

MASTER LEASE AGREEMENT

CITY OF SAN DIEGO, CALIFORNIA

(AS LESSEE)

AND

IBM CREDIT LLC

(AS LESSOR)

DATED AS OF _____, 2007

DOCUMENT NO. 00 19618
FILED MAY 15 2007
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT (this "Agreement") dated as of _____, is between IBM Credit LLC, a wholly owned subsidiary of International Business Machines Corporation ("IBM"), as the Lessor hereunder (the "Lessor"), and the City of San Diego, California (the "City"), as the Lessee hereunder, a political subdivision of the State of California (the "State").

RECITALS

Whereas, the City desires to enter into arrangements for the lease purchase of various Equipment including but not limited to equipment, software license fees, consulting fees, and related expenses specified in the Request For Proposals.

Whereas, the Lessor desires to provide for the financing of all such Equipment and Financed Items under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Agreement and in addition to the terms defined elsewhere in this Agreement and in the Request for Proposals, the following terms have the meanings given below unless the context clearly requires otherwise:

- 1.1 **Acceptance Certificate:** means the certificate substantially in the form of Schedule 1 of the Appendix.
- 1.2 **Acceptance Date:** means the date on the Acceptance Certificate which the City notifies the Lessor to establish and agree on a Vendor Payment Date. The Acceptance Date shall be at least one (1) week in advance of the Vendor Payment Date and no earlier than two (2) weeks in advance of the Vendor Payment Date.
- 1.3 **Acquisition Period:** means the period commencing on execution of this Agreement and ending on the earlier of June 30, 2009, or once an aggregate amount of \$29.5 million of Equipment and/or Financed Items has commenced each under seven-year lease terms. The City reserves the right to request to increase the limits upon exhausting the initial limits for and of the terms upon mutual agreement and preapproval of the Lessor.

- 1.4 **Additional Lease Payment(s):** means the amounts specified as such in Section 4.5. (b) hereof.
- 1.5 **Agreement:** means this Master Lease Agreement as the same may be amended and supplemented from time to time in accordance with its terms.
- 1.6 **Appendix:** means Attachment A of this Agreement, substantially in the form annexed hereto, which includes the Acceptance Certificate, the Disbursement Authorization Certificate, the City Representation Certificate, the Payment Schedule Certificate, and all exhibits, attachments, and schedules thereto.
- 1.7 **Business Day:** means any day other than a City holiday, a Saturday, Sunday or day upon which banks in the State or in the state in which the principal office of the Lessor is located are authorized or required to be closed.
- 1.8 **Certificate of Counsel:** means the certificate substantially in the form of Attachment B of this Agreement.
- 1.9 **City Representatives:** means the Purchasing Agent, Chief Financial Officer, or such other person at the time designated to act on behalf of the Lessee for the purpose of performing any act under this Agreement by a written certificate furnished to the Lessor.
- 1.10 **City Representation Certificate:** means the certificate substantially in the form of Schedule 3 of the Appendix and signed by the Chief Financial Officer.
- 1.11 **Contract Term:** means the period commencing upon execution of this Agreement and ending on the date the final payment is made under all Appendices entered into during the Acquisition Period.
- 1.12 **Contract Year:** means individually each year of the Contract Term. The initial Contract Year shall begin on the date the contract is executed, and end on June 30, 2007, and thereafter each Contract Year shall begin July 1 and end on the following June 30.
- 1.13 **Disbursement Authorization Certificate:** means the certificate substantially in the form of Schedule 2 of the Appendix.
- 1.14 **Equipment:** means the items of personal property leased to Lessee for a term not exceeding the useful life of the item pursuant to this Agreement and listed on each Appendix.
- 1.15 **Lease Rate:** means a fixed rate of interest calculated by multiplying the applicable Percentage of the Index Rate (or alternative method) by the applicable Index.

- 1.16 **Vendor:** means the manufacturer or the distributor, including consultants and City staff, who deliver the items of Equipment to Lessee.
- 1.17 **Event of Default:** has the meaning set forth in Sections 4.9 and 4.10 herein.
- 1.18 **Financed Item:** means the one time charge for software license fees, consulting fees and other related expense financed by Lessee pursuant to this Agreement and listed on each Appendix.
- 1.19 **Fiscal Year:** means the City's Fiscal Year which begins on July 1 of a calendar year and ends on June 30 of the following calendar year.
- 1.20 **Index:** means the applicable U.S. Treasury Constant Maturity Rate for week ending prior to published date as published at <http://www.federalreserve.gov/Releases/H15/> as further described below:
- 1.21 **Index Rate:** means for leases of a seven-year term, use the seven year Index.
- 1.22 **Lease:** means the lease purchase transaction for Equipment or Financed Items.
- 1.23 **Lease Payment(s):** means the amount(s) specified in Section 4.5 hereof, as adjusted from time to time in accordance with the terms hereof, but does not include Additional Lease Payments.
- 1.24 **Lease Payment Date:** means the date on which the Lessee is required to make a Lease Payment, as specified in an Appendix.
- 1.25 **Lease Term:** means the number of months of each Lease beginning with the first day of the month after the Vendor Payment Date.
- 1.26 **Lessee:** means the City of San Diego.
- 1.27 **Lessor:** means IBM Credit LLC, acting as Lessor under this Agreement, and any successor thereto or any assignee thereof.
- 1.28 **Lessor Representative:** means the President or any Vice President of the Lessor, or any person or persons at the time designated to act on behalf of the Lessor for purposes of performing any act or obligation on behalf of the Lessor under this Agreement.
- 1.29 **Material Adverse Change:** means a change in the City's General Obligation rating by Moody's Investor Service to below investment grade, or a suspension of the City's General Obligation rating by Investor Service.

- 1.30 **Payment Schedule Certificate:** means the certificate substantially in the form of Schedule 4 of the Appendix annexed hereto and issued by the Lessee to the Lessor not more frequently than monthly, unless agreed to by both parties.
- 1.31 **Non-Qualified Lease:** means a lease purchase transaction for Equipment or Financed Items which Lessor will finance at taxable rates
- 1.32 **Percentage of the Index Rate:** means the percentage proposed by the Lessor for the lease term(s) awarded to the Lessor which is to be multiplied by the Index Rate in the calculation of the Lease Rate in an Appendix, for all lease purchase transactions during the term of this Agreement. The Percentage of the Index Rate for leases of a seven-year term is 100% of the seven year Index Rate. For Non-Qualified Leases, the Percentage of the Index Rate of a seven-year term is 164% of the seven year Index Rate.
- 1.33 **Pre-approval Request:** means the form attached hereto, which is prepared by the Lessee and submitted to Lessor for execution.
- 1.34 **Pre-payment Date:** has the meaning contained in Section 7.2a herein.
- 1.35 **Transaction Documents:** means the Agreement, the Appendices, and all attachments, exhibits and schedules thereto. An amendment to a Lease will take precedence over the other Transaction Documents.
- 1.36 **Vendor Payment Date:** means the date on which the Vendor or Lessee (in the case of reimbursement) receives funds from the Lessor, as specified in an Appendix.

ARTICLE 2. PURPOSE

- 2.1 The Lessor agrees to lease Equipment and finance Financed Items to Lessee subject to the terms hereof, upon the provision by Lessee of an Appendix, and the Lessee agrees to lease Equipment and finance Financed Items from the Lessor for the consideration indicated in an Appendix at the Percentage of Index Rate in response to the Request for Proposals.
- 2.2 No payments will be due under this Agreement by the Lessor until the Lessor has determined that no Material Adverse Change has occurred prior to the Lessor's execution of a Pre-approval Request, that insurance required under the Agreement will be in place as of the Vendor Payment Date, and the Lessor has been provided an Appendix and all attachments, exhibits and schedules thereto (in form and substance, acceptable to Lessor) signed by authorized City Representatives. No payments will be due from the City to the Lessor until the Lessor has made payment to the Vendor or to the City as provided in Section 4.3.

ARTICLE 3. TERM

- 3.1 The term of this Agreement during which Equipment or Financed Item can be ordered or funded shall be the Acquisition Period. The Acquisition Period of this Agreement may be extended by mutual consent of both the Lessee and the Lessor.
- 3.2 The payment term of each Appendix entered into pursuant to this Agreement shall be for a period of seven (7), subject to a Pre-approval Request by the Lessor at the time the equipment software license fees, consulting fees, and related expenses is ordered by the City, and further subject to earlier termination as provided herein.
- 3.3 The Contract Term of this Agreement shall be from the execution of this Agreement until all obligations under this Agreement are extinguished pursuant to this Agreement.

ARTICLE 4. PAYMENT

- 4.1 **Amount and Times of Payment to the Lessor:** The total purchase price plus accrued interest indicated in each Appendix shall be paid by the City in equal semi-annual installment payments as indicated in an Appendix. The initial Lease Payment by the City shall be due on the first day of the month after six (6) full months have elapsed from the Vendor Payment Date as shown on an Appendix. The initial Lease Payment shall include accrued interest from the Vendor Payment Date to the first Lease Payment date. Each successive Lease Payment during the term of the Appendix will continue semi-annually on the first day of the calendar month. Payments for partial months and accrued interest shall be calculated on a 30/360

basis. Lessee shall receive invoices from Lessor to Lessee no less than 30 days prior to each Lease Payment date.

