35	Average Monthly Volume Total per unit	629		<b>629</b>
Cost Model 1: Per Page Cost Only				
TIER 1A	Price per Mono Page	Not Disclosed		
TIER 1A	Price per Color Page	Not Disclosed		
TIER 1A	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 1A	Estimated Color Cost based on Average Monthly Volume	Not Disclosed		
TIER 1A	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 1A	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 1A	Minimum Cost Per Month Fee	Not Disclosed		
Cost Model 2: Per Device Cost With Fee for over allocated pages per Month				
TIER 1A	Monthly Cost per Installed Device	NA		<b>\$ 18.00</b>
TIER 1A	Allotted Pages per Month	NA		<b>0</b>
TIER 1A	Price per Mono Page over Allotted	NA		<b>\$ 0.0029</b>
TIER 1A	Price per Color Page over Allotted	NA		<b>\$ 0.034</b>
TIER 1A	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		<b>\$ 1.10</b>
TIER 1A	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		<b>\$ 8.53</b>
TIER 1A	Total of Mono and Color Costs over Allotted Pages	NA		<b>\$ 9.62</b>
TIER 1A	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		<b>\$ 27.63</b>
TIER 1A	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		<b>\$ 2,569.59</b>
	Cost Model 2: Estimated Monthly Costs for All Tier 1			<b>\$ 803.58</b>
	Cost Model 2: Estimated Monthly Costs for All Tier 1A			<b>\$ 2,569.59</b>

Requirement	Description	Current Contract		24 Month Term
<b>TIER 2</b>				
1	Supports Mono and Color Printing/Copier/Scanning (List Model(s))	Sharp M3110/M3140/M363	<b>MX-3050V</b>	<b>/ MX-3051/ MX3070V</b>
2	Minimum Pages Per Month: 1001	Yes		<b>0</b>
3	Recommended Max Volume per Month: 10000	Yes		<b>10,000</b>
4	Manufacturer maximum monthly volume: 35000	Yes		<b>125,000</b>
5	Copy Speed >=30 Pages Per Minute (PPM) @ 600 DPI single sided (Specify Actual)	Yes (31)		<b>YES (30)</b>
6	Offset Stacking Capability	Yes		<b>YES</b>
7	Supports Auto Duplex Printing; 1gb RAM or greater	Yes		<b>YES</b>
8	Resolution => 600 DPI	Yes		<b>YES</b>
9	Must support USB 2.0 as direct connect	Yes		<b>YES</b>
10	Network Enabled; RJ-45 Ethernet (10/100/1000Base-T)	Yes		<b>YES</b>
11	Supports PCL6 with Drivers for Windows 7 (32 & 64 bit), and 10 (32 and 64bit), Mac OS (9) and OSX (10).	Yes		<b>YES</b>
12	Scan to Email as PDF, JPG, and TIFF	Yes		<b>YES</b>
13	Scan to Fax, File Share, FTP, and Print	Yes		<b>YES</b>
14	Fax Enabled	Yes		<b>YES</b>
15	Paper Capacity >= 1000 sheets letter	Yes		<b>YES</b>
16	Reversing Auto Document Feeder; 50 sheet capacity (8.5" by 5.5" up to 8.5" by 14" as well as envelopes)	Yes		<b>YES</b>
17	>= 2 Trays	Yes		<b>YES</b>
18	2/3-Hole Punch	No		<b>NO</b>
19	Stapling	No		<b>NO</b>
20	Minimum Original Size <= 5.5 by 8.5 inches	Yes		<b>YES</b>
21	Maximum Paper Size => 11 by 17 inches	Yes		<b>YES</b>
22	Auto Paper Selection / Tray Switching	Yes		<b>YES</b>
23	Auto Exposure Control w/ Override	Yes		<b>YES</b>
24	Pre-Set Reduction & Enlargement (w/ manual adjustment capabilities)	Yes		<b>YES</b>
25	Auto magnification selection	Yes		<b>YES</b>
26	Zoom reduction and enlargement (pre-set ratios 50%-200% & manually adjustable in increments of 1%)	Yes		<b>YES</b>
27	Energy Saving Mode(s)	Yes		<b>YES</b>

