

1 MASTER AGREEMENT TO PURCHASE, LEASE AND
2 MAINTAIN PRODUCTS AND EQUIPMENT

3 **30332**

4 This Master Agreement is made and entered, in duplicate, as of August 2,
5 2007 for reference purposes only, pursuant to a minute order of the City Council of the
6 City of Long Beach at its meeting on July 10, 2007, by and between KONICA MINOLTA
7 BUSINESS SOLUTIONS, U.S. A. INC., a New York corporation, with a business at 879
8 W. 190th Street, #200, Gardena, California 90248 ("KONICA") and the CITY OF LONG
9 BEACH, a municipal corporation ("CITY").

10 WHEREAS, CITY desires to engage KONICA to provide hardware,
11 software and maintenance services to support the CITY'S document production
12 equipment; and

13 WHEREAS, CITY selected KONICA in accordance with the CITIES policies
14 and procedures, after evaluation of its proposal submitted in response to CITY'S Request
15 for Proposal;

16 NOW, THEREFORE, in consideration of the mutual terms and conditions
17 contained in this Master Agreement, the parties agree as follows:

18 1. Exhibit. The terms of this Master Agreement cover the lease, purchase,
19 maintenance, and financing of products and equipment, professional services and pool
20 plans provided by KONICA to the CITY. Leasing is more specifically described in Exhibit
21 A attached hereto and incorporated herein by this reference. This Master Agreement and
22 Exhibit A are collectively called the "Agreement." Where the context so requires, the term
23 "Agreement " may also include a Transaction Document.

24 2. Transaction Documents. For each business transaction between the
25 parties that is subject to this Agreement, KONICA will provide a "Transaction Document"
26 that confirms the details of that transaction. Transaction Documents shall be signed by
27 both parties in duplicate originals and shall become a part of this Agreement. Examples
28 of Transaction Documents are further exhibits, invoices, statements of work,

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 supplements, completed order forms, and further addenda. Certain Transaction
2 Documents shall be filed with City's City Clerk: exhibits, statements of work, supplements
3 and further addenda.

4 3. Term. The term of this Agreement shall commence on September 15,
5 2007 and shall terminate on September 15, 2012. The term of this Agreement may be
6 extended by the execution of a written agreement by the City Manager of CITY. Each
7 business transaction may have a different term and that term will be identified on a
8 Transaction Document. This Agreement may be terminated by either party upon thirty
9 (30) days written notice without penalty or further obligation after CITY has paid for
10 services rendered through the date of termination.

11 4. Insurance. If KONICA performs any work on CITY property, then
12 KONICA agrees to and shall provide the following insurance which shall supersede
13 anything to the contrary in the Exhibit or any Transaction Document:

14 KONICA shall procure and maintain at KONICA's expense for the duration
15 of the Master Agreement from insurance companies that are admitted to write insurance
16 in California or from authorized non-admitted insurance companies that have ratings of or
17 equivalent to A:VIII by A.M. Best Company:

18 (a) Commercial general liability insurance (equivalent in scope to ISO form
19 CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars
20 (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general
21 aggregate. Such coverage shall include but not be limited to broad form
22 contractual liability, cross liability, independent contractors liability, and products
23 and completed operations liability. The CITY, its officials, employees and agents
24 shall be named as additional insureds by endorsement (on the CITY's
25 endorsement form or on an endorsement equivalent in scope to ISO form CG 20
26 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special
27 limitations on the scope of protection given to the CITY, its officials, employees
28 and agents.

1 (b) Workers' compensation insurance as required by the California Labor
2 Code and employer's liability insurance in an amount not less than One Million
3 Dollars (\$1,000,000) per accident.

4 (c) Commercial automobile liability insurance (equivalent in scope to ISO
5 form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less
6 than Five Hundred Thousand Dollars (\$500,000) combined single limit per
7 accident.

8 Any self-insurance program, self-insured retention, or deductible must be
9 separately approved in writing by CITY's Risk Manager or designee and shall protect the
10 CITY, its officials, employees and agents in the same manner and to the same extent as
11 they would have been protected had the policy or policies not contained retention or
12 deductible provisions. Each insurance policy shall be endorsed to state that coverage
13 shall not be reduced in coverage, nonrenewed, or canceled except after thirty (30) days
14 prior written notice to CITY, and shall be primary and not contributing to any other
15 insurance or self-insurance maintained by the CITY, its officials, employees and agents.
16 KONICA shall notify the CITY within five (5) days after any insurance required herein has
17 been voided by the insurer or cancelled by the insured.