- 4.1.1 The Lease Rate will be established on the Acceptance Date through execution of an Appendix by multiplying the Percentage of the Index Rate by the Index Rate as defined in Section 1.20 herein, listed for the week preceding the Monday closest to two (2) weeks prior to the Acceptance Date for the lease term.
- 4.2 For federal income tax purposes only, a portion of each Lease Payment is paid as, and represents payment of, interest, as set forth in each Payment Schedule Certificate.
- 4.2.1 The Lease Payments shall be paid by check in lawful monies of the United States and mailed to the Lessor at its principal corporate office or such other place as may be designated by the Lessor in writing; or, at the Lessee's preference, wired to the Lessor in accordance with wire payment instructions provided in writing on the Lessor's letterhead.
- 4.3 **Amount and Times of Payment by Lessor:** Subject to a Pre-approval Request by the Lessor in accordance with Sections 1.2 and 3.2 of the Agreement, payment by the Lessor must be made to Lessee's Vendor (not more frequently than monthly, unless agreed to by both parties) or to the Lessee, where the Lessee has already made full payment to the Vendor, provided the Lessee provides satisfactory proof to the Lessor, on or before the Vendor Payment Date given in an Appendix. The amount of payment will be stated in an Appendix. Late payment by the Lessor will cause liquidated damages to be paid by the Lessor to the Lessee pursuant to Section 4.12 herein; provided, however, such Vendor Payment Date shall not be more than ten (10) Business Days after receipt of Schedules 1 through 4, IRS Form 8038-G/GC (Information Return for Tax-Exempt Governmental Obligations), UCC financing statements and any other items deemed necessary by the Lessor as established prior to the Vendor Payment Date, pursuant to Section 5.5b. IRS Form 8038-G/GC is not required for a Non-Qualified Lease.
- 4.3.1 As evidence of payment by Lessor to Lessee's Vendor, Lessor shall return to Lessee a signed copy of the Disbursement Authorization Certificate, initially executed by Lessee.
- 4.4 **Maximum Payment:** Except in the event of Pre-payment by the Lessee as hereinafter provided, and except for Additional Lease Payments and other amounts due hereunder, the total charges paid by the Lessee shall not exceed the amount calculated on the Payment Schedule Certificates.
- 4.5 **Lease Payments:** Subject to the terms hereof, the Lessee hereby agrees to pay to the Lessor the Lease Payments and Additional Lease Payments in the amounts, at the times and in the manner hereinafter set forth, such amounts constituting in the aggregate the rent payable under the Lease.

- a) The Lease Payments payable by the Lessee shall be due on each Lease Payment Date during the term of the Lease. The Lease Payment payable on a particular Lease Payment Date shall be for the period from the immediately preceding Lease Payment Date to such particular Lease Payment Date.
 - b) In addition to the Lease Payments set forth herein, the Lessee agrees to pay as Additional Lease Payments all of the following:
 - (i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes including sales taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Equipment, or upon any interest of the Lessor; and
 - (ii) any late Lease Payment penalty shall be determined in accordance with this subparagraph, for the late payment of scheduled Lease Payments. A scheduled Lease Payment not made by the sixth calendar day succeeding the scheduled Lease Payment Date shall, upon written notice from the Lessor, begin accruing a late Lease Payment penalty, calculated at the applicable lease interest rate, on a prorata basis, against the scheduled Lease Payment due. In no event shall the late Lease Payment penalty begin accruing before the sixth day succeeding the scheduled Lease Payment Date or before the date written the Lessee receives notice from the Lessor, and in no event shall any late Lease Payment penalty continue to accrue past the twentieth day succeeding the scheduled Lease Payment Date, except as provided in Section 4.11 (b)
- 4.5.1 Amounts constituting Additional Lease Payments hereunder shall be paid by the Lessee directly to the person(s) to whom such amounts shall be payable. The Lessee shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within thirty (30) calendar days after notice in writing from the Lessor to the City stating the amount of Additional Lease Payments then due and payable and the purpose thereof.
- 4.5.2 The obligation of the Lessee to make Lease Payments, Additional Lease Payments, or any other payments required hereunder, shall be absolute and unconditional except as otherwise specifically provided in this Agreement. This is a net lease. All costs, expenses and other liabilities associated with the Equipment or Financed Item shall be borne solely by the Lessee. Except as expressly provided herein, the Lessee's obligation to pay rent and all other obligations under this Agreement are absolute and unconditional and not subject to any deferment, reduction, setoff, defense, counterclaim or recoupment for any reason whatsoever.

- 4.6 **Consideration:** For each Fiscal Year or portion thereof during the term of this Agreement, Lease Payments and Additional Lease Payments shall constitute the total Lease Payments for such fiscal year or portion thereof and shall be paid by the Lessee for and in consideration of the right of use and possession, and the continued quiet use and enjoyment, of the Equipment by the Lessee for and during such Fiscal Year or portion thereof. The Lessee determines and represents to the Lessor that such Lease Payments are not in excess of the total fair rental value of the Equipment. In making such determination, consideration has been given to the costs of acquiring and financing the Equipment, the uses and purposes served by the Equipment, and the benefits therefrom that will accrue to the parties by reason of this Agreement and to the general public by reason of the Lessee's use of the Equipment.
- 4.7 **Budget:** The Lessee hereby covenants to take such action as may be necessary to include all Lease Payments and Additional Lease Payments due hereunder in its annual budget and to make the necessary annual appropriations for all such Lease Payments and Additional Lease Payments, subject to Section 4.8 hereof. The covenants on the part of the Lessee herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the Lessee to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the Lessee to carry out and perform the covenants and agreements on the part of the Lessee contained in this Agreement. In the event sufficient funds are not appropriated for the payment of all Lease Payments required to be paid, Lessee shall promptly inform Lessor in writing and the Lease may be terminated at the end of the last fiscal year for which funds were appropriated. In the event of such nonappropriation, Lessee shall return the Equipment to Lessor and surrender to Lessor for return to licensor or owner of all licensed program materials financed hereunder and to destroy any and all copies thereof. The obligation of the Lessee to make Lease Payments or Additional Lease Payments does not constitute an obligation of the Lessee for which the Lessee is obligated to levy or pledge any form of taxation or for which the Lessee has levied or pledged any form of taxation. The obligation of the Lessee to make Lease Payments or Additional Lease Payments does not constitute an indebtedness of the Lessee, the State or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.
- 4.8 **Abatement:** The Lessee's obligations to make payments under this Agreement shall be subject to abatement in accordance with this Section 4.8 during any period in which, by reason of material damage, destruction, or condemnation, there is substantial interference with the use and right of possession by the Lessee of such item of Equipment. The amount of Lease Payment abatement shall be calculated as the percentage of the portion of the Lease Payment in respect of the damaged item of Equipment in relation to the total Lease Payment. Such abatement shall continue for the period commencing with the date of such damage, destruction, or condemnation and ending with the restoration of such item of Equipment to useable condition. The

Lessor shall receive rental interruption insurance proceeds sufficient to cover the Lease Payments subject to abatement, until such time as the Equipment is restored to useable condition. In the event of such damage, destruction, or condemnation, this Agreement shall continue in full force and effect.

4.9 **Events of Default by the Lessor:** Any of the following events which shall occur shall constitute an Event of Default by the Lessor under this Agreement:

- a) Late payment by the Lessor to the Lessee's Vendor or to the Lessee, whichever is applicable, or failure of the Lessor to perform any of the obligations, covenants, terms and provisions contained or referred to in this Agreement, which nonpayment or failure to perform is not cured within twenty (20) calendar days of the receipt of written notice (certified mail, return receipt requested) thereof from the Lessee to the Lessor.
- b) Any warranty, representation, or statement of the Lessor contained in this Agreement which proves to have been false in any material respect when made or furnished.

4.10 **Events of Default by Lessee:** Any of the following events which shall occur shall constitute an Event of Default by the Lessee under this Agreement:

- a) Subject to the provisions of Section 4.8 hereof, the nonpayment by the Lessee of any payment required hereunder, or failure of the Lessee to perform any of the obligations, covenants, terms and provisions contained or referred to in this Agreement, which nonpayment or failure to perform is not cured within fifteen (15) calendar days of the receipt of written notice (certified mail, return receipt requested) thereof from the Lessor to the Lessee; provided, however, that the termination as described in Article 7 shall not constitute an Event of Default hereunder and shall not give rise to any of the remedies hereinafter authorized.
- a) Any warranty, representation, or statement of the Lessee contained in this Agreement which proves to have been false in any material respect when made or furnished.
- b) Dissolution, termination of existence, discontinuance of its business, insolvency, business failure, or appointment of a receiver of any part of the property of or assignment for the benefit of creditors by Lessee or the commencement of any proceedings under any bankruptcy whether voluntary or involuntary, reorganization or arrangement laws by or against Lessee.
- c) Failure by Lessee to maintain insurance as required by Section 5.6.

4.11 **Remedies of the Lessor:** Upon the occurrence of an Event of Default, the Lessor may, at its option, take any one or more of the following actions:

- a) Collect each installment of Lease Payments and Additional Lease Payments as it becomes due and payable hereunder.
- b) Collect on a pro-rata basis from the Lessee payment of late charges accrued at the rate of one percent (1%) per month on the outstanding principal balance, in the event of a default by the Lessee as provided in Section 4.10.
- c) Repossess the Equipment without being subject to any action for trespass, conversion, or the recovery from the Lessor of any sums previously received in this Agreement. City agrees that: (i) 10 days prior written notice shall constitute adequate notice of disposition of any Equipment, (ii) Lessor has no obligation to cleanup or otherwise prepare the Equipment for disposition and (iii) that any disposition of such Equipment will be conveyed on an "AS IS" basis and Lessor disclaims any and all warranties."
- d) Retain prior payments and sell or lease the Equipment through public or private transaction after giving the Lessee reasonable notice with or without having the Equipment at any such sale or leasing. The proceeds of any sale or leasing will be applied to the payment of the unpaid balance of the Lessee's obligations under this Agreement. The Lessee shall remain liable for any deficiency of unpaid payment for the current Contract Year. Any excess obtained by the Lessor at any sale or leasing of the Equipment over the amounts owed by the Lessee for the remainder of the Agreement shall be paid to the Lessee or to such other persons as is prescribed by law.
- d) By action pursuant to the California Code of Civil Procedure, or as otherwise provided by law, for the issuance of writ of mandamus enforcing, for the entire balance of the term hereof, the duty of the Lessee to appropriate and take all other administrative steps necessary for the making of Lease Payments, Additional Lease Payments and other amounts due hereunder.
- e) Require the City to surrender to Lessor for return to licensor or owner of all licensed program materials financed hereunder and to destroy any and all copies thereof.
- f) Take any other remedy available at law or in equity with respect to such Event of Default.
- g) Terminate the Agreement with respect to future financing.