## EXHIBIT D: RATE SHEET

28	120V AC 15AMP Circuit; 60Hz; NEMA 5-15R Type Plug; 14 amps or less usage max	Yes		YES
29	web based management with LDAP validation	Yes		YES
30	Specify Weight	<= 200 pounds		173 LB
31	Dimensions <= 26" (w) by 30" (d) by 36" (h)	Yes		33" X 24" X 26"
32	Installed Quantity	264		343
33	Average Monthly Volume Mono per unit	2711.56		2711.56
34	Average Monthly Volume Color per unit	1923.52		1923.52
35	Average Monthly Volume Total per unit	4635.08		4635.08
<b>Cost Model 1: Per Page Cost Only</b>				
TIER 2	Price per Mono Page	Not Disclosed		
TIER 2	Price per Color Page	Not Disclosed		
TIER 2	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 2	Estimated Color Cost based on Average Monthly Volume	Not Disclosed		
TIER 2	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 2	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 2	Minimum Cost Per Month Fee	Not Disclosed		
<b>Cost Model 2: Per Device Cost With Fee for over allocated pages per Month</b>				
TIER 2	Monthly Cost per Installed Device	NA		\$ 53.39
TIER 2	Allotted Pages per Month	NA		0
TIER 2	Price per Mono Page over Allotted	NA		\$ 0.0029
TIER 2	Price per Color Page over Allotted	NA		\$ 0.034
TIER 2	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		\$ 7.86
TIER 2	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		\$ 65.40
TIER 2	Total of Mono and Color Costs over Allotted Pages	NA		\$ 73.26
TIER 2	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		\$ 126.65
TIER 2	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		\$ 43,440.95

## EXHIBIT D: RATE SHEET

TIER 2A				
1	Supports Mono and Color Printing/Copier/Scanning (List Model(s))	Sharp M3110/M3140/M363	<b>MX-3050V / MX-3051 / MX-3070V</b>	
2-17 & 20-29	<b>Same Requirements as Tier 2 for Items 2-17 &amp; Items 20-29</b>	Yes		<b>YES</b>
18	2/3-Hole Punch	Yes		<b>YES</b>
19	<b>Stapling: &gt;= 50 pages</b>	Yes		<b>YES</b>
30	Finisher; >= 500 sheets(letter) or 250 sheets (ledger/legal)	Yes		<b>YES</b>
31	Specify Weight	<= 250 pounds		<b>YES</b>
32	Dimensions <= 26" (w) by 30" (d) by 36" (h) (main unit), <= 26" (w) by 30" (d) by 12" (h) (finisher w/extended tray)	Yes		<b>33" X 24" X 26"</b>
33	Installed Quantity	91		<b>1</b>
34	Average Monthly Volume Mono per unit	2613.95		<b>2613.95</b>
35	Average Monthly Volume Color per unit	2358.95		<b>2358.95</b>
36	Average Monthly Volume Total per unit	4972.9		<b>4972.9</b>
Cost Model 1: Per Page Cost Only				
TIER 2A	Price per Mono Page	Not Disclosed		
TIER 2A	Price per Color Page	Not Disclosed		
TIER 2A	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 2A	Estimated Color Cost based on Average Monthly Volume	Not Disclosed		
TIER 2A	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 2A	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 2A	Minimum Cost Per Month Fee	Not Disclosed		
Cost Model 2: Per Device Cost With Fee for over allocated pages per Month				
TIER 2A	Monthly Cost per Installed Device	NA		<b>\$ 53.39</b>
TIER 2A	Allotted Pages per Month	NA		<b>0</b>
TIER 2A	Price per Mono Page over Allotted	NA		<b>\$ 0.0029</b>
TIER 2A	Price per Color Page over Allotted	NA		<b>\$ 0.034</b>
TIER 2A	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		<b>\$ 7.58</b>
TIER 2A	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		<b>\$ 80.20</b>
TIER 2A	Total of Mono and Color Costs over Allotted Pages	NA		<b>\$ 87.78</b>
TIER 2A	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		<b>\$ 141.17</b>
TIER 2A	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		<b>\$ 141.17</b>

