

RESOLUTION NO. 23-110

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Lease Agreement With Shamrock Office Solutions For The Lease Of Twenty-Two Multi-Function Printing Devices, Including All Service And Support For Sixty Months, In The Amount Of Three Thousand Seven Hundred Sixty-Five Dollars (\$3,765.00) Per Month Or Two Hundred Twenty-Five Thousand Nine Hundred Dollars (\$225,900.00) Over The Term Of The Lease; And To Sign All Relevant And Necessary Documents Pertaining To Execution Of The Lease

WHEREAS, the City's existing multi-function printing device fleet is at end of life and in need of replacement; and

WHEREAS, the City desires to lease new, reliable, equipment from a suitable vendor; and

WHEREAS, the City reviewed hardware from several manufacturers and solicited proposals from multiple vendors; and

WHEREAS, the City determined that the proposal from Shamrock Office Solutions was the best fit for the City; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville authorizes the City Manager to enter into a sixty month lease agreement with Shamrock Office Solutions for the lease of twenty-two printing devices in the amount of \$3,765.00 per month, or \$225,900.00 over the term of the lease, and sign all relevant and necessary documents pertaining to the lease.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 5, 2023, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Welch and Council Members Kaur, Mourra and Priforce
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

John Bauters

C7389E49E2C9458...

MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

April Richardson

9AF9F67CE0264D6...

CITY CLERK

DocuSigned by:

John Kennedy

2C934D02DB35407...

CITY ATTORNEY

RICOH

APPLICATION NO.

AGREEMENT NO.

provided
by:**usbank**
EQUIPMENT FINANCE**Dealer Value Lease Agreement****Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092****Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448**The words "Lessee," "you" and "your" refer to **Customer**. The words "Lessor," "we," "us" and "our" refer to **U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance")**.**CUSTOMER INFORMATION**

FULL LEGAL NAME

City of Emeryville

STREET ADDRESS

1333 Park Avenue

CITY

Emeryville

STATE

CA

ZIP

94608

PHONE

(510) 450-7803

FAX

BILLING NAME (IF DIFFERENT FROM ABOVE)

BILLING STREET ADDRESS

CITY

STATE

ZIP

E-MAIL

EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)

SUPPLIER INFORMATION

FULL LEGAL NAME

Shamrock Office Solutions, Inc.

STREET ADDRESS

6908 Sierra Ct ste A

CITY

Dublin

STATE

CA

ZIP

94568

PHONE

925.875.0480

FAX

925.875.0485

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES

Ricoh IM C3510

SERIAL NO.

STARTING METER

0

NOT FINANCED
UNDER THIS
AGREEMENT☐

Ricoh IM C3510

0

☐

Ricoh IM C3510

0

☐

Ricoh IM C3010

0

☐

Ricoh IM C3010

0

☐

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

☒ See attached Schedule A☒ See attached Billing Schedule**TERM AND PAYMENT INFORMATION**

60

Payments* of \$ 3,765.00

If you are exempt from sales tax, attach your certificate.

*plus applicable taxes

The payment ("Payment") period is monthly unless otherwise indicated.

Payment includes

See Group Pool
Billing

B&W pages per month

Overages billed quarterly at \$

See Group
Pool Billing

per B&W page*

Payment includes

See Group Pool
Billing

Color pages per month

Overages billed quarterly at \$

See Group
Pool Billing

per Color page*

END OF TERM OPTIONS

You may choose one of the following options, which you may exercise at the end of the term, provided that no event of default under this Agreement has occurred and is continuing. If no box is checked and initialed, Fair Market Value will be your end of term option. Fair Market Value means the value of the Equipment in continued use.

☒ Purchase all of the Equipment for its Fair Market Value, renew this Agreement, or return the Equipment.☐ Purchase all of the Equipment for \$1.00. At the end of the term, title to the Equipment will automatically transfer to you, AS IS, WHERE IS, with no warranties of any kind.

____ Customer's Initials

____ Customer's Initials

Upon acceptance of the Equipment, THIS AGREEMENT IS NONCANCELABLE, IRREVOCABLE AND CANNOT BE TERMINATED.**LESSOR ACCEPTANCE**

U.S. Bank Equipment Finance

LESSOR

SIGNATURE

TITLE

DATED

CUSTOMER ACCEPTANCE

BY SIGNING BELOW OR AUTHENTICATING AN ELECTRONIC RECORD HEREOF, YOU CERTIFY THAT YOU HAVE REVIEWED AND DO AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT ON THIS PAGE AND ON PAGE 2 ATTACHED HERETO.

City of Emeryville

X

SIGNATURE

TITLE

Approved As To Form:

DocuSigned by:

John Kennedy

2C934D02DB55467

City Attorney

FEDERAL TAX I.D. #

PRINT NAME

DELIVERY & ACCEPTANCE CERTIFICATE

You certify and acknowledge that all of the Equipment listed above: 1) has been received, installed and inspected; and 2) is fully operational and unconditionally accepted. Upon you signing below, your promises in this Agreement will be irrevocable and unconditional in all respects. You understand and agree that we have paid for the purchase of the Equipment from Supplier and you may contact Supplier for any warranty rights, which we transfer to you for the term of this Agreement (or until you default).

City of Emeryville

X

SIGNATURE

TITLE

ACCEPTANCE DATE

CUSTOMER (as referenced above)

27544 (2017)

Page 1 of 2

Rev. 12/01/2017

1. AGREEMENT: You agree to lease from us the goods ("Equipment") and, if applicable, finance certain software, software license(s), software components and/or professional services in connection with software (collectively, the "Financed Items," which are included in the word "Equipment" unless separately stated) from software licensor(s) and/or supplier(s) (collectively, the "Supplier"), all as described in this Agreement and in any attached schedule, addendum or amendment hereto ("Agreement"). You represent and warrant that you will use the Equipment for business purposes only. You agree to all of the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document. This Agreement becomes valid upon execution by us. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law.