4.11.1 The Lessor's attempt to exercise any of the remedies herein entitles the Lessee to prepay, without notice, as provided in Section 7.2 herein, notwithstanding any provision to the contrary.

- 4.12 **Remedies of the Lessee:** Upon the occurrence of an Event of Default by the Lessor, the Lessee may, at its option, take any one or more of the following actions:
- a) Should the Lessor not make the entire principal payment to the Lessee's Vendor or to the Lessee, whichever is applicable, on or before the Vendor Payment Date as stated in an Appendix, the Lessee may require payment of liquidated damages on a pro-rata basis at the rate of one percent (1%) per month of the principal amount of the Equipment or Financed Item Purchase. Such amount shall be paid by the Lessor to the Lessee.
 - b) Institute all remedies available to the Lessee as available at law or in equity with respect to such Event of Default.
 - c) Terminate this Agreement with respect to future financings provided that all existing Appendices shall remain in effect.

Upon the Lessee's exercise of any of the remedies herein, the Lessee shall not exercise any further remedy against the Lessor.

ARTICLE 5. RESPONSIBILITIES OF LESSEE

- 5.1 **Care and Use of Equipment:** At its own expense, the Lessee shall obtain remedial and preventive maintenance, in accordance with the Lessee's maintenance policies and procedures, to keep the Equipment in good operating condition.
- 5.2 **Inspection:** Subject to security regulations, the Lessee will allow the Lessor to enter the premises where the Equipment is located during normal business hours for the purposes of inspecting the Equipment and observing whether the Lessee is in compliance with its responsibilities.
- 5.3 **Taxes:** In the event that the Equipment or Financed Item or any portion thereof shall, for any reason, be deemed subject to taxation, assessments, or charges lawfully made by any governmental body, the Lessee shall, during the term of this Agreement, pay the amount of all such taxes, assessments, and governmental charges then due, as Additional Lease Payments, as described in Section 4.5(b)(i) herein. At the expense and in the name of the Lessee, the Lessee may in good faith contest any such taxes, assessments, and other charges in any reasonable manner which does not, in the opinion of independent counsel, adversely affect the right, title, and interest of the Lessor in and to any item of the Equipment or its rights or interest under this Lease or subject any portion of any item of Equipment to loss or forfeiture, and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest or any appeal therefrom.

5.4 **Permits and Licenses:** The Lessee shall provide all permits and licenses necessary for use of the Equipment. Registration and titling of all vehicles shall be at the Lessee's expense. The Lessee shall comply with all laws, rules, regulations, and ordinances applicable to the use of the Equipment. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Equipment, such changes or additions shall be made by the Lessee at its own expense.

5.5 **Delivery of Related Documents:**

- a) For each item of Equipment and Financed Item, the Lessee shall provide the Lessor with a completed Pre-approval Request, substantially in the form attached hereto. Prior to the date the Equipment or Financed Item is ordered by the Lessee from the Vendor, the Lessor has the right to approve or disapprove the Pre-approval Request based only on the nature of the acquisition subject to Lessor's determination that no Material Adverse Change has occurred prior to the Lessor's execution of a Pre-approval Request.) Provided, however, that if the nature of the acquisition indicated in the Pre-approval Request changes materially after the Lessor has agreed to provide financing, the Lessor is not bound by the Pre-approval Request .
- b) For each item of Equipment or Financed Item, the Lessee shall provide an Appendix at least three (3) Business Days prior to the Vendor Payment Date, in substantially the form shown in Attachment A, attached hereto and by this reference incorporated herein, including:
 - i) A copy of the Vendor invoice.
 - ii) Evidence of the Lessor's security interest (completed Form UCC-1) as of the Vendor Payment Date, provided that such statements shall not impose liabilities and/or responsibilities inconsistent with this Agreement.
 - iii) Lessor will prepare an IRS Form 8038-G or 8038-GC and submit to the Lessee for filing with the Internal Revenue Service. IRS Form 8038-G/GC is not required for a Non-Qualified Lease.
 - iv) A copy of the Manufacturer's Certificate of Origin, if applicable.
 - v) A copy of the Application for Vehicle Registration, if applicable, stating the Lessor as lienholder.
 - vi) Certificate of Counsel.

- vii) A copy of the Lessee's resolution or ordinance, where applicable and when specifically requested by the Lessor.
- c) For each item of Equipment, the Lessee shall provide upon written request of the Lessor:
 - i) The Lessee's maintenance contract on the Equipment, if applicable.
 - ii) Such other documents at the time of execution as the parties reasonably believe necessary to protect their interests in this Agreement and in the Equipment, provided that no such document may impose liabilities and/or responsibilities on the Lessor or the Lessee inconsistent with this Agreement and no such document is deemed to be incorporated into, nor to amend nor to alter the terms of this Agreement.
- d) Upon each draw, the Lessee shall provide a Certificate of Counsel substantially in the form of Attachment B, attached hereto and by this reference incorporated herein.
- e) Upon settlement of the Agreement and thereafter as changes occur, the Lessee will provide a listing of authorized City Representatives to the Lessor.

5.6 **Risk of Loss:** The Lessee shall obtain and maintain for the Contract Term, at the expense of the Lessee and from reputable commercial insurers, rental interruption insurance, property damage and liability insurance (excess of the City's self-insured retention of two million dollars (\$2,000,000) for Public Liability), and insurance against loss or damage to the Equipment, including loss by fire, theft, collision and such other risks of loss as are customarily insured against on the type of Equipment purchased hereunder and by the business in which the Lessee is engaged. The amount of insurance against loss or damage to the Equipment shall not be less than the lesser of the full replacement value of the Equipment or the sum of the Lease Payments then remaining unpaid under the Agreement and the amount of rental interruption insurance shall cover lease payments for not less than twelve (12) months. At the Lessor's request, the Lessee shall furnish to the Lessor a certificate of insurance or other evidence satisfactory to the Lessor that such insurance is in effect. The Lessee further agrees to give the Lessor prompt notice of any substantial damage to, or loss of, the Equipment or any part thereof.

5.6.1 The Lessee shall repair, replace, or make the applicable Pre-payment for, within twelve (12) months any item of Equipment which is destroyed or damaged to such an extent that there is substantial interference with the use and right of possession by the Lessee of that item which would result in an abatement of Lease Payments or any item thereof pursuant to Section 4.8 hereof, whether or not there are sufficient insurance proceeds to pay for such repair or replacement. However, the Lessee shall

not be required to repair or replace any such item of Equipment pursuant to this Section 5.6 if there shall be applied to the Pre-payment of Lease Payments insurance proceeds or other legally available funds sufficient to prepay all of the Lease Payments for such item of Equipment as set forth in Section 7.2 hereof. The Lessee shall name the Lessor as additional insured and loss payee under any policy obtained pursuant to this Section 5.6.

- 5.7 **Application of Funds:** All funds authorized or appropriated for payments under this Agreement shall be applied by the Lessee to such payment requirements.
- 5.8 **Tax Matters:** In order to maintain the exclusion from gross income for Federal income tax purposes of the interest component of each Lease Payment due under this Agreement, the Lessee covenants to comply with each applicable requirement of Section 103 and Sections 141 through 150 of the Internal Revenue Code of 1986, as amended. This covenant shall survive the payment or Pre-payment of all Lease Payments hereunder.
- 5.8.1 If the Lessor either (i) receives notice, in any form, from the Internal Revenue Service; or (ii) reasonably determines, based on an opinion of independent tax counsel that the Lessor may not exclude all interest from Federal gross income as the result of any act or omission by the Lessee or a breach of any representation or covenant contained in this Agreement or any schedule, then the Lessee shall pay to the Lessor within thirty (30) days after the Lessor notifies the Lessee of such determination, an amount which after deduction of all taxes required to be paid by the Lessor in respect of the receipt of any amount pursuant to this sentence under the laws of any federal, state or local government or taxing authority of the United States, (i.e. on an after tax basis), shall be equal to the sum of all penalties, fines, interest, and additions to tax (including taxes imposed on the interest component of all Lease Payments due through the date of such event) that are imposed on the Lessor as a result of the loss of the exclusion. Additionally, the Lessee agrees that upon the occurrence of such an event, the Lessee shall pay Additional Lease Payments to the Lessor on each succeeding Lease Payment Date in such amount(s) as will maintain the Lessor's after-tax yield(s) and after tax cash flows for the transaction(s) evidenced by the schedules attached to this Agreement.
- 5.8.2 This Agreement and the rights of the Lessee in the Equipment may not be sold, leased, pledged, assigned or otherwise encumbered by the Lessee for any reason. Such restriction shall not preclude the Lessee from permitting the use of the Equipment by others for public purposes or in furtherance of any governmental or proprietary functions of the Lessee, provided such use does not impair the exclusion of the interest component from gross income for federal income tax purposes.