18 KONICA shall require that all contractors and subcontractors which
19 KONICA uses in the performance of services under the Master Agreement maintain
20 insurance in compliance with this Section unless otherwise agreed in writing by CITY's
21 Risk Manager or designee.

22 Prior to the start of performance under the Master Agreement, KONICA
23 shall deliver to CITY certificates of insurance and required endorsements, including any
24 insurance required of KONICA's contractors and subcontractors, for approval as to
25 sufficiency and form. The certificates and endorsements shall contain the original
26 signature of a person authorized by that insurer to bind coverage on its behalf. In
27 addition, KONICA shall, at least thirty (30) days prior to expiration of the insurance
28 required hereunder, furnish to the CITY certificates of insurance and endorsements

1 evidencing renewal of such insurance. KONICA and KONICA's contractors and
2 subcontractors shall make available to the CITY all books, records and other information
3 relating to the insurance coverage required herein during normal business hours.

4 Any modification or waiver of the insurance requirements herein shall only
5 be made with the written approval of the CITY's Risk Manager or designee. Not more
6 frequently than once a year, the CITY's Risk Manager or designee may require that
7 KONICA, KONICA's contractors and subcontractors change the amount, scope or types
8 of coverages required herein if, in his or her sole opinion, the amount, scope, or types of
9 coverages herein are not adequate.

10 The procuring or existence of insurance shall not be construed or deemed
11 as a limitation on liability relating to KONICA's performance of services or as full
12 performance of or compliance with the indemnification provisions herein.

13 5. Notice. Notice shall be given as described in Exhibit A.

14 6. Miscellaneous. A. If there is any conflict between this Master
15 Agreement and any Exhibit or Transaction Document, then the provisions of the Master
16 Agreement shall govern.

17 B. This Master Agreement is not intended or designed or entered for the
18 purpose of creating any benefit or right for any person or entity of any kind that is not a
19 party to this Master Agreement.

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1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

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4 KONICA MINOLTA BUSINESS SOLUTIONS, a
California Corporation
New York

5
6 NOVEMBER 14, 2007

By 

(Print or Type Name)

8 Officer's Title _____

9 NOVEMBER 14, 2007

By 

(Print or Type Name)

12 Officer's Title _____

13 "KONICA"

14 CITY OF LONG BEACH, a municipal
corporation

15 ASSISTANT

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

16 November 19, 2007

By 

City Manager

17 "CITY"

18 This Master Agreement is approved as to form on 11/16, 2007

19 ROBERT E. SHANNON, City Attorney

20 By 

Deputy

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EXHIBIT A

The following terms and conditions apply to the provision of maintenance services by Konica Minolta Business Solutions USA, Inc. ("KMBS") to Customer during the term of this Agreement:

1. **PAYMENT:** Payment is due within thirty (30) days from the date of the invoice. Should the customer fail to make any payment due hereunder, or be or become insolvent or be a party to or acquiesce in any bankruptcy or receivership proceeding or any similar action affecting the affairs or property of Customer, KMBS may (1) refuse to continue to service the equipment or (2) furnish service on a time, travel and material basis, without prejudice to any other remedies KMBS may have. If Customer fails to make any payment when due, there will be a service charge of one and one-half percent (1 1/2%) of the total amount due or the maximum legal rate allowed by law, whichever is less. NO CASH PAYMENTS ACCEPTED. Accepted manners of Payment are by Major Credit Card or checks made payable to KMBS.

2. **METER READINGS:** Customer will provide accurate and timely meter readings at the end of each billing period in a manner prescribed by KMBS. KMBS shall have access to monitor the meter readings and if meter readings are not received in a timely manner, KMBS may obtain or estimate them and Customer agrees to pay for maintenance services based on estimated meter readings. Duplexed and 11" x 17" shall be counted as two meter clicks. For models equipped with banner printing capabilities, the following meter click charges shall apply: 18"x27" = 3 clicks; 27"x36" = 4 clicks; 36"x47" = 5 clicks.

3. **INSTALLATION:** Equipment shall be installed by an authorized KMBS representative, at Customer's sole cost and expense, Customer shall ensure that equipment is placed in an environment that conforms with the manufacturer's specifications and requirements and will bear all cost and expense for any additional necessities required for installation such as telephone and electrical wiring, remodeling, and noise and power filters. Any electrical work external to the equipment (i.e. associated peripheral equipment, power, transmission and phone lines, and modems) and equipment line cord is not covered by this Agreement.