Cost Model 2: Estimated Monthly Costs for All Tier 2

**\$ 43,440.95**

Cost Model 2: Estimated Monthly Costs for All Tier 2A

**\$ 141.17**

## EXHIBIT D: RATE SHEET

Tier 3: Medium Level

Requirements	Description	Current Contract		24 Month Term
<b>TIER 3</b>				
1	Supports Mono and Color Printing/Copier/Scanning (List Model(s))	Sharp M4110/M4140/M453	<b>MX-4050V</b>	<b>/ MX-4051/ MX-4070N</b>
2	Minimum Pages Per Month: 10001	Yes		<b>0</b>
3	Recommended Max Volume per Month: 30000	Yes		<b>30,000</b>
4	Manufacturer maximum monthly volume: 50000	Yes		<b>175,000</b>
5	Copy Speed >=40 Pages Per Minute (PPM) @ 600 DPI single sided (Specify Actual)	Yes (41)		<b>YES (40)</b>
6	Offset Stacking Capability	Yes		<b>YES</b>
7	Supports Auto Duplex Printing; 1gb RAM or greater	Yes		<b>YES</b>
8	Resolution => 600 DPI	Yes		<b>YES</b>
9	Must support USB 2.0 as direct connect	Yes		<b>YES</b>
10	Network Enabled; RJ-45 Ethernet (10/100/1000Base-T)	Yes		<b>YES</b>
11	Supports PCL6 with Drivers for Windows 7 (32 & 64 bit), and 10 (32 and 64bit), Mac OS (9) and OSX (10).	Yes		<b>YES</b>
12	Scan to Email as PDF, JPG, and TIFF	Yes		<b>YES</b>
13	Scan to Fax, File Share, FTP, and Print	Yes		<b>YES</b>
14	Fax Enabled	Yes		<b>YES</b>
15	Paper Capacity >= 1500 sheets letter	Yes		<b>YES</b>
16	Reversing Auto Document Feeder; 50 sheet capacity (8.5" by 5.5" up to 8.5" by 14" as well as envelopes)	Yes		<b>YES</b>
17	>= 3 Trays	Yes		<b>YES</b>
18	2/3-Hole Punch	No		<b>NO</b>
19	Stapling	No		<b>NO</b>
20	Minimum Original Size <= 5.5 by 8.5 inches	Yes		<b>YES</b>
21	Maximum Paper Size => 11 by 17 inches	Yes		<b>YES</b>
22	Auto Paper Selection / Tray Switching	Yes		<b>YES</b>
23	Auto Exposure Control w/ Override	Yes		<b>YES</b>
24	Pre-Set Reduction & Enlargement (w/ manual adjustment capabilities)	Yes		<b>YES</b>
25	Auto magnification selection	Yes		<b>YES</b>
26	Zoom reduction and enlargement (pre-set ratios 50%-200% & manually adjustable in increments of 1%)	Yes		<b>YES</b>
27	Energy Saving Mode(s)	Yes		<b>YES</b>