ARTICLE 6. EQUIPMENT

- 6.1 **Title:** Except as otherwise provided in Section 7.3 hereof, title to Equipment in an Appendix shall pass to the Lessee at the time the Equipment is deemed acceptable by City staff for payment following inspection, installation, and /or testing of the Equipment. Title will, at the Lessor's option, revert to the Lessor upon termination as the result of the occurrence of Event of Default by the Lessee pursuant to Sections 4.10(a), 4.10(b), or 4.10(c), and to the extent permitted by applicable law, the Lessee will indemnify the Lessor from and against any liability arising out of retaining the title to the equipment.
- 6.2 **Security Interest:** The Lessee grants to the Lessor and the Lessor retains a security interest in the Equipment. The Lessee will not change or remove any insignia or lettering which the Lessor may place on the Equipment to indicate its interest therein until all Lease Payments are made. Until all Lease Payments are made or Pre-payment is complete, the Lessee shall keep the Equipment and any additions, attachments or alterations thereto, free from any lien, encumbrance or legal process which would conflict with this security interest created pursuant to this Agreement. The Lessor shall release its security interest when all Lease Payments are made or Pre-payment is completed.
- 6.3 **Filing:** Subject to the provisions of Section 5.5(b)(ii) hereof, the Lessee authorizes the Lessor to make the Lessor's security interest a matter of public record by filings of any standard documents necessary for that purpose. The Lessee agrees to sign or execute such documents to evidence its consent to the filing. The Lessee will provide sixty (60) calendar days written notice to the Lessor that Equipment is being relocated to insure that the Lessor may perfect additional filings as necessary. In no event shall the Equipment be relocated outside the United States.
- When all payments are made or Pre-payment is complete, the Lessor shall make the release of its security interest a matter of public record by filing a UCC, signed release of title where applicable, and/or any and all documents necessary.
- 6.4 **Personal Property:** The Equipment shall remain personal property of the Lessee and shall not be deemed to have become real property regardless of the manner in which it is affixed to real property.
- 6.5 **Alterations, Additions, Attachments:** The Lessor hereby agrees to allow the Lessee to add and attach to the Equipment such additional equipment, facilities or fixtures as the Lessee may subsequently acquire (exclusive of repair, service or replacement parts, which do not constitute new equipment, etc.), notwithstanding the form of financing that the Lessee might use. Such additional equipment facilities, or fixtures shall not be a part of or subject to this Agreement, unless by express written amendment. No alterations, additions and attachments will cause irreparable damage

to the Equipment and will not impair the value, utility or useful life of the Equipment.

- 6.6 **Removal of Alterations, Additions, Attachments:** In the event title to the Equipment reverts to the Lessor, the Lessee, at its own expense, will remove all alterations, additions, and attachments and repair the Equipment as necessary so as to return the Equipment to the condition in which it was furnished, reasonable wear and tear excepted. The removal of all alterations, additions and attachments and any resultant repair will not impair the value, utility or useful life of the Equipment.
- 6.7 **Return of Equipment:** Upon rightful demand of the Lessor, as specified herein, for the Equipment listed in any attached Appendix, the Lessee shall use its best efforts to immediately return upon demand, but in no event later than 45 days from such demand, deliver possession of the Equipment to the Lessor in good operating condition, in compliance with the Lessee's maintenance policies and procedures, normal wear and tear excepted. In such event, the Lessee will, at its own expense, deliver the Equipment to the Lessor at a location designated by the Lessor. Such location, however, shall not be more than one hundred (100) miles from the Lessee's business location. The Lessee will not be responsible for any shipment charges beyond the one hundred (100) mile limit.
- 6.8 **Quiet Enjoyment:** Provided that the Lessee has duly performed its obligations under this Agreement, the Lessee shall be entitled to possess and use the Equipment during the term of this Agreement without interruption by the Lessor. Any Equipment acquired under terms of this Agreement may be operated at any time at the convenience of the Lessee (exclusive of time required for preventive maintenance, remedial maintenance, and/or approved engineering changes). There shall be no restrictions as to the consecutive hours, length of personnel shifts, etc., unless such restrictions are specifically incorporated in an Appendix. The Lessee may make Equipment available to any other users under conditions where such use is supervised by the Lessee and such Equipment is used for governmental purposes.

ARTICLE 7. TERMINATION

- 7.1 **Termination:** The Lessor and the Lessee agree that this Agreement shall remain in full force and effect for the periods set forth in each Appendix.
- 7.2 **Pre-payment:** The Lessee shall have the right, exercisable as of any date following the Vendor Payment Date, to prepay at the following Pre-payment prices, expressed as a percentage of the principal amount outstanding, plus accrued interest to the Pre-payment date:

Pre-payment Period (both months inclusive)	Pre-payment Prices (Percentage of Principal Amount Outstanding)
1 to 6 months	103%
7 to 12 months	102%
13 to 18 months	101%
over 18 months	100%

The Lessee's right hereunder shall be exercised by:

- a) the Lessee advising the Lessor, in writing, in advance of Pre-payment, of its intention to prepay its obligations hereunder and the effective date of that payment ("Pre-payment Date"); and
- b) the Lessee paying the Lessor the outstanding principal balance or the Pre-payment price if applicable as of the Pre-payment Date together with interest from the most recent Payment Date up to and including the Pre-payment Date.

Upon Pre-payment, the Lessee will pay any sums in arrears.

The Lessee may not exercise its option to prepay an amount less than required for all Equipment and Financed Items under an Appendix without the written consent of the Lessor.

- 7.3 **Lessee's Rights on Pre-payment or Payment in Full:** Except as otherwise provided in Section 6.1 hereof, upon (i) the Lessee's exercise of the right of Pre-payment in accordance with the preceding subsection, or (ii) the Lessee's having satisfied all of its monetary and other obligations hereunder, the Lessor shall deliver to the Lessee all documents necessary to confirm, legal and beneficial title, and possession free of all liens and encumbrances created by, through, or under Lessor, to the Lessee and to evidence the termination of the Lessor's interest therein. At no time does the Lessor makes any warranties or representations of any type as to the Equipment.

ARTICLE 8. ASSIGNMENT BY LESSOR

- 8.1 **Right of Assignment:** This Agreement shall be binding upon and inure to the benefit of the Lessor and the Lessee. **With the prior written consent of the Lessee,** not to be unreasonably withheld, the Lessor may assign its rights, duties and obligations under this Agreement to a qualified third party. This Agreement, the Lessor's rights hereunder, or the obligations hereby described are not assignable by

the Lessor except as provided in Section 8.2, or transferable except by written mutual agreement of the parties hereto.

- 8.2 **Assignment by Lessor:** The Lessor or any subsequent assignee shall not sell certificates of participation or other publicly offered securities based on Lease Payments by the Lessee. However, for the purpose of providing funds for financing the purchase of the Equipment or Financed Item, or for any other purpose, and notwithstanding any provision herein to the contrary, the Lessee agrees (i) that the Lessor, without notice to or consent of the Lessee, may assign, sell, transfer or encumber all or any part of its rights under this Agreement, the Equipment and the Lease Payments hereunder, and (ii) in the event of any such assignment of Lease Payments hereunder whereby the Lessee shall unconditionally pay directly to any such assignee all Lease Payments and other sums due or to become due under this Agreement, Lessor shall provide prior written notice to Lessee. THE RIGHTS OF ANY SUCH ASSIGNEE SHALL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SET OFF WHICH LESSEE MAY HAVE AGAINST THE LESSOR, PROVIDED THE LESSEE SHALL NOT BE PRECLUDED FROM ASSERTING AGAINST ANY ASSIGNEE ANY CLAIM IT MAY HAVE AS A RESULT OF ASSIGNEE'S BREACH OF ANY OF THE OBLIGATIONS OF THE LESSOR HEREUNDER OCCURRING AFTER ANY SUCH ASSIGNMENT. Notwithstanding any of the foregoing, any such assignment (A) shall be subject to the Lessee's right to possess and use the Equipment and the Financed Item so long as the Lessee is not in default under this Agreement, and (B) shall not release any of the Lessor's obligations hereunder or any claim which the Lessee has against the Lessor.

ARTICLE 9. WARRANTIES AND REPRESENTATIONS

- 9.1 **Warranties and Representations of the Lessee:** The Lessee represents and warrants to the Lessor and, so long as this Agreement is in effect or any part of the Lessee's obligations to the Lessor remain unfulfilled, shall continue to warrant at all times, that:
- a) The Lessee is duly organized and validly existing and has the power and authority to enter into the Transaction Documents to which it is a party and to carry out the terms thereof.
 - b) This Agreement and all other Transaction Documents and the performance of the Lessee's obligations thereunder have been duly and validly authorized and approved under all laws and regulations and procedures applicable to the Lessee, the consent of all necessary persons or bodies has been obtained and all of the Transaction Documents executed by the Lessee have been duly and validly executed and delivered by authorized City Representatives and constitute absolute and unconditional legal, valid and binding obligations of

the Lessee enforceable against the Lessee in accordance with their respective terms.

- c) The leasing of the Equipment and the financing of the Financed Items will serve a function which presently is, and is anticipated to continue to be, essential to the proper, efficient and economic operation of the Lessee.
- d) During the term of this Agreement, the Equipment and the Financed Items will at all times be used by the Lessee and its agents, and will not be used by a nongovernmental person or entity other than the general public on an equal basis.
- e) There is no litigation or proceeding pending or threatened against the Lessee or any other person affecting the right of the Lessee to execute this Agreement or the ability of the Lessee to make the Lease Payments required hereunder or to otherwise comply with the obligations contained herein.