2. OWNERSHIP; PAYMENTS; TAXES AND FEES: We own the Equipment, excluding any Financed Items. Ownership of any Financed Items shall remain with Supplier thereof. You will pay all Payments, as adjusted, when due, without notice or demand and without abatement, set-off, counterclaim or deduction of any amount whatsoever. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or, if less, the maximum charge allowed by law. The Payment may be adjusted proportionately upward or downward: (i) if the shipping charges or taxes differ from the estimate given to you; and/or (ii) to comply with the tax laws of the state in which the Equipment is located. You shall pay all applicable taxes, assessments and penalties related to this Agreement, whether levied or assessed on us (except on our income) or you, or on the Equipment, its lease, sale, ownership, possession, use or operation. If we pay any taxes or other expenses that are owed hereunder, you agree to reimburse us when we request. You agree to pay us a yearly processing fee of up to \$50 for personal property taxes we pay related to the Equipment. You agree to pay us a fee of up to \$50 for filing and/or searching costs required under the Uniform Commercial Code ("UCC") or other laws. You agree to pay us an origination fee of up to \$125 for all closing costs. We may apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for insufficient funds, you will pay us a service charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. EQUIPMENT; SECURITY INTEREST: At your expense, you shall keep the Equipment: (i) in good repair, condition and working order, in compliance with applicable laws, ordinances and manufacturers' and regulatory standards; (ii) free and clear of all liens and claims; and (iii) at your address shown on page 1, and you agree not to move it unless we agree in writing. You grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement or any other agreement with us ("Other Agreements"), except amounts under Other Agreements which are secured by land and/or buildings. You authorize and ratify our filing of any financing statement(s) to show our interest. You will not change your name, state of organization, headquarters or residence without providing prior written notice to us. You will notify us within 30 days if your state of organization revokes or terminates your existence.

4. INSURANCE; COLLATERAL PROTECTION; INDEMNITY; LOSS OR DAMAGE: You agree to keep the Equipment fully insured against all risk, with us named as lender's loss payee, in an amount not less than the full replacement value of the Equipment until this Agreement is terminated. You also agree to maintain commercial general liability insurance with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. You will provide written notice to us within 10 days of any modification or cancellation of your insurance policy(s). You agree to provide us certificates or other evidence of insurance acceptable to us. If you do not provide us with acceptable evidence of property insurance within 30 days after the start of this Agreement, we may, at our sole discretion, charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, leasing, manufacture, use, condition, inspection, removal, return or storage of the Equipment. All indemnities will survive the expiration or termination of this Agreement. You are responsible for any loss, theft, destruction or damage to the Equipment ("Loss"), regardless of cause, whether or not insured. You agree to promptly notify us in writing of any Loss. If a Loss occurs and we have not otherwise agreed in writing, you will promptly pay to us the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment, both discounted to present value at 2%. Any proceeds of insurance will be paid to us and credited against the Loss. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to a Loss.

5. ASSIGNMENT; YOU SHALL NOT SELL, TRANSFER, ASSIGN, ENCUMBER, PLEDGE OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. You shall not consolidate or merge with or into any other entity, distribute, sell or dispose of all or any substantial portion of your assets other than in the ordinary course of business, without our prior written consent, and the surviving, or successor entity or the transferee of such assets, as the case may be, shall assume all of your obligations under this Agreement by a written instrument acceptable to us. No event shall occur which causes or results in a transfer of majority ownership of you while any obligations are outstanding hereunder. We may sell, assign, or transfer this Agreement without notice to or consent from you. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. **You agree that our assignee will not be subject to any claims, defenses, or offsets that you may have against us.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. DEFAULT AND REMEDIES: You will be in default if: (i) you do not pay any Payment or other sum due to us or you fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates or fail to perform or pay under any material agreement with any other entity; (ii) you make or have made any false statement or misrepresentation to us; (iii) you or any guarantor dies, dissolves, liquidates, terminates existence or is in bankruptcy; (iv) you or any guarantor suffers a material adverse change in its financial, business or operating condition; or (v) any guarantor defaults under any guaranty for this Agreement. If you are ever in default, at our option, we can cancel this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of term plus the anticipated residual value of the Equipment, both discounted to present value at 2%. We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any remedies available to us under the UCC and any other law and we may require that you immediately stop using any Financed Items. If we take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement and you will be responsible for any deficiency. In the event of any dispute or enforcement of our rights under this Agreement or any related agreement, you agree to pay our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. **WE SHALL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE.** Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will refund such excess to you, which will be your sole remedy.

7. INSPECTIONS AND REPORTS: We have the right, at any reasonable time, to inspect the Equipment and any documents relating to its installation, use, maintenance and repair. Within 30 days after our request (or such longer period as provided herein), you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains. You authorize us to obtain credit bureau reports for credit and collection purposes and to share them with our affiliates and agents.