### EXHIBIT D: RATE SHEET

28	120V AC 15AMP Circuit; 60Hz; NEMA 5-15R Type Plug; 14 amps or less usage max	Yes		YES
29	web based management with LDAP validation	Yes		YES
30	Specify Weight	<= 300 pounds		173 LB
31	Dimensions <= 30" (w) by 36" (d) by 42" (h)	Yes		33" X 24" X 26"
32	Installed Quantity	39		50
33	Average Monthly Volume Mono per unit	6973.82		6973.82
34	Average Monthly Volume Color per unit	5242.07		5242.07
35	Average Monthly Volume Total per unit	12215.89		12215.89
<b>Cost Model 1: Per Page Cost Only</b>				
TIER 3	Price per Mono Page	Not Disclosed		
TIER 3	Price per Color Page	Not Disclosed		
TIER 3	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 3	Estimated Color Cost based on Average Monthly Volume	Not Disclosed		
TIER 3	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 3	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 3	Minimum Cost Per Month Fee	Not Disclosed		
<b>Cost Model 2: Per Device Cost With Fee for over allocated pages per Month</b>				
TIER 3	Monthly Cost per Installed Device	NA		\$ 67.93
TIER 3	Allotted Pages per Month	NA		0
TIER 3	Price per Mono Page over Allotted	NA		\$ 0.0029
TIER 3	Price per Color Page over Allotted	NA		\$ 0.034
TIER 3	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		\$ 20.22
TIER 3	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		\$ 178.23
TIER 3	Total of Mono and Color Costs over Allotted Pages	NA		\$ 198.45
TIER 3	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		\$ 266.38
TIER 3	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		\$ 13,319.00

## EXHIBIT D: RATE SHEET

TIER 3A				
1	Supports Mono and Color Printing/Copier/Scanning (List Model(s))	Sharp M4110/M4140/M453	<b>MX-4050N / MX-4051 / MX-4070N</b>	
2-16 & 20-29	<b>Same Requirements as Tier 3 for Items 2-16 &amp; 20-29</b>	Yes		<b>YES</b>
17	>=4 Trays and >= 2000 paper capacity letter	Yes		<b>YES</b>
18	2/3-Hole Punch	Yes		<b>YES</b>
19	<b>Stapling: &gt;= 50 pages</b>	Yes		<b>YES</b>
30	Finisher; >= 1500 sheets(letter) or 500 sheets (ledger/legal)	Yes		<b>YES</b>
31	Specify Weight	<= 430 Pounds		<b>YES</b>
32	Dimensions <= 30" (w) by 36" (d) by 42" (h) (main unit), <= 26" (w) by 30" (d) by 48" (h) (finisher w/extended tray)	Yes		<b>46 5/8" x 24" x 46 3/8"</b>
33	Installed Quantity	75		<b>86</b>
34	Average Monthly Volume Mono per unit	6204.73		<b>6204.73</b>
35	Average Monthly Volume Color per unit	4560.02		<b>4560.02</b>
36	Average Monthly Volume Total per unit	10764.75		<b>10764.75</b>
Cost Model 1: Per Page Cost Only				
TIER 3A	Price per Mono Page	Not Disclosed		
TIER 3A	Price per Color Page	Not Disclosed		
TIER 3A	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 3A	Estimated Color Cost based on Average Monthly Volume	Not Disclosed		
TIER 3A	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 3A	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 3A	Minimum Cost Per Month Fee	Not Disclosed		
Cost Model 2: Per Device Cost With Fee for over allocated pages per Month				
TIER 3A	Monthly Cost per Installed Device	NA		<b>\$ 99.70</b>
TIER 3A	Allotted Pages per Month	NA		<b>0</b>
TIER 3A	Price per Mono Page over Allotted	NA		<b>\$ 0.0029</b>
TIER 3A	Price per Color Page over Allotted	NA		<b>\$ 0.034</b>
TIER 3A	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		<b>\$ 17.99</b>
TIER 3A	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		<b>\$ 155.04</b>
TIER 3A	Total of Mono and Color Costs over Allotted Pages	NA		<b>\$ 173.03</b>
TIER 3A	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		<b>\$ 272.73</b>
TIER 3A	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		<b>\$ 23,454.78</b>

Cost Model 2: Estimated Monthly Costs for All Tier 3  
 Cost Model 2: Estimated Monthly Costs for All Tier 3A