9.2 **Warranties and Representations of the Lessor:** The Lessor represents and warrants to the Lessee and, so long as this Agreement is in effect or any part of the Lessor's obligations to the Lessee remain unfulfilled, shall continue to warrant at all times that:

- a) The Lessor is a corporation or other entity in good standing under the laws of the State of Delaware and has the power and authority to enter into the Transaction Documents to which it is a party and to carry out the terms thereof.
- b) The Transaction Documents executed by the Lessor have been duly authorized, approved, executed and delivered by its authorized representatives and constitute legal, valid and binding obligations of the Lessor enforceable against the Lessor in accordance with their respective terms.
- c) The Lessor shall not pledge or assign the revenues or any of its other rights under this Agreement except for any assignment pursuant to this Agreement as stated under Section 8.2; and the Lessor shall not mortgage or otherwise encumber the Equipment.
- d) To the knowledge of the Lessor, there is no litigation or proceeding pending or threatened against the Lessor or any other person affecting the right of the Lessor to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither the execution and delivery of this Agreement by the Lessor, nor compliance by the Lessor with its obligations under this Agreement, require the approval of any regulatory body, any parent company, or any other entity, from which approval has not yet been obtained.

ARTICLE 10. GENERAL

- 10.1 **Waiver:** No delay or omission by the Lessor in exercising any right in any of the Transaction Documents shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the Lessor from the exercise of any right or remedy. The Lessor may itself cure any Event of Default of Lessee without waiving the Event of Default and such cure shall not constitute a waiver of any prior or subsequent Event of Default of Lessee.
- 10.2 **Heading:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of this Agreement.
- 10.3 **Severability:** In the event any portion of this Agreement shall be finally determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be stricken and this Agreement, as modified, shall continue in full force and effect.
- 10.4 **Governing Laws:** This Agreement shall be construed in accordance with and governed by the laws of the State of California.
- 10.5 **Implementation:** This Agreement shall be implemented by its execution or execution of Appendices hereto. Each Appendix incorporates all terms and conditions of the Agreement. For purposes of construing a transaction an integrated contract and for the purposes of the provisions of Article 8 hereof, the following shall be considered a single transaction or legal binding agreement:
- a) The Agreement, which provides basic terms and conditions.
 - b) An executed Appendix, which provides for the description of the Equipment or Financed Item to be purchased, the payments from the Lessee to the Lessor for the purchase of such equipment, software license fees, consulting fees, and related expenses , and the Pre-payment amounts.
- 10.6 **Amendment:** Neither this Agreement nor any of the Transaction Documents may be amended unless the same be in writing and signed by the parties hereto.
- 10.7 **Contractual Records:** All contractual books, records, and other documents related to matters under this Agreement shall be made available by the Lessor to the Lessee and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

- 10.8 **Disputes:** Any dispute, claim, or cause of action filed by the Lessor (or any party making such claim on behalf of or under the rights of the Lessor, its agents or any subcontractor) shall be governed by the laws of the State of California, as amended, and any period of limitation set forth therein.
- 10.9 **Entire Agreement:** This Agreement, the Appendices, the Attachments, and Exhibits as may be hereafter executed, constitute the entire agreement between the parties hereto. All prior negotiations, representations and additional or inconsistent oral or written statements are superseded, null and void.
- 10.10 **Notices:** All notices, instructions, or consents which should or may be given hereunder shall be deemed given when sent by certified or registered mail addressed to the respective party at its address set forth below and received by such party. The respective addresses for the parties are as follows:

Lessee: City of San Diego
202 "C" Street, Mail Station 7B
San Diego, CA 92101

Lessor: IBM Credit LLC
Attn: Dwight Nunnally (phone 1-404-238-5144)
4111 Northside Parkway
Atlanta, GA 30327

- 10.11 **Indemnification:** The Lessee agrees to defend, indemnify, protect and hold Lessor and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the Lessee and its agents, officers or employees in the use, condition, operation, ownership, selection, delivery, leasing, or return of any Equipment, and all expenses of investigating and defending against same; provided, however, that the Lessee's duty to defend, indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of the Lessor, its agents, officers or employees.

The Lessee hereby expressly waives any claim of sovereign immunity it may have with respect to any action, suit, or other proceeding arising out of or relating to this Agreement, whether in contract or in tort. This waiver is absolute and unconditional, whether or not the Lessee was functioning in a governmental or proprietary capacity and whether or not the Lessee is covered by insurance for tort.

- 10.12 **Transaction Documents:** Delivery of an executed copy of any of these documents by facsimile or other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. Both parties acknowledge that they may maintain a copy of these documents in electronic form and agrees that copy

reproduced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

ARTICLE 11. DISCLAIMER OF WARRANTIES

- 11.1 THE LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, RELATING TO THE EQUIPMENT; AND THE LESSOR HAS EXPRESSLY MADE NO WARRANTY AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT.
- 11.2 The Lessor shall not be liable to the Lessee or any other person for any liability, loss or damage caused or alleged to be caused, directly or indirectly, by the Equipment or by any inadequacies thereof or deficiency or defect therein, by any incident whatsoever in connection therewith or in any way related to or arising out of this Agreement. The Lessee shall be entitled to the benefit of any applicable manufacturer's warranties. The Lessor agrees to execute and deliver such further instruments as may be necessary, in the reasonable opinion of the Lessee, to enable it to enforce such warranties and obtain the warranties and service furnished for the Equipment by the manufacturer.

ARTICLE 12. EQUAL EMPLOYMENT OPPORTUNITY

- 12.1 The Lessor hereby certifies that we comply with and maintain programs which conform to the requirements outlined in the following provisions:

Affirmative Action Compliance	48 C.F.R. 52.222-25	41 C.F.R. 60-2
Equal Opportunity (Apr 2002)	48 C.F.R. 52-222-26	41 C.F.R. 60-1.4
Certification of Nonsegregated Facilities (Apr 1984) (if in excess of \$10,000)	48 C.F.R. 52.222.21	41 C.F.R. 60-1.8
Utilization of Labor Surplus Area Concerns (Apr 1984) (if in excess of \$10,000)	48 C.F.R. 52-220-3	41 C.F.R. Section 1-1.805-3(a)
Labor Surplus Area Subcontracting Program (Apr 1984) (if in excess of \$500,000)	48 C.F.R. 52-222-4	41 C.F.R. Section 1.1.805-3(b)
Affirmative Action for Handicapped Workers (Jun 1998) (if in excess of \$10,000)	48 C.F.R. 52-222-36	41 C.F.R. 60-741.4
Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001) (if in excess of \$25,000)	48 C.F.R. 52-222.35	41 C.F.R. 60-250.4
Utilization of Small Business Concerns	48 C.F.R. 52.219-8	41 C.F.R. Section 1-

& Small Disadvantaged Bus. Concerns (Feb 1990) (in excess of \$10,000)		1.710-3(a)
Small Business and Small Disadvantaged Business Subcontracting Plan (Jan 1991) (in excess of \$500,000)	48 C.F.R. 52.219-9	41 C.F.R. Section 1- 1.710-3(b)
Utilization of Women-Owned Small Business (Aug 1986) (if in excess of \$25,000)	48 C.F.R. 52.219-13	41 C.F.R. Section 1- 1.340-1
Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Jan 1988) (if in excess of \$10,000)	48 C.F.R. 52.222-37	41 C.F.R. 61-250
Certification Regarding a Drug-Free Workplace (Mar 1989)	48 C.F.R. 52.223-5	
Drug-Free Workplace (Mar 1989)	48 C.F.R. 52-223-6	
Previous Contracts & Compliance Reports (Feb 1999)	48 C.F.R. 52.222-22	

The Lessor will comply with Title VII of the Civil Rights of 1964, as amended, and if applicable, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. The Lessor will not discriminate against any employee or applicant for employment on any basis prohibited by law.

The Lessor submitted a current Work Force Report. The Lessor acknowledges and agrees that it is aware of, the City's Council Ordinance No. 18173, Section 22.2701 through 22.2708, EQUAL OPPORTUNITY OUTREACH PROGRAM. Notwithstanding anything to the contrary herein or therein, the Lessee acknowledges and agrees that the Lessor is exempt from reporting requirements contained therein.

ARTICLE 13. DRUG-FREE WORKPLACE

- 13.1 The Lessor is in compliance with the Drug-Free Workplace Act of 1988 (see Attachment D).

ARTICLE 14. LOCAL BUSINESS AND EMPLOYMENT

- 14.1 The Lessor acknowledges that the Lessee seeks to promote employment and business opportunities for local residents and firms on all Lessee contracts. The Lessor will, to the extent commercially feasible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. The Lessor agrees to hire qualified local residents and firms whenever feasible.
- 14.2 The Lessor understands that failure to comply with the above requirements, and/or submitting false information in response to these requirements, may result in

termination of this Agreement, and/or suspension from participating in future City contracts as a Lessor for a period of not less than one (1) year. For additional or subsequent violation, the period of suspension may be extended for a period of up to three (3) years. Failure to satisfy penalties imposed pursuant to this section shall prohibit the Lessor from participating in future City contracts until all penalties have been satisfied.

ARTICLE 15. SAN DIEGO SPECIFIC COMMUNITY
REINVESTMENT PROGRAMS

- 15.1 It is the policy of the City to encourage financial institutions doing business within its boundaries to develop and implement San Diego-specific community reinvestment programs consistent with the spirit of the Community Reinvestment Act of 1977 ("CRA"), programs that promote the economic stability and growth of the City of San Diego and meet the financial needs of all of its neighborhoods and residents.