8. END OF TERM: Unless the purchase option is \$1.00, at the end of the initial term, this Agreement shall renew for successive 12-month renewal term(s) under the same terms hereof unless you send us written notice between 90 and 150 days before the end of the initial term or at least 30 days before the end of any renewal term that you want to purchase or return the Equipment, and you timely purchase or return the Equipment. You shall continue making Payments and paying all other amounts due until the Equipment is purchased or returned. As long as you have given us the required written notice, if you do not purchase the Equipment, you will return all of the Equipment to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. **YOU ARE SOLELY RESPONSIBLE FOR REMOVING ANY DATA THAT MAY RESIDE IN THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO HARD DRIVES, DISK DRIVES OR ANY OTHER FORM OF MEMORY.**

9. USA PATRIOT ACT NOTICE; ANTI-TERRORISM AND ANTI-CORRUPTION COMPLIANCE: To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each customer who opens an account. When you enter into a transaction with us, we ask for your business name, address and other information that will allow us to identify you. We may also ask to see other documents that substantiate your business identity. You and any other person who you control, own a controlling interest in, or who owns a controlling interest in or otherwise controls you in any manner ("Representatives") are and will remain in full compliance with all laws, regulations and government guidance concerning foreign asset control, trade sanctions, embargoes, and the prevention and detection of money laundering, bribery, corruption, and terrorism, and neither you nor any of your Representatives is or will be listed in any Sanctions-related list of designated persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control or successor or the U.S. Department of State. You shall, and shall cause any Representative to, provide such information and take such actions as are reasonably requested by us in order to assist us in maintaining compliance with anti-money laundering laws and regulations.

10. MISCELLANEOUS: Unless otherwise stated in an addendum hereto, the parties agree that: (i) this Agreement and any related documents hereto may be authenticated by electronic means; (ii) the "original" of this Agreement shall be the copy that bears your manual, facsimile, scanned or electronic signature and that also bears our manually or electronically signed signature and is held or controlled by us; and (iii) to the extent this Agreement constitutes chattel paper (as defined by the UCC), a security interest may only be created in the original. You agree not to raise as a defense to the enforcement of this Agreement or any related documents that you or we executed or authenticated such documents by electronic or digital means or that you used facsimile or other electronic means to transmit your signature on such documents. Notwithstanding anything to the contrary herein, we reserve the right to require you to sign this Agreement or any related documents hereto manually and to send to us the manually signed, duly executed documents via overnight courier on the same day that you send us the facsimile, scanned or electronic transmission of the documents. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. Whenever our consent is required, we may withhold or condition such consent in our sole discretion, except as otherwise expressly stated herein. From time to time, Supplier may extend to us payment terms for Equipment financed under this Agreement that are more favorable than what has been quoted to you or the general public, and we may provide Supplier information regarding this Agreement if Supplier has assigned or referred it to us. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing us with a telephone number for a cellular phone or other wireless device, including a number that you later convert to a cellular number, you are expressly consenting to receiving communications, including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system, from us and our affiliates and agents at that number. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from your cellular provider. You authorize us to make non-material amendments (including completing and conforming the description of the Equipment) on any document in connection with this Agreement. Unless stated otherwise herein, all other modifications to this Agreement must be in writing and signed by each party or in a duly authenticated electronic record. This Agreement may not be modified by course of performance.

11. WARRANTY DISCLAIMERS: WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS." YOU HAVE SELECTED SUPPLIER AND THE EQUIPMENT BASED UPON YOUR OWN JUDGMENT. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF SUPPLIER, AND NOTHING SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATIONS HEREUNDER. **YOU WILL MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, INFRINGEMENT OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.** SO LONG AS YOU ARE NOT IN DEFAULT UNDER THIS AGREEMENT, WE ASSIGN TO YOU ANY WARRANTIES IN THE EQUIPMENT GIVEN TO US.

12. LAW; JURY WAIVER: This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **BOTH PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY.**

13. MAINTENANCE AND SUPPLIES: You have elected to enter into a separate arrangement with Supplier for maintenance, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and toner and developer ("Arrangement"). You agree to pay all amounts owing under this Agreement regardless of any claim you have against Supplier relating to the Arrangement. Supplier will be solely responsible for performing all services and providing all supplies under the Arrangement. You agree not to hold Lessor (if different from Supplier) or any assignee of this Agreement responsible for Supplier's obligations under the Arrangement. As a convenience to you, we will provide you with one invoice covering amounts owing under this Agreement and the Arrangement. If necessary, Supplier's obligations to you under the Arrangement may be assigned by us. You agree to pay a monthly supply freight fee to cover the costs of shipping supplies to you. Each month, you are entitled to produce the minimum number of pages shown on page 1 for each applicable page type. Regardless of the number of pages made, you will never pay less than the minimum Payment. You agree to provide periodic meter readings on the Equipment. You agree to pay the applicable overage charge for each metered page that exceeds the applicable minimum number of pages. Pages made on equipment marked as not financed under this Agreement will be included in determining your page and overage charges. At the end of the first year of this Agreement, and once each successive 12-month period thereafter, the maintenance and supplies portion of the Payment and the overage charges may be increased by a maximum of 15% of the existing payment or charge. In order to facilitate an orderly transition, the start date of this Agreement will be the date the Equipment is delivered to you or a date designated by us, as shown on the first invoice. If a later start date is designated, in addition to all Payments and other amounts due hereunder, you agree to pay us a transitional payment equal to 1/30th of the Payment, multiplied by the number of days between the date the Equipment is delivered to you and the designated start date. The first Payment is due 30 days after the start of this Agreement and each Payment thereafter shall be due on the same day of each month.



APPLICATION NO.

AGREEMENT NO.

provided
by:



EQUIPMENT FINANCE

Dealer Schedule "A"

This Schedule "A" is to be attached to and becomes part of the above-referenced Agreement by and between the undersigned and **U.S. Bank Equipment Finance**.

EQUIPMENT DESCRIPTION

[illegible]

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

CUSTOMER ACCEPTANCE

This Schedule "A" is hereby verified as correct by the undersigned Customer.

City of Emeryville



SIGNATURE

TITLE

DATED

RICOH

APPLICATION NO.

AGREEMENT NO.

provided
by:**usbank**
EQUIPMENT FINANCE**Dealer Value Lease Grouped Pool Billing Schedule**

This Grouped Pool Billing Schedule is to be attached to and becomes part of the above-referenced Agreement by and between the undersigned and **U.S. Bank Equipment Finance**.