\$ 13,319.00  
 \$ 23,454.78

## EXHIBIT D: RATE SHEET

Tier 4: Large Level

Requirements	Description	Current Contract	24 Month Term
<b>TIER 4</b>			
1	Supports Mono and Color Printing/Copier/Scanning (List Model(s))	Sharp M623M/M5110/M6240	<b>MX-6050V / MX-6070V</b>
2	Minimum Pages Per Month: 30001	Yes	<b>0</b>
3	Recommended Max Volume per Month: 60000	Yes	<b>60,000</b>
4	Manufacturer maximum monthly volume: 100000	Yes	<b>225,000</b>
5	Copy Speed >=60 Pages Per Minute (PPM) @ 600 DPI single sided (Specify Actual)	Yes (60)	<b>YES (60)</b>
6	Offset Stacking Capability	Yes	<b>YES</b>
7	Supports Auto Duplex Printing; 1gb RAM or greater	Yes	<b>YES</b>
8	Resolution => 600 DPI	Yes	<b>YES</b>
9	Must support USB 2.0 as direct connect	Yes	<b>YES</b>
10	Network Enabled; RJ-45 Ethernet (10/100/1000Base-T)	Yes	<b>YES</b>
11	Supports PCL6 with Drivers for Windows 7 (32 & 64 bit), and 10 (32 and 64bit), Mac OS (9) and OSX (10).	Yes	<b>YES</b>
12	Scan to Email as PDF, JPG, and TIFF	Yes	<b>YES</b>
13	Scan to Fax, File Share, FTP, and Print	Yes	<b>YES</b>
14	Fax Enabled	Yes	<b>YES</b>
15	Paper Capacity >= 2500 sheets	Yes	<b>YES</b>
16	Reversing Auto Document Feeder; 100 sheet capacity (8.5" by 5.5" up to 8.5" by 14" as well as envelopes) OR Duplex Single Pass Feeder	Yes	<b>YES</b>
17	>= 3 Trays	Yes	<b>YES</b>
18	2/3-Hole Punch	Yes	<b>YES</b>
19	<b>Stapling: &gt;= 50 pages</b>	Yes	<b>YES</b>
20	Minimum Original Size <= 5.5 by 8.5 inches	Yes	<b>YES</b>
21	Maximum Paper Size => 11 by 17 inches	Yes	<b>YES</b>
22	Auto Paper Selection / Tray Switching	Yes	<b>YES</b>
23	Auto Exposure Control w/ Override	Yes	<b>YES</b>
24	Pre-Set Reduction & Enlargement (w/ manual adjustment capabilities)	Yes	<b>YES</b>
25	Auto magnification selection	Yes	<b>YES</b>



26	Zoom reduction and enlargement (pre-set ratios 50%-200% & manually adjustable in increments of 1%)	Yes		YES
27	Energy Saving Mode(s)	Yes		YES
28	120V AC 20 AMP Circuit; 60Hz; NEMA 5-20R Type Plug; 18 amps or less usage max	Yes		YES
29	Web based management with LDAP validation	Yes		YES
30	Finisher; >= 2500 sheets(letter) or 1500 sheets (ledger/legal)	Yes		YES
31	Specify Weight	<= 500 pounds		YES
32	Dimensions <= 30" (w) by 36" (d) by 48" (h) (main unit), <= 30" (w) by 36" (d) by 48" (h) (finisher w/extended tray)	Yes		46 5/8" x 24" x 46 3/8"
33	Installed Quantity	48		60
34	Average Monthly Volume Mono per unit	14533.8		14533.8
35	Average Monthly Volume Color per unit	691.15		691.15
36	Average Monthly Volume Total per unit	15224.95		15224.95
<b>Cost Model 1: Per Page Cost Only</b>				
TIER 4	Price per Mono Page	Not Disclosed		
TIER 4	Price per Color Page	Not Disclosed		
TIER 4	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 4	Estimated Color Cost based on Average Monthly Volume	Not Disclosed		
TIER 4	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 4	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 4	Minimum Cost Per Month Fee	Not Disclosed		
<b>Cost Model 2: Per Device Cost With Fee for over allocated pages per Month</b>				
TIER 4	Monthly Cost per Installed Device	NA		\$ 103.93
TIER 4	Allotted Pages per Month	NA		0
TIER 4	Price per Mono Page over Allotted	NA		\$ 0.0029
TIER 4	Price per Color Page over Allotted	NA		\$ 0.034
TIER 4	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		\$ 42.15
TIER 4	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		\$ 23.50
TIER 4	Total of Mono and Color Costs over Allotted Pages	NA		\$ 65.65
TIER 4	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		\$ 169.58
TIER 4	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		\$ 10,174.80