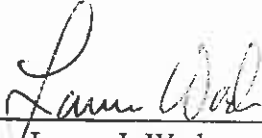
Firms projecting total annual compensation in excess of \$100,000 and whose total assets exceed \$250 million, will be responsible for providing the City with information regarding any San Diego-specific reinvestment program currently in place, as well as information regarding any reinvestment activities undertaken by the firm in San Diego consistent with the spirit of the CRA. The City will make this information available to the San Diego City-County Reinvestment Task Force for compilation and analysis. See attached copy of Council Policy 900-09.


The Lessor is a wholly-owned, captive finance subsidiary of IBM providing financing to commercial, and state and local clients. The Lessor does not engage in retail banking activities and has determined that it does not qualify as a financial institution for purposes of the San Diego Community Reinvestment Act.

ARTICLE 16. SIGNATURES

16.1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF SAN DIEGO

By: 
Lance J. Wade

By: 
Jay M. Goldstone

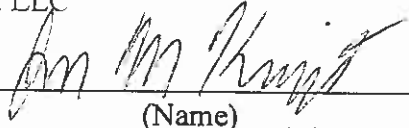
Director, Purchasing & Contracting
(Title)

Chief Financial Officer
(Title)

Date: 6/19/07

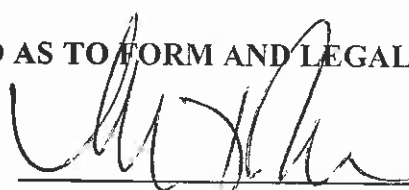
Date: 6-7-07

LESSOR
IBM Credit LLC

By: 
(Name)
Jon m Knight
Vice President
(Title)

Date: 5/30/07

APPROVED AS TO FORM AND LEGALITY this 21st day of June 2007.

By: 
Mark D. Blake

Chief Deputy City Attorney

APPENDIX NO.
SCHEDULE 1
ACCEPTANCE CERTIFICATE

[Contract No. SD-_____]

The City of San Diego hereby accepts for purposes of the Master Lease Agreement dated as of _____, 20__ (the "Agreement") by and between _____ and the City of San Diego, the Equipment and/or Financed Item described below, evidencing acceptance pursuant to the Agreement. Pursuant to the Agreement, the undersigned City Representative certifies that the Equipment and/or Financed Item described below (i) has been delivered to the City and installed at _____; (ii) has been fully and finally accepted by the City; (iii) has been found by the City to be in good working order and (iv) has insurance coverage required by Section 5.6 of the Agreement. (All capitalized terms in this Appendix have the meanings set forth in the Agreement.)

<u>Quantity</u>	<u>Manufacturer/ Seller</u>	<u>Description</u>	<u>Identification or Serial No.</u>	<u>Cost</u>
-----------------	---------------------------------	--------------------	---	-------------

CITY OF SAN DIEGO

By: _____
(Name)

(Title)

Dated: _____

APPENDIX NO.
SCHEDULE 2
DISBURSEMENT AUTHORIZATION CERTIFICATE

[Contract No. SD-_____]

In accordance with the terms of the Agreement dated as of _____, 20__ by and between _____ and the City of San Diego, the City hereby submits this Disbursement Authorization Certificate to request a disbursement under the Agreement for certain Equipment and/or Financed Item shown on Schedule 1 of this Appendix. The City represents and warrants for all purposes of this Certificate that:

1. The amount of the disbursement pursuant to this Certificate is \$_____ (the "Purchase Amount" less any portion cash funded by the City). Such disbursement is to be made on or before _____ (the "Vendor Payment Date "). The sales tax will be paid by the City directly to the Vendor, at the prevailing rate, for all equipment, software license fees, consulting fees, and related expenses acquired from California Vendors. The sales tax will be paid by the City directly to the State of California, at the prevailing rate, for new equipment acquired from out-of-state Vendors.

2. Payment of the disbursement requested hereby is to be made to _____ (the City or "Vendor") at the following address, pursuant to the attached Vendor invoice:

_____ (tel. no.)

_____ (FAX)

3. Attached hereto is a copy of an executed UCC-1 form and Exhibit or other appropriate financing statement, in proper form for filing, evidencing the Lessor's security interest in the Equipment with respect to the disbursement under this Certificate.

CITY OF SAN DIEGO

By: _____
(Name)

(Title)

Dated: _____

Attachment A

EXHIBIT

All goods, equipment, general intangibles and other property described in Attachment A, Schedule 1 attached hereto and made a part hereof, and subject to the Master Lease Agreement Dated _____, 20__ between Debtor and Secured Party, wherever located, together with (i) all substitutions for, and products and proceeds of any of the foregoing property, (ii) all accessions thereto, (iii) all accessories, attachments, parts, and repairs now or hereafter attached or affixed to any of the foregoing property, and (iv) if any escrow account is implemented with respect to such Master Lease Agreement, all securities, funds, moneys, deposits and other property at any time held in or subject to such escrow account.

Attachment A

APPENDIX NO.
SCHEDULE 2 CONTINUED
DISBURSEMENT AUTHORIZATION CERTIFICATE

[Contract No. SD-_____]

- 4. Lessor hereby certifies that payment in the amount of _____ was made to _____ the " Vendor" (or the City of San Diego in the case of reimbursement), on _____. Payments shall be made semi-annually to the Lessor commencing on _____ pursuant to Schedule 4 of this Appendix. Payments shall be remitted to the following address:

LESSOR

By: _____
(Signature)

(Name - Type or Print)

(Title)

Dated: _____

APPENDIX NO.
SCHEDULE 3
CITY REPRESENTATION CERTIFICATE

[Resolution or Ordinance No. _____]

The City of San Diego (the "City") represents and warrants to the Lessor that:

1. The City is a duly organized and validly existing political subdivision of the State of California.
2. The Equipment and Financed Item is of a size, design, capacity and manufacture selected by the City and the City has selected the Equipment and Financed Item of a design, type and size for the purposes for which the Equipment and Financed Item is intended.
3. The City's participation in the Agreement and the performance of the City's obligations thereunder have been duly authorized, approved and executed under all laws, rules, regulations, and procedures applicable to the City.
4. The City has obtained the consent of all necessary bodies and the City has the power to enter into and carry out its obligations under the Agreement.
5. The City has complied with all statutory requirements pertaining to the acquisition of the Equipment or Financed item.
6. Funds have been specifically provided for Lease Payments in the City's current appropriations for the Equipment and Financed Item and said funds are sufficient to make the payments contemplated under the Agreement through the end of the Contract Year.
7. The Equipment is personal property, has a useful life greater than or equal to the term on an Appendix and will be used for essential governmental purposes.
8. For any service financed under the Agreement, Lessee represents and warrants that such service has been incurred by Lessee to customize and implement internal use software and will be capitalized by Lessee for financial accounting purposes. IRS Form 8038-G/GC is not required for a Non-Qualified Lease.

CITY OF SAN DIEGO

By: _____
(Name)

(Title)

Dated: _____

APPENDIX NO.
SCHEDULE 4
PAYMENT SCHEDULE CERTIFICATE

[Contract No. SD-_____]

All terms and conditions of the Master Lease Agreement dated as of _____, 20__ by and between _____, as lessor hereunder ("the Lessor"), and the City of San Diego, California (the "Lessee") as lessee, are hereby incorporated herein by reference as if such were fully set forth herein and Lessee reaffirms all of its representations and warranties contained in the Agreement. Lessee warrants that no Event of Default or any event which, with the passage of time or the giving of notice would constitute a default, has occurred under the Agreement.

Pursuant to the terms of the Agreement, the City requests that the lease purchase of the Equipment and/or Financed Item with respect to this Appendix in the amount of \$_____ be financed over a ___ year period. Based on the Acceptance Date, the Index Rate for this financing is _____% and the Percentage of Index Rate is _____%. Based on the Index Rate, the Lease Rate for this financing is _____%.

The initial payment for this financing is \$_____, and will be due on _____, thereafter, the semi-annual payment will be \$_____. The schedule of lease payments for the Equipment and/or Financed Item with respect to this Appendix is as follows:

[See attached Amortization Schedule provided by Lessor]

CITY OF SAN DIEGO

By: _____
(Name)

(Title)

Dated: _____

CERTIFICATE OF COUNSEL

This office is counsel to the Lessee and in that capacity we have examined Contract No. SD _____ between the City of San Diego and _____.

As a result of our examination of the Agreement and such other examinations as we deemed appropriate, we have advised the Lessee and hereby indicate to _____ that, in our view:

1. The Lessee is a political subdivision of the State of California, duly organized, existing and operating under the Constitution and laws of the State of California [and the City's home rule charter;
2. The Lessee is authorized by the Constitution and the laws of the State of California to enter into the transactions contemplated by the Agreement and to carry out its obligations thereunder;
3. The Lessee's participation in the Agreement and the performance of the Lessee's obligations thereunder have been duly authorized, approved and executed under all laws, regulations and procedures applicable to the Lessee;
4. The Agreement and all Appendices thereto have been duly authorized, approved, executed and delivered by and on behalf of the Lessee, and are legal, valid and binding contracts of the Lessee enforceable in accordance with their respective terms, except to the extent limited by state and federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights;
5. No approval, consent, or withholding of objection is required from any governmental authority with respect to the entering into or performance by the Lessee of the Agreement or the transaction contemplated thereby; or if any such approval is required, it has been obtained;
6. The entering into and the performance of the Agreement will not violate any judgment, or order, applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee other than the Equipment subject to the Agreement pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
7. This Certificate shall not be deemed to confer any authority or obligation upon the Lessee to the Lessor or Lessor's assignees other than exist under the laws of the State of California in the absence of this Certificate; and

8. To the knowledge of the Lessee, there is no litigation or proceeding pending or threatened against the Lessee or any other person affecting the right of the Lessee to execute this Agreement or the ability of the Lessee to make the Lease Payments required hereunder or to otherwise comply with the obligations contained herein.