POOL NAME: **Ricoh B&W**

Pool Location: _____

MAKE/MODEL/ACCESSORIES	EQUIPMENT POOL DESCRIPTION	SERIAL NO.	STARTING METER	NOT FINANCED UNDER THIS AGREEMENT
(3) Ricoh IM C3510			0	<input type="checkbox"/>
(6) Ricoh IM C3010			0	<input type="checkbox"/>
Ricoh IM C2510			0	<input type="checkbox"/>
Ricoh IM C400			0	<input type="checkbox"/>
				<input type="checkbox"/>

No. of Pages Included 75,000 Overages billed quarterly at \$.0075 per page*Please check one of the following: ☒ B&W Pages ☐ Color Pages

*plus applicable taxes

POOL NAME: **Ricoh Color**

Pool Location: _____

MAKE/MODEL/ACCESSORIES	EQUIPMENT POOL DESCRIPTION	SERIAL NO.	STARTING METER	NOT FINANCED UNDER THIS AGREEMENT
(3) Ricoh IM C3510			0	<input type="checkbox"/>
(6) Ricoh IM C3010			0	<input type="checkbox"/>
Ricoh IM C2510			0	<input type="checkbox"/>
Ricoh IM C400				<input type="checkbox"/>

No. of Pages Included 60,000 Overages billed quarterly at \$.0548 per page*Please check one of the following: ☐ B&W Pages ☒ Color Pages

*plus applicable taxes

POOL NAME: **HP's B&W**

Pool Location: _____

MAKE/MODEL/ACCESSORIES	EQUIPMENT POOL DESCRIPTION	SERIAL NO.	STARTING METER	NOT FINANCED UNDER THIS AGREEMENT
(2) HP E40040dn			0	<input type="checkbox"/>
(4) HP E47528f			0	<input type="checkbox"/>
(5) HP E42540f			0	<input type="checkbox"/>
				<input type="checkbox"/>

No. of Pages Included 30,000 Overages billed quarterly at \$.018 per page*Please check one of the following: ☒ B&W Pages ☐ Color Pages

*plus applicable taxes

POOL NAME: **HP's Color**

Pool Location: _____

MAKE/MODEL/ACCESSORIES	EQUIPMENT POOL DESCRIPTION	SERIAL NO.	STARTING METER	NOT FINANCED UNDER THIS AGREEMENT
(4) HP E47528f			0	<input type="checkbox"/>
(5) HP E42540f			0	<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

No. of Pages Included 4,500 Overages billed quarterly at \$.095 per page*Please check one of the following: ☐ B&W Pages ☒ Color Pages

*plus applicable taxes

Each piece of Equipment described in this Grouped Pool Billing Schedule includes all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

PAYMENT INFORMATIONMonthly Payment* \$ \$3,765.00

*plus applicable taxes

CUSTOMER ACCEPTANCE

This Grouped Pool Billing Schedule is hereby verified as correct by the undersigned Customer.

City of Emeryville

X

SIGNATURE

TITLE

DATED

CUSTOMER

27547 (2017)

Rev. 12/01/2017

**SHAMROCK**
office solutionsA **FLEX TECHNOLOGY GROUP** Company**MAINTENANCE AGREEMENT &
INSTALLATION ACCEPTANCE****RICOH****Canon****KONICA MINOLTA**

6908 Sierra Court, Suite A Dublin, California 94568 • Tel: (925) 875-0480 • Fax: (925) 875-0485 • www.ShamrockOffice.com

SHAMROCK OFFICE SOLUTIONS GUARANTEES

- A service response time of an average of 4 hours or less, or receive a 5% discount off of your next maintenance billing. **
- Automated meter readings and toner fulfillment (when toner level drops below 20%).
- A loaner unit of equal or greater capabilities if we are unsuccessful in repairing your equipment within 24 business hours.
- Professional, courteous service personnel.

** 4 working hour average response time within a contract quarter

Customer Name: City of Emeryville Phone #: 510-596-4330Billing Address (Street, City, Zip): 1333 Park Ave. Emeryville CA, 94608

Install Address (if diff. from above): _____

Contact Name: Michael Parenti Phone #: 510-450-7803 Email: mparenti@emeryville.orgModel #: Ricoh- Schedule A SOS ID #: _____ Serial #: _____ Start Meter: BLK 0 CLR 0

Model #: _____ SOS ID #: _____ Serial #: _____ Start Meter: BLK _____ CLR _____

Model #: _____ SOS ID #: _____ Serial #: _____ Start Meter: BLK _____ CLR _____

Contract Cost: (BLK) See Grouped Billing Schedule Pages Included: 30,000 Overage Cost Per Page: 0.018Contract Cost: (CLR) See Grouped Billing Schedule Pages Included: 4,500 Overage Cost Per Page: 0.095Billing Frequency: ☐ Monthly ☒ Quarterly ☐ AnnuallyAgreement Includes: ☒ Parts ☒ Labor ☒ TonerCheck here to receive invoices by email: ☐ Accounts Payable Email: _____

Beginning Date: _____ Ending Date: _____

Maintenance Agreement:

This agreement is automatically renewed at the end of the contract term at Shamrock Office Solutions' then prevailing terms and rates.

☐ I agree to the terms outlined in this maintenance agreement☐ I decline the maintenance agreement**X**

Authorized Signature _____

Date _____

Shamrock Office Solutions Rep. _____

Date _____

Customer Acceptance:

The above equipment has been delivered and installed under the terms of Shamrock Office Solutions sales order.

Printed Name _____ Title _____

Authorized Signature _____

Date _____

Approved As To Form:

DocuSigned by:

John Kennedy

2C934D02DB55467...