4. **COMMENCEMENT OF SERVICE:** The equipment must be in good condition on the commencement date of this agreement. KMBS charges for parts and labor required to place the equipment in such condition unless covered under any applicable warranties or a continuous maintenance agreement. KMBS will invoice the customer and this will be in addition to the price set forth on the reverse hereof.

5. **ADDITIONAL EQUIPMENT:** No maintenance service for additional or substituted equipment will be provided by KMBS until it is accepted by KMBS, in writing, for coverage. KMBS reserves the right to adjust the coverage period for any additional or substituted equipment to assure common renewal dates.

6. **SERVICE INCLUDED:** This Agreement covers labor or routine, remedial and preventive maintenance service as well as remedial parts. All part replacements shall be on an exchange basis with new or refurbished items. Emergency service calls will be performed at no extra charge during normal business hours. Unless otherwise indicated, normal business hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays observed by KMBS. Overtime charges, at KMBS' then current rate, will be charged for all service calls outside normal business hours. In addition to any other rights hereunder, KMBS reserves the right to delete discontinued equipment from this Agreement if parts become unavailable for discontinued equipment.

7. **PREVENTIVE MAINTENANCE:** Preventive Maintenance shall be performed on the equipment at the intervals defined by the Technical Service Manuals for the particular model. Preventive Maintenance will include cleaning, lubrication, adjustment, and may be made at the same time remedial service is being performed. KMBS technicians do not carry or deliver consumable supplies (toner, developer, etc.). It is the Customer's responsibility to have the necessary supplies available for the Technician's use.

8. **ACCESS:** Customer shall provide KMBS' personnel with free and full access to the equipment and any necessary operating time for the purposes of furnishing maintenance services. Customer shall arrange and insure that one of its employees is present at all times when KMBS personnel perform maintenance services.

9. **SELLER'S AGENTS:** Customer acknowledges that it has been advised that no agent, employee, or representative of KMBS has any authority to bind KMBS to any affirmation, promise, representation, or warranty concerning any of the equipment or services. Unless an affirmation, promise, representation, or warranty is specifically set forth in this Agreement it does not form a basis of this bargain and shall not be enforceable against KMBS.

10. **DISCLAIMER:** This Agreement does not cover service required due to malfunction of parts, attachments, or supplies of non-KMBS manufacture. When the use of a particular supply item may cause machine damage or require excessive servicing, KMBS, upon notice to Customer, will not continue remedial or preventive service for that equipment. By introducing supplies of differing manufacture into the KMBS equipment Customer accepts the responsibility to pay for any remedial or corrective service required. Any alterations, modifications or changes to the equipment by someone other than KMBS, including Customer, may result in termination of this Agreement. Without prior authorization, this Agreement does not apply to any equipment which ceases to be at the customer location described on the reverse side hereof. This Agreement does not apply to any equipment lost or damaged through accident, abuse, misuse, theft, neglect, acts of third parties, fire, water, casualty or any other natural force, and any loss or damage occurring from any of the foregoing is specifically excluded from this Agreement.

11. **AUTOMATIC RENEWAL:** Service on individual equipment shall automatically be extended for successive one year terms at the then prevailing rate unless Customer or KMBS provides the other party with thirty (30) days written notice before the end of the current term of its intention not to renew this Agreement. Upon renewal, either party may cancel this agreement, with or without cause, upon thirty (30) days written notice to the other party. Upon cancellation pursuant to this paragraph 11, Customer will be billed for service through the effective date of cancellation.

12. **BUSINESS PURPOSE:** Customer warrants and represents that the equipment will be used for business purposes, and not for personal, family, or household purposes.

13. **NETWORK INTEGRATION:** If Network Integration services are provided by KMBS, Customer warrants that the KMBS Digital Needs Analysis "DNA" has been accurately completed and KMBS may rely on the information contained in the DNA in providing network integration services. KMBS reserves the right to assess additional charges for service due to Customer's modification of its network, software, or operating system(s).

14. **RELOCATION:** Relocation or make ready shipment of equipment is not covered by this maintenance agreement. This service, when requested, will be at the then billable rate of KMBS.

15. **ASSIGNMENT:** Customer may not assign This Agreement, without KMBS' express written consent. In the event that KMBS assigns or subcontracts any of its obligations under this Agreement, KMBS shall remain primarily responsible to perform those obligations. Any claim or defense Customer may have relating to those obligations must be asserted only against KMBS and not its assignee. KMBS may assign, without notice to Customer, any of its rights under this Agreement