9. Resolution/Ordinance Number _____ of the governing body of Lessee was duly and validly adopted, modified or supplemented and remains in full force and effect.

CITY OF SAN DIEGO

I hereby approve the form and legality of the foregoing Agreement this ____ day of _____, 20__.

City Attorney

By: _____

PRE-APPROVAL FORM

Date:

Debt Management:

Telephone:

FAX.:

Department:

Contact:

Telephone:

Equipment/Project Costs:

Total Costs:

Financing Term:

Est. Acceptance Date:

Delivery in Installments YES/NO

Amount Financed:

Useful Life:

Est. Financing Date:

Equipment/Project Description:

Manufacturer:

Vendor Name:

Vendor Address:

Vendor Contact Name:

Vendor Phone Number:

General Description:

Bid No./Quantity to be Ordered:

Reference Bid #

Item#

Quantity

Unit Price \$

Ref. Equipment No(s):

Essential Use:

Is this new or replacement equipment
How old is the equipment to be replaced?

Additional _____

Replacement _____

Why is the Equipment needed?

What function does the equipment perform:
(essential use)

What are the estimated cost savings
acquiring this equipment through lease
purchase rather than cash purchase?

The next payment(s) is (are) included in the fiscal year's budget

Lease Provider (Name) agrees to provide financing as noted.

Drug Free Workplace

Drug Free Workplace Act of 1988

Federal and state legislation requires employers to provide a drug-free workplace and notify employees of the following:

- Unlawful manufacture, sale, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the workplace or on IBM premises (including parking lots and recreation areas). Employees who violate such prohibition will be subject to discipline, including dismissal.
- As a condition of employment, you must abide by the anti-drug statement above and notify your manager of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

IBM Substance Abuse Policy and Testing Program

In addition to federal and state law requirements, you should know that IBM is committed to providing its employees with a safe, healthy, and productive work environment. Toward that end, IBM has established a comprehensive policy which expressly prohibits the manufacture, use, dispensation, distribution, sale, or possession of illegal drugs and/or non-medically prescribed controlled substances on IBM premises or any other IBM work environment, including but not limited to any customer site, IBM owned or leased vehicle, or other locations where IBM business is being conducted.

Alcoholic beverages are not permitted on IBM premises unless specifically approved for use at an IBM-sponsored function or event by the human resources manager. Your manager will be happy to discuss the details of this policy with you.

IBM recognizes the health implications of drug/alcohol abuse by its employees and considers these conditions treatable illnesses. If you feel your job performance or personal well-being is being affected by the use of such substances, IBM encourages you to seek help by contacting your manager, the IBM Global Well-being Services department, or, if you are a regular employee, the Employee Assistance Program. Additional information on these subjects can be found at You and IBM (w3.ibm.com/hr); access Your Health, Health Benefits Option-Mental Health Care Program.

Employee Drug Testing

Subject to applicable law, an employee may be tested for drugs and/or alcohol whenever IBM has reasonable suspicion that the employee is under the influence of drugs and/or alcohol in the workplace or has violated the substance abuse policy. Employees have the right to refuse to submit to drug or alcohol testing, however, an employee who does so will be subject to disciplinary action, up to and including dismissal. 'Refusal' shall include a failure to sign the appropriate pretest forms or failure to cooperate with the IBM Global Well-being Services medical professional. Employees have the right to provide an explanation for a positive result on a confirmed test and to request a retest of the original sample at their expense by a Department of Health and Human Services certified laboratory.

Employees with confirmed positive test results will be subject to disciplinary action, up to and including dismissal. IBM may refer an employee for chemical dependency treatment or evaluation, and, where appropriate, may require the employee to undergo drug or alcohol counseling and rehabilitation. IBM will assist the employee in obtaining such treatment through IBM's benefits program or the Employee Assistance Program. IBM may require periodic testing without prior notice during and following the evaluation and treatment period for up to two years.

Drug Free Workplace Act of 1988.lwp. 10/9/2000, 4:57:31 PM
2/1/2006, 4:43:27 PM
Page 1 of 3

Drug Free Workplace

A confirmed positive test result during this period will result in disciplinary action, up to and including dismissal. Any concern regarding IBM's Substance Abuse Policy and Testing program may be brought to the attention of Human Resources or site management.

Right-to-Know

Federal law requires that any employee who works with chemicals, or regularly enters areas where chemicals are present, must have chemical safety training and access to information sheets for all chemicals in the area.

If you are assigned a job working with chemicals - or which requires you to regularly enter an area where chemicals are present - and you have not attended a foundation chemical safety class, see your manager and make sure he/she is aware that you have not been trained before starting to work in the area.

Drug Free Workplace

IBM Substance Abuse Policy and Testing Program

A drug free environment is vital to IBM, the safety of its workplace, the quality of its product, the productivity of its employees, the interest of its customers, and the general public. In order to achieve a drug free environment, IBM has adopted the following substance abuse policy:

The manufacture, use, dispensation, distribution, sale, or possession of illegal drugs and/or non-medically prescribed controlled substances on IBM premises or any other IBM work environment, including but not limited to any customer site, IBM owned or leased vehicle, or other locations where IBM business is being conducted is prohibited. Employees who violate this policy are subject to disciplinary action.

Name: Last _____, First _____ MI _____

Serial Number _____ Date of Hire : _____

I acknowledge that I have read the above drug policy statement and have received a copy of IBM's drug and alcohol testing policy.

Signature _____ Date _____

(Page 3 to be filed in the employee's personnel folder)

FIRST AMENDMENT TO MASTER LEASE AGREEMENT

**CITY OF SAN DIEGO, CALIFORNIA
(AS LESSEE)**

AND

**IBM CREDIT LLC
(AS LESSOR)**

DATED AS OF June 30, 2009

FIRST AMENDMENT TO MASTER LEASE AGREEMENT

This FIRST AMENDMENT TO MASTER LEASE AGREEMENT (this "Amendment") dated and effective as of June 30, 2009, amends and supplements that certain Master Lease Agreement, dated as of June 21, 2007, between IBM Credit LLC as the Lessor thereunder (the "Lessor"), and the City of San Diego, California (the "City") a political subdivision of the State of California (the "State") as the Lessee thereunder ("Original Agreement").

RECITALS

Whereas, the City and Lessor entered into an arrangement for the lease purchase by the City of various Equipment including but not limited to equipment and for software license fees, consulting fees, and related expenses as specified in the Original Agreement with Lessor, and a copy of the Original Agreement is attached hereto as Exhibit A.

Whereas, the City and the Lessor desire modify the Original Agreement to increase the aggregate amount of the financing provided in the Original Agreement from \$29.5 Million to an amount not to exceed \$37 Million, to extend the Acquisition Period and to revise certain definitions as set forth in this Amendment.

Whereas, Section 10.6 of the Original Agreement provides the procedures for the amendment of the Original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. The term "Acquisition Period" defined at Section 1.3 of the Original Agreement is hereby amended to read in its entirety as follows:

- 1.3 **Acquisition Period:** means the period commencing on execution of the Agreement and ending on the earlier of: (i) June 30, 2010, or (ii) the date upon which an aggregate amount of \$37 million of Equipment and/or Financed Items has been funded by the Lessor under either of the five year and seven-year lease terms. The City reserves the right to request an increase to the limits of the amounts financed herein after exhausting the initial limits set forth in this Amendment and a change to the terms thereof upon the mutual agreement and pre-approval of the Lessor.

Section 2. The term "Lease Rate" defined at Section 1.15 of the Original Agreement is hereby amended to read in its entirety as follows:

- 1.15 **Lease Rate:** means a fixed rate of interest calculated by: (i) multiplying the applicable Percentage of the Index Rate (or alternative method as specified herein) by the applicable Index plus (ii) a spread of 3.20% for a seven year term

and a spread of 2.59% for a five year term and effective for any leases commencing on July 1, 2009 (respectively the "Applicable Spread"). Upon Lessee's written request, Lessor will review and consider reductions to the Applicable Spread, if there is an improvement to the City's General Obligation Bond rating of A2, as published by Moody's Investor Service ("Obligation Rating"). Specifically, if such General Obligation Bond Rating improves from A2 to Aa3 or better, Lessor may, at its sole discretion, reduce the Applicable Spread for future funding by 0.27% for the five-year or 0.35% for the seven-year lease term.

If the City finances IBM Equipment or Financed Item(s) within the ERP System, the applicable Lease Rate for each of the five- year and seven-year lease terms will be lower. Lease Rates shall be contingent on the CDS Index Value (as defined below) as of the applicable Appendix Acceptance Date not being 50 basis points more or less than the Initial CDS Index Value (as defined below). Initial CDS Index Value: 198.070. "CDS Index Value" means, as of the date of determination, the average of the CDS Index mid-market closing quotes provided by CMA Vision under Bloomberg data provider code "CMAN" for each trading day during the week preceding such date of determination that such quote is available.

"CDS Index" means the Bloomberg CDX North America Investment Grade Index, Bloomberg ID "IBOXUMAE". Indicative values may be available at CDX index provider Markit's website at <http://www.markit.com/information/products/category/indices/cdx.html> under index CDX.NA.IG.