City Attorney

(Terms and Conditions on Back)

TERMS AND CONDITIONS

- 1 Shamrock Office Solutions in consideration of the annual maintenance charge provided for herein, agrees to perform maintenance service with respect to the equipment specified on the reverse side hereof. Maintenance service will consist of making all necessary service calls **during Shamrock's regular business hours** after request by Customer and provision and installation of parts for necessary replacement of those, which have become broken or worn through normal use. **All inclusive contracts do not include the shipping and handling of supplies to the customer.**

HOWEVER, THE SERVICE WILL NOT INCLUDE INTEGRATION/NETWORK SERVICES, INSTALLATION OF SUPPLIES SUCH AS TONER, DEVELOPER OR PAPER, MODIFICATIONS OF THE EQUIPMENT, OR SHOP RECONDITIONING, OR SERVICE PERFORMED AT CUSTOMER'S REQUEST OUTSIDE SHAMROCK'S REGULAR BUSINESS HOURS. WHEN FURNISHED, THE FOREGOING ITEMS AND SERVICES WILL BE INVOICED TO CUSTOMER AT CURRENT PRICES.

ANY EXCEPTIONS TO COVERAGE NOTED ABOVE WILL BE INDICATED ON THE FRONT OF THIS AGREEMENT.
- 2 THIS AGREEMENT DOES NOT COVER SERVICE, REPAIRS OR PARTS NECESSARY BECAUSE OF ACCIDENT, MISUSE, ABUSE, NEGLECT, THEFT VANDALISM, INSUFFICIENT POWER SOURCE, ALTERATION, FIRE, WATER OR OTHER CASUALTY, ACTS OR OMISSIONS IN PERFORMANCE OR REPAIRS OR SERVICE BY NON-SHAMROCK PERSONNEL, MALFUNCTIONS OF PARTS OR ATTACHMENTS NOT SUPPLIED BY SHAMROCK, OR USE OF SUPPLIES OR SPARE PARTS NOT MEETING SHAMROCK OFFICE SOLUTIONS' SPECIFICATIONS, OR MAINTENANCE REQUIRED DUE TO ABNORMAL TEMPERATURE CONDITIONS.
- 3 The equipment must be in good working condition on the commencement date of the Agreement. Shamrock charges for parts and labor required to place the equipment in such condition will be invoiced to Customer at Shamrock's then current rates.
- 4 This agreement will be automatically renewed at the end of the term with an annual escalation amount not to exceed 10%.
- 5 In the event of cancellation by Shamrock due to non-payment of maintenance agreement charges, customer will be liable at then prevailing retail rates for all service performed on machine during agreement period. This agreement will be in effect only as long as customer's account with Shamrock is current.
- 6 The amount of the maintenance charge under this Agreement will be increased by an amount equal to any applicable tax now or hereafter assessed, levied, or imposed by any federal, state or local authority on such charge or upon the services rendered or parts supplied pursuant hereto, including any privilege or excise taxes based on gross revenues, but excluding taxes on net income.
- 7 Shamrock will not be responsible for delays or inability to service caused, directly or indirectly, by strikes, accidents, climatic conditions, or other reason of a like or dissimilar nature beyond its control. IN NO EVENT WILL SHAMROCK BE LIABLE FOR LOSS OR PROFITS OR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.
- 8 This Agreement is not assignable and may be canceled by Shamrock without notice to Customer if the equipment is sold, leased or transferred by Customer to any other person or entity.
- 9 Notices under this Agreement must be in writing and mailed by certified mail to Shamrock at the address shown for it on the reverse side hereof and to Customer at the "Bill To" address shown on the reverse side hereof.
- 10 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no representations, either written or oral, will be of any force or effect unless set forth in this Agreement. The laws of the State of California will govern this Agreement.

**SHAMROCK**
office solutionsA **FLEX TECHNOLOGY GROUP** Company**MAINTENANCE AGREEMENT &
INSTALLATION ACCEPTANCE****KONICA MINOLTA**

6908 Sierra Court, Suite A Dublin, California 94568 • Tel: (925) 875-0480 • Fax: (925) 875-0485 • www.ShamrockOffice.com

SHAMROCK OFFICE SOLUTIONS GUARANTEES

- A service response time of an average of 4 hours or less, or receive a 5% discount off of your next maintenance billing. **
- Automated meter readings and toner fulfillment (when toner level drops below 20%).
- A loaner unit of equal or greater capabilities if we are unsuccessful in repairing your equipment within 24 business hours.
- Professional, courteous service personnel.

** 4 working hour average response time within a contract quarter

Customer Name: The City of Emeryville Phone #: 510-596-4330Billing Address (Street, City, Zip): 1333 Park Ave. Emeryville CA, 94608

Install Address (if diff. from above): _____

Contact Name: Michael Parenti Phone #: 510-450-7803 Email: mparenti@emeryville.orgModel #: HP- Schedule A SOS ID #: _____ Serial #: _____ Start Meter: BLK 0 CLR 0

Model #: _____ SOS ID #: _____ Serial #: _____ Start Meter: BLK _____ CLR _____

Model #: _____ SOS ID #: _____ Serial #: _____ Start Meter: BLK _____ CLR _____

Contract Cost: (BLK) See Grouped Billing Schedule Pages Included: 75,000 Overage Cost Per Page: 0.0075Contract Cost: (CLR) See Grouped Billing Schedule Pages Included: 60,000 Overage Cost Per Page: 0.0548Billing Frequency: ☐ Monthly ☒ Quarterly ☐ AnnuallyAgreement Includes: ☒ Parts ☒ Labor ☒ TonerCheck here to receive invoices by email: ☐ Accounts Payable Email: _____

Beginning Date: _____ Ending Date: _____

Maintenance Agreement:

This agreement is automatically renewed at the end of the contract term at Shamrock Office Solutions' then prevailing terms and rates.