Cost Model 2: Estimated Monthly Costs for All Tier 4

\$ - \$ 10,174.80

Note: This tier is a combination of several other tiers in the existing contract to consolidate needs into a single tier

## EXHIBIT D: RATE SHEET

Tier 5: Extra Large Level

Requirements	Description	Current Contract	24 Month Term
<b>TIER 5</b>			
1	Supports Mono Printing/Copier/Scanning (List Model(s))	Sharp MX-M850/MX-M950	<b>MX-M905</b>
2	Minimum Pages Per Month: 60001	Yes	<b>60001</b>
3	Recommended Max Volume per Month: 90000	Yes	<b>90,000</b>
4	Manufacturer maximum monthly volume: 200000	Yes	<b>1,000,000</b>
5	Copy Speed >=80 Pages Per Minute (PPM) @ 600 DPI single sided (Specify Actual)	Yes (85)	<b>YES (90)</b>
6	Offset Stacking Capability	Yes	<b>YES</b>
7	Supports Auto Duplex Printing; 1gb RAM or greater; Hard drive	Yes	<b>YES</b>
8	Resolution => 600 DPI	Yes	<b>YES</b>
9	Must support USB 2.0 as direct connect	Yes	<b>YES</b>
10	Network Enabled; RJ-45 Ethernet (10/100/1000Base-T)	Yes	<b>YES</b>
11	Supports PCL6 with Drivers for Windows 7 (32 & 64 bit), and 10 (32 and 64bit), Mac OS (9) and OSX (10).	Yes	<b>YES</b>
12	Scan to Email as PDF, JPG, and TIFF	Yes	<b>YES</b>
13	Scan to Fax, File Share, FTP, and Print	Yes	<b>YES</b>
14	Fax Enabled	Yes	<b>YES</b>
15	Paper Capacity >= 3000 sheets	Yes	<b>YES</b>
16	<b>Duplex Single Pass Feeder capable of &gt;= 85 ppm</b>	Yes	<b>YES</b>
17	>= 3 Trays	Yes	<b>YES</b>
18	2/3-Hole Punch	Yes	<b>YES</b>
19	<b>Stapling: &gt;= 100 pages</b>	Yes	<b>YES</b>
20	Minimum Original Size <= 5.5 by 8.5 inches	Yes	<b>YES</b>
21	Maximum Paper Size => 11 by 17 inches	Yes	<b>YES</b>
22	Auto Paper Selection / Tray Switching	Yes	<b>YES</b>
23	Auto Exposure Control w/ Override	Yes	<b>YES</b>
24	Pre-Set Reduction & Enlargement (w/ manual adjustment capabilities)	Yes	<b>YES</b>
25	Auto magnification selection	Yes	<b>YES</b>
26	Zoom reduction and enlargement (pre-set ratios 50%-200% & manually adjustable in increments of 1%)	Yes	<b>YES</b>