Section 3. The term "Index" defined at Section 1.20 of the Original Agreement is hereby amended to read in its entirety as follows:

1.20 **Index:** means the Interest Rate swap rate for 2, 3, 4, or 5-year period, as defined in section 1.21 as published at <http://www.federalreserve.gov/Releases/H15/>

Section 4. The term "Index Rate" defined at Section 1.21 of the Original Agreement is hereby amended to read in its entirety as follows:

1.21 **Index Rate:** means for leases of a seven-year term, average of the 3-year and 4-year Index Rate. For leases of a five year term Index Rate means the average of a 2-year and 3-year Index Rate.

Section 5. The term "Percentage of the Index Rate" defined at Section 1.32 of the Original Agreement is hereby amended to read in its entirety as follows:

1.32 **Percentage of the Index Rate:** means the percentage proposed by the Lessor for the lease term(s) awarded to the Lessor which is to be multiplied by the Index Rate in the calculation of the Lease Rate in an Appendix, for all lease purchase appendices during the term of this Agreement. The Percentage of the Index Rate for leases of a five year and seven-year term is 100% of the Index Rate.

Section 6 follows: Section 3.2 of the Original Agreement is hereby amended to read in its entirety as follows:

The payment term of each Appendix entered into pursuant to the Agreement shall be for a period of five (5) years or seven (7) years, subject only to a request by the Lessee at the time the equipment is required to be funded by the City and the Lessor hereby agrees to accept such determination, and further subject to earlier termination as provided herein.

Section 7. as follows: Section 4.1.1 of the Original Agreement is hereby amended to read in its entirety as follows:

4.1.1 The Lease Rate will be established on the Acceptance Date through execution of an Appendix by: (i) multiplying the Percentage of the Index Rate by (ii) the Index Rate as defined in Section 1.21 herein and as listed for the week ending two (2) weeks prior to the Acceptance Date for the lease term plus (iii) the Applicable Spread. The CDS Index Value will be determined by using the rate for the Friday closest to the day that is over two (2) weeks prior to the Acceptance Date.

Section 8. All provisions in the Original Agreement, except as modified in this Amendment, shall remain in full force and effect and are reaffirmed. Other than as stated in this Amendment, this Amendment shall not operate as a waiver of any condition or obligation imposed on the parties under the Original Agreement.

Section 9. In the event of any conflict, inconsistency or incongruity between this Amendment and the Original Agreement, this Amendment shall govern and control.

Section 10. All capitalized terms not expressly defined herein shall have the meanings set forth in the Original Agreement.

Section 11. The City and the Lessor hereby represent and warrant that the individual signing this Amendment on its behalf has the necessary authority and legal capacity to execute this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**CITY OF SAN DIEGO,
Purchasing & Contracting**

CITY OF SAN DIEGO, LESSEE

By: Hildred Pepper Jr.
Hildred Pepper Jr.
Purchasing & Contracting
Director

By: Maryhewoi
(Name)
Chief Financial Officer
(Title)

Date: 6/29/09

Date: 6/26/09

IBM CREDIT LLC, LESSOR

By: Arif Baloch
(Name)
FINANCIAL Sales Executive
(Title)

Date: JUNE 24, 2009

APPROVED AS TO FORM AND LEGALITY this 20th day of June 2009.

By: Brant Will
(Name)
Brant Will
Deputy City Attorney

SECOND AMENDMENT TO MASTER LEASE AGREEMENT

**CITY OF SAN DIEGO, CALIFORNIA
(AS LESSEE)**

AND

**IBM CREDIT LLC
(AS LESSOR)**

DATED AS OF October 15, 2012

SECOND AMENDMENT TO MASTER LEASE AGREEMENT

This SECOND AMENDMENT TO MASTER LEASE AGREEMENT (this "Amendment") dated and effective as of _____, 2012, amends and supplements that certain First Amendment to Master Lease Agreement, dated as of June 30, 2009 ("First Amendment"), which amended and supplemented that certain Master Lease Agreement, dated as of June 21, 2007 between IBM Credit LLC as the Lessor thereunder (the "Lessor"), and the City of San Diego, California (the "City") a political subdivision of the State of California (the "State") as the Lessee thereunder (together the "Amended Agreement").

RECITALS

Whereas, the City and Lessor entered into an arrangement for the lease purchase by the City of various Equipment including but not limited to equipment and for software license fees, consulting fees, and related expenses as specified in the Amended Agreement and with Lessor, and a copy of the Original Agreement and First Amendment is attached hereto as Exhibit A.

Whereas, the City and the Lessor desire to modify the Amended Agreement to increase the aggregate amount of the financing provided in the Amended Agreement from \$37,000,000 to an amount not to exceed \$39,600,000 and to extend the Acquisition Period and to revise certain definitions as set forth in this Amendment.

Whereas, Section 10.6 of the Amended Agreement provides the procedures for the amendment of the Amended Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. The term "Acquisition Period" defined at Section 1.3 of the Amended Agreement is hereby amended to read in its entirety as follows:

- 1.3 **Acquisition Period:** means the period commencing on execution of the Amendment and ending on the earlier of: (i) May 31, 2013, or (ii) the date upon which an aggregate amount of \$39,600,000 of Equipment and/or Financed Items has been funded by the Lessor. The City reserves the right to request an increase to the limits of the amounts financed herein after exhausting the initial limits set forth in this Amendment and a change to the terms thereof upon the mutual agreement and pre-approval of the Lessor.

Section 2. The term "Contract Year" defined at Section 1.12 of the Amended Agreement is hereby amended to read in its entirety as follows:

- 1.12 **Contract Year:** means individually each year of the Contract Term. The initial Contract Year shall begin on the date the contract is executed, and end on

June 30, 2013, and thereafter each Contract Year shall begin July 1 and end on the following June 30.

Section 3. The term "Lease Rate" defined at Section 1.15 of the Amended Agreement is hereby amended to read in its entirety as follows:

1.15 **Lease Rate:** means, commencing on execution of this Amendment a fixed rate of interest calculated by: (i) multiplying the applicable Percentage of the Index Rate (or alternative method as specified herein) by the applicable Index plus (ii), a spread of 2.24% for a four (4) year term (respectively the "Applicable Spread").

The Lease Rate for a Non-Qualified Lease is a fixed rate of interest calculated by: (i) multiplying the applicable Percentage of the Index Rate (or alternative method as specified herein) by the applicable Index plus (ii) a spread of 3.96% for a four (4) year term (the "Applicable Spread").

1.20 **Index:** means the applicable Interest Rate swap(s) for the week ending prior as defined in section 1.21 and as published at:
<http://www.federalreserve.gov/releases/H15/>

Section 4. The term "Index Rate" defined at Section 1.21 of the Amended Agreement is hereby amended to read in its entirety as follows:

(i) 1.21 **Index Rate:** means a four-year financing term Index Rate using the 2-year swap Index Rate for the week ending two (2) weeks prior to the Acceptance Date for the lease term as published at:
<http://www.federalreserve.gov/releases/H15/>

Section 5. The term "Percentage of the Index Rate" defined at Section 1.32 of the Amended Agreement is hereby amended to read in its entirety as follows:

1.32 **Percentage of the Index Rate:** means the percentage proposed by the Lessor for the lease term(s) awarded to the Lessor which is to be multiplied by the Index Rate in the calculation of the Lease Rate in an Appendix, for all lease purchase appendices during the term of this Agreement. The Percentage of the Index Rate is 100% of the Index Rate.

Section 6. Section 3.2 of the Amended Agreement is hereby amended to read in its entirety as follows:

The payment term of each Appendix entered into pursuant to this Amendment shall be for a period of four (4) years, subject only to a request by the Lessee at the time the equipment is required to be funded by the City and the Lessor hereby agrees to accept such determination, and further subject to earlier termination as provided herein.

Section 7.

- 4.1.1 The Lease Rate will be established on the Acceptance Date through execution of an Appendix by:
- (i) multiplying the Percentage of the Index Rate by
 - (ii) the Index Rate as defined in Section 1.21 herein and as listed for the week ending two (2) weeks prior to the Acceptance Date for the lease term plus the Applicable Spread.

Section 8. All provisions in the Amended Agreement, except as modified in this Amendment, shall remain in full force and effect and are reaffirmed. Other than as stated in this Amendment, this Amendment shall not operate as a waiver of any condition or obligation imposed on the parties under the Amended Agreement.

Section 9. In the event of any conflict, inconsistency or incongruity between this Amendment and the Amended Agreement, this Amendment shall govern and control.

Section 10. All capitalized terms not expressly defined herein shall have the meanings set forth in the Amended Agreement.

Section 11. The City and the Lessor hereby represent and warrant that the individual signing this Amendment on its behalf has the necessary authority and legal capacity to execute this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

CITY OF SAN DIEGO, LESSEE

By: _____
(Name)

Chief Operating Officer
(Title)

Date: _____

IBM CREDIT LLC, LESSOR

By: Anthony Galante
(Name)

FINANCIAL SALES EXECUTIVE
(Title)

Date: 10/15/12

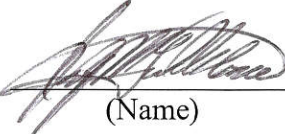
APPROVED AS TO FORM AND LEGALITY this _____ day of _____ 2012.

By: _____
(Name)

Deputy City Attorney

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

CITY OF SAN DIEGO, LESSEE

By: 
(Name)

Chief Operating Officer
(Title)

Date: 10/15/12

IBM CREDIT LLC, LESSOR

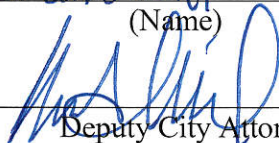
By: _____
(Name)

(Title)

Date: _____

APPROVED AS TO FORM AND LEGALITY this 15 day of October 2012.

By: Brant Will
(Name)


Deputy City Attorney