☐ I agree to the terms outlined in this maintenance agreement☐ I decline the maintenance agreement**X**

Authorized Signature _____

Date _____

Shamrock Office Solutions Rep. _____

Date _____

Customer Acceptance:

The above equipment has been delivered and installed under the terms of Shamrock Office Solutions sales order.

Printed Name _____ Title _____

Authorized Signature _____

Date _____

Approved As To Form:

DocuSigned by:

John Kennedy

2C934D02DB55467

City Attorney

(Terms and Conditions on Back)

TERMS AND CONDITIONS

- 1 Shamrock Office Solutions in consideration of the annual maintenance charge provided for herein, agrees to perform maintenance service with respect to the equipment specified on the reverse side hereof. Maintenance service will consist of making all necessary service calls **during Shamrock's regular business hours** after request by Customer and provision and installation of parts for necessary replacement of those, which have become broken or worn through normal use. **All inclusive contracts do not include the shipping and handling of supplies to the customer.**

HOWEVER, THE SERVICE WILL NOT INCLUDE INTEGRATION/NETWORK SERVICES, INSTALLATION OF SUPPLIES SUCH AS TONER, DEVELOPER OR PAPER, MODIFICATIONS OF THE EQUIPMENT, OR SHOP RECONDITIONING, OR SERVICE PERFORMED AT CUSTOMER'S REQUEST OUTSIDE SHAMROCK'S REGULAR BUSINESS HOURS. WHEN FURNISHED, THE FOREGOING ITEMS AND SERVICES WILL BE INVOICED TO CUSTOMER AT CURRENT PRICES.

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- 2 THIS AGREEMENT DOES NOT COVER SERVICE, REPAIRS OR PARTS NECESSARY BECAUSE OF ACCIDENT, MISUSE, ABUSE, NEGLECT, THEFT VANDALISM, INSUFFICIENT POWER SOURCE, ALTERATION, FIRE, WATER OR OTHER CASUALTY, ACTS OR OMISSIONS IN PERFORMANCE OR REPAIRS OR SERVICE BY NON-SHAMROCK PERSONNEL, MALFUNCTIONS OF PARTS OR ATTACHMENTS NOT SUPPLIED BY SHAMROCK, OR USE OF SUPPLIES OR SPARE PARTS NOT MEETING SHAMROCK OFFICE SOLUTIONS' SPECIFICATIONS, OR MAINTENANCE REQUIRED DUE TO ABNORMAL TEMPERATURE CONDITIONS.
- 3 The equipment must be in good working condition on the commencement date of the Agreement. Shamrock charges for parts and labor required to place the equipment in such condition will be invoiced to Customer at Shamrock's then current rates.
- 4 This agreement will be automatically renewed at the end of the term with an annual escalation amount not to exceed 10%.
- 5 In the event of cancellation by Shamrock due to non-payment of maintenance agreement charges, customer will be liable at then prevailing retail rates for all service performed on machine during agreement period. This agreement will be in effect only as long as customer's account with Shamrock is current.
- 6 The amount of the maintenance charge under this Agreement will be increased by an amount equal to any applicable tax now or hereafter assessed, levied, or imposed by any federal, state or local authority on such charge or upon the services rendered or parts supplied pursuant hereto, including any privilege or excise taxes based on gross revenues, but excluding taxes on net income.
- 7 Shamrock will not be responsible for delays or inability to service caused, directly or indirectly, by strikes, accidents, climatic conditions, or other reason of a like or dissimilar nature beyond its control. IN NO EVENT WILL SHAMROCK BE LIABLE FOR LOSS OR PROFITS OR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.
- 8 This Agreement is not assignable and may be canceled by Shamrock without notice to Customer if the equipment is sold, leased or transferred by Customer to any other person or entity.
- 9 Notices under this Agreement must be in writing and mailed by certified mail to Shamrock at the address shown for it on the reverse side hereof and to Customer at the "Bill To" address shown on the reverse side hereof.
- 10 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no representations, either written or oral, will be of any force or effect unless set forth in this Agreement. The laws of the State of California will govern this Agreement.



EQUIPMENT FINANCE

STATE AND LOCAL GOVERNMENT ADDENDUM

AGREEMENT # 3002765

Addendum to Agreement # 3002765 and any future supplements/schedules thereto, between CITY OF EMERYVILLE, as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance"), as Lessor. The words "you" and "your" refer to Customer. The words "we" and "us" refer to Lessor.

1. The parties wish to amend the above-referenced Agreement by adding the following language:

REPRESENTATIONS AND WARRANTIES OF CUSTOMER: You hereby represent and warrant to us that: (i) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (ii) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (iii) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (iv) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (v) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period, from now until the end of the term of this Agreement; and (vi) your exact legal name is as set forth on page one of this Agreement.

INITIAL TERM AND RENEWAL TERM(S): The term of the Agreement consists of an initial term beginning on the date we pay Supplier and ending at the end of your fiscal year in which we pay Supplier, and a series of renewal terms, each co-extensive with your fiscal year. Except to the extent required by applicable law, if you do not exercise your right to terminate the Agreement under the Non-Appropriation or Renewal paragraph as of the end of any fiscal year, the Agreement will be deemed automatically renewed for the next succeeding renewal term.

An election by you to terminate the Agreement under the Non-Appropriation or Renewal paragraph is not a default.

Notwithstanding anything to the contrary set forth in the Agreement, if we cancel the Agreement following a default by you, we may require that you pay the unpaid balance of Payments under the Agreement through the end of your then-current fiscal year, but we may not require you to pay future Payments due beyond that fiscal year or the anticipated residual value of the Equipment. If we sell the Equipment following a default by you, you will not be responsible for a deficiency, except to the extent of our costs of repossession, moving, storage, repair and sale, and our attorneys' fees and costs.

NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed either automatically or by mutual ratification, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated or the term of this Agreement has been renewed, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which event this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you.

SUPPLEMENTS; SEPARATE FINANCINGS: To the extent applicable, in the event that the parties hereafter mutually agree to execute and deliver any supplement or schedule ("Supplement") under the above-referenced Agreement, such Supplement, as it incorporates the terms and conditions of the Agreement, shall be a separate financing distinct from the Agreement or other Supplements thereto. Without limiting the foregoing, upon the occurrence of an event of default or a non-appropriation event with respect to the Agreement or a Supplement (each, a separate "Contract"), as applicable, we shall have the rights and remedies specified in the Agreement with respect to the Equipment financed and the Payments payable under such Contract, and we shall have no rights or remedies with respect to Equipment financed or Payments payable under any other Contract unless an event of default or non-appropriation event has also occurred under such other Contract.

2. The parties wish to amend the above-referenced Agreement by restating certain language as follows:

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from this Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document."

Any provision in the Agreement stating that this Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "Unless the purchase option is \$1.00 or \$101.00, you agree to send us written notice at least 30 days before the end of the final renewal term that you want to purchase or return the Equipment, and you agree to so purchase or return the Equipment not later than the end of the final renewal term. If you fail to so purchase or return the Equipment at or before the end of the final renewal term, you shall be a holdover tenant with respect to this Agreement and the Equipment, and this Agreement shall renew on a month-to-month basis under the same terms hereof until the Equipment has been purchased or returned."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby

amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement and any supplements hereto. You authorize and ratify our filing of any financing statement(s) and the naming of us on any vehicle title(s) to show our interest."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under this Agreement when due or you fail to perform in accordance with the covenants, terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentation to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

3. If your end-of-term option is the purchase of all Equipment for \$1.00 or \$101.00, the following applies: Unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

4. With respect to any "Financed Items," the following provisions shall be applicable to such Financed Items:

This Addendum concerns the granting to you of certain software and/or software license(s) ("Licensed Software"), the purchase by you of certain software components, including but not limited to, software maintenance and/or support ("Products") and/or the purchase by you of certain implementation, integration, training, technical consulting and/or professional services in connection with software ("Services") (collectively, the "Financed Items") from software licensor(s) and/or supplier(s) (collectively, the "Supplier"), all as further described in the agreement(s) between you and Supplier (collectively, the "Product Agreement"). For essential governmental purposes only, you have requested and we have agreed that instead of you paying the fees pursuant to the Product Agreement to Supplier for the Financed Items, we will satisfy your obligation to pay such fees to Supplier, and in consideration thereof, you shall repay the sums advanced by us to Supplier by promptly making certain installment payments to us, which are included in the Payments set forth in the Agreement.

To the extent permitted by law, you grant us a security interest in the license(s), including without limitation, all of your rights in the Licensed Software granted thereunder, the Products, all rights to payment under the Product Agreement, the Financed Items, and all proceeds of the foregoing to secure all amounts you owe us under this Agreement. You authorize and ratify our filing of any financing statement(s) to show our interest.

Ownership of any Licensed Software shall remain with Supplier thereof. All Financed Items shall be provided by a Supplier unrelated to us, and your rights with respect to such Financed Items shall be governed by the Product Agreement between you and Supplier, which shall not be affected by this Agreement. IN NO EVENT SHALL WE HAVE ANY OBLIGATION TO PROVIDE ANY FINANCED ITEMS, AND ANY FAILURE OF SUPPLIER TO PROVIDE ANY FINANCED ITEMS SHALL NOT EXCUSE YOUR OBLIGATIONS TO US IN ANY WAY. YOU HAVE SELECTED SUPPLIER AND THE FINANCED ITEMS BASED UPON YOUR OWN JUDGMENT. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE FINANCED ITEMS. SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF SUPPLIER, AND NOTHING SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATIONS HEREUNDER. **YOU WILL MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE FINANCED ITEMS COVERED BY THE PRODUCT AGREEMENT AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AS TO ANY PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS OR ANY OTHER ISSUE IN REGARD TO THE FINANCED ITEMS.** YOU HEREBY WAIVE ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT LIABILITY OR ABSOLUTE LIABILITY IN TORT) THAT YOU MAY HAVE AGAINST US FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA OR ANY OTHER DAMAGES) OR EXPENSE CAUSED BY THE FINANCED ITEMS COVERED BY THE PRODUCT AGREEMENT OR A TERMINATION OF THE FINANCED ITEMS PURSUANT TO AN EVENT OF DEFAULT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, EXPENSE OR COST.

The following shall be additional events of default under the Agreement: (i) you fail to perform in accordance with the covenants, terms and conditions of the Product Agreement, or (ii) the Product Agreement is terminated, suspended, materially restricted or limited.

The following shall be additional remedies we have for your default under the Agreement: We shall have the right to: (a) cause the termination of the Financed Items and you irrevocably consent to such termination of the Financed Items by Supplier; and (b) require you to immediately stop using the Financed Items (regardless of whether you are in default under the Product Agreement) and you shall, at our option, either deliver to us a certification executed by a duly authorized officer certifying that you have ceased use of the Financed Items or deliver the Financed Items to a location designated by us. In the event you are entitled to transfer the right to use the Financed Items to any third party, you hereby agree to transfer any such right to use the Financed Items to any third party selected by us and acknowledge that you shall have no right to fees payable by any third party in connection with such transfer. However, we shall not be required to mitigate our damages caused by a default by transferring any Financed Items to a third party.

By signing this Addendum, Customer acknowledges the applicable changes noted above are incorporated by reference into the Agreement. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer. In the event of any conflict between the terms and conditions of the Agreement and this Addendum, the terms and conditions of this Addendum shall control. Customer has caused this Addendum to be executed by its duly authorized officer as of the date below.

U.S. Bank Equipment Finance

Lessor

Signature

Title

Date

CITY OF EMERYVILLE

Customer

X

Signature

Title

Date

Approved As To Form:
DocuSigned by:
John Kennedy
2C934D02DB55467
City Attorney



EQUIPMENT FINANCE

CALIFORNIA JUDICIAL REFERENCE ADDENDUM

AGREEMENT #
3002765

Addendum to Agreement # 3002765 and any future supplements/schedules thereto, between CITY OF EMERYVILLE, as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance"), as Lessor/Secured Party ("Agreement"). The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Lessor/Secured Party.

The parties wish to amend the above-referenced Agreement by adding the following language:

- Any and all disputes, claims and controversies arising out of, connected with or relating to the Agreement or the transactions contemplated thereby (individually, a "Dispute") that are brought before a forum in which pre-dispute waivers of the right to trial by jury are invalid under applicable law shall be subject to the terms contained in this Addendum in lieu of the jury trial waiver otherwise provided in the Agreement. Disputes may include, without limitation, tort claims, counterclaims, claims brought as class actions, claims arising from schedules, supplements, exhibits or other documents to the Agreement executed in the future, disputes as to whether a matter is subject to judicial reference, or claims concerning any aspect of the past, present or future relationships arising out of or connected with the Agreement.
- Any and all Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure ("CCCP") §§ 638 et seq. The referee shall be a retired California state court judge or an attorney licensed to practice law in the State of California with at least 10 years' experience practicing commercial law. The parties shall not seek to appoint a referee that may be disqualified pursuant to CCCP §641 or 641.2 without the prior written consent of all parties. If the parties are unable to agree upon a referee within 10 calendar days after one party serves a written notice of intent for judicial reference upon the other parties, then the referee will be selected by the court in accordance with CCCP § 640(b).
- The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the CCCP, the Rules of Court, and the California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of CCCP §§644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.
- Notwithstanding the preceding agreement to submit Disputes to a judicial referee, the parties preserve, without diminution, certain rights and remedies at law or equity and under the Agreement that such parties may employ or exercise freely, either alone or in conjunction with or during a Dispute. Each party shall have and hereby reserves the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (A) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted in the Agreement or under applicable law or by judicial foreclosure and sale, including a proceeding to confirm the sale, (B) all rights of self-help including peaceful occupation of property and collection of rents, setoff, and peaceful possession of property, (C) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and in filing an involuntary bankruptcy proceeding, and (D) when applicable, a judgment by confession of judgment. Preservation of these remedies does not limit the power of a judicial referee to grant similar remedies that may be requested by a party in a Dispute. No provision in the Agreement regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in this Addendum for judicial reference of any Dispute. The parties do not waive any applicable federal or state substantive law except as provided herein.
- If a Dispute includes multiple claims, some of which are found not subject to this Addendum, the parties shall stay the proceedings of the claims not subject to this Addendum until all other claims are resolved in accordance with this Addendum. If there are Disputes by or against multiple parties, some of which are not subject to this Addendum, the parties shall sever the Disputes subject to this Addendum and resolve them in accordance with this Addendum.
- During the pendency of any Dispute that is submitted to judicial reference in accordance with this Addendum, each of the parties to such Dispute shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Addendum. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing party shall be entitled to reasonable court costs and legal fees, including customary attorneys' fees, expert witness fees, paralegal fees, the fees of the referee and other reasonable costs and disbursements charged to the party by its counsel, in such amount as is determined by the referee.
- In the event of any challenge to the legality or enforceability of this Addendum, the prevailing party shall be entitled to recover the costs and expenses from the non-prevailing party, including reasonable attorneys' fees, incurred by it in connection therewith.
- THIS ADDENDUM CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN THE PARTIES WITHIN THE MEANING OF AND FOR PURPOSES OF CCCP § 638.

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor/Secured Party to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer. This Addendum may be executed in multiple counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same agreement.

U.S. Bank Equipment Finance

Lessor/Secured Party

Signature

Title

Date

CITY OF EMERYVILLE

Customer

X

Signature

Title

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

A595 REV 10/19

Date
Approved As To Form:

John Kennedy

2C934D02DB55467

City Attorney

Lease Payoff Agreement

Current Lease Payment (including tax):	\$0.00
Remaining Number of Payments:	0
Total Payoff Amount:	\$0.00

*Upon Acceptance of Delivery by City of Emeryville (Customer)
of the new lease provided by Shamrock Office Solutions, Shamrock and Customer mutually agree that the above Total Payoff satisfies Shamrock's financial obligation to Customer.

*Customer acknowledges responsibility to provide Shamrock with the Return Authorization from the existing leasing company, so that Shamrock may return the existing equipment. The freight cost for returning the equipment will be at Shamrock's expense.

*All lease and service charges incurred prior to delivery of the new Shamrock equipment are the responsibility of the Customer.

*Customer acknowledges responsibility for providing a letter of intent to the existing leasing company, which communicates Customer's intent to return the equipment at the end of the lease.

Leasing Company: <u>Key Bank</u>	Lease Number: <u>1975039001</u>
Existing Vendor: <u>KBA Document Solutions</u>	Acct. Number: <u>EC14</u>
Equipment Model: <u>See Attached Fleet Record</u>	Serial Number: _____
Equipment Model: _____	Serial Number: _____
Equipment Model: _____	Serial Number: _____
Equipment Model: _____	Serial Number: _____
Equipment Model: _____	Serial Number: _____
Equipment Model: _____	Serial Number: _____

Customer Signature: _____ Date: _____

Printed Name: _____ Title: _____

Approved As To Form:

DocuSigned by:
John Kennedy
City Attorney