## EXHIBIT D: RATE SHEET

27	Energy Saving Mode(s)	Yes		YES
28	208-240V AC 20AMP Circuit; 60Hz; NEMA 6-20R Plug; 18 amps or less usage max	Yes		YES
29	Web based management with LDAP validation	Yes		YES
30	Finisher; >= 3000 sheets (letter) or 1500 sheets (ledger/legal); supports folding	Yes		YES
31	Specify Weight	<= 800 Pounds		YES
32	Dimensions <= 48" (w) by 36" (d) by 52" (h) (main unit), <= 40" (w) by 36" (d) by 48" (h) (finisher w/extended tray)	Yes		114 7/8" x 33 1/4" x 48 1/8"
33	Installed Quantity	12		13
34	Average Monthly Volume Mono per unit	30531.67		30531.67
35	Average Monthly Volume Color per unit	NA		N/A
36	Average Monthly Volume Total per unit	30531.67		30531.67
<b>Cost Model 1: Per Page Cost Only</b>				
TIER 5	Price per Mono Page	Not Disclosed		
TIER 5	Price per Color Page	NA		
TIER 5	Estimated Mono Cost based on Average Monthly Volume	Not Disclosed		
TIER 5	Estimated Color Cost based on Average Monthly Volume	NA		
TIER 5	Total of Estimated Mono and Color Costs	Not Disclosed		
TIER 5	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	Not Disclosed		
TIER 5	Minimum Cost Per Month Fee	Not Disclosed		
<b>Cost Model 2: Per Device Cost With Fee for over allocated pages per Month</b>				
TIER 5	Monthly Cost per Installed Device	NA		\$ 241.68
TIER 5	Allotted Pages per Month	NA		0
TIER 5	Price per Mono Page over Allotted	NA		\$ 0.0029
TIER 5	Price per Color Page over Allotted	NA		\$ 0.034
TIER 5	Estimated Mono Cost based on Average Monthly Volume over Allotted	NA		\$ 88.54
TIER 5	Estimated Color Cost based on Average Monthly Volume over Allotted	NA		N/A
TIER 5	Total of Mono and Color Costs over Allotted Pages	NA		\$ 88.54
TIER 5	Estimated Unit Cost based on Monthly Device Cost and Total Estimate Cost over Allotted	NA		\$ 330.22
TIER 5	Estimated Total Monthly Cost (Unit Cost times Qty Installed)	NA		\$ 4,292.86

Cost Model 2: Estimated Monthly Costs for All Tier 5

\$ - \$ 4,292.86

Note: This tier is a combination of several other tiers in the existing contract to consolidate needs into a single tier











# 1 Sharp Agreement (two year) for MFDs with Exhibits, v003 unsigned

Final Audit Report

2023-08-16


Created:	2023-08-16
By:	Sandra Vasquez (SMVasquez@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4iyT4Dx7gckCNWzpnbjyiPqTXbiLbd3O

## "1 Sharp Agreement (two year) for MFDs with Exhibits, v003 unsigned" History

-  Document created by Sandra Vasquez (SMVasquez@sandiego.gov)  
2023-08-16 - 5:44:42 PM GMT- IP address: 137.83.224.179
-  Document emailed to dale.wedge@sharpusa.com for signature  
2023-08-16 - 5:47:47 PM GMT
-  Email viewed by dale.wedge@sharpusa.com  
2023-08-16 - 5:52:48 PM GMT- IP address: 54.147.246.36
-  Signer dale.wedge@sharpusa.com entered name at signing as Dale Wedge  
2023-08-16 - 5:53:43 PM GMT- IP address: 12.43.162.114
-  Document e-signed by Dale Wedge (dale.wedge@sharpusa.com)  
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 Signer slastomirsky@sandiego.gov entered name at signing as Steven Lastomirsky

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 Document e-signed by Steven Lastomirsky (slastomirsky@sandiego.gov)

Signature Date: 2023-08-16 - 9:27:04 PM GMT - Time Source: server- IP address: 70.95.204.119

 Agreement completed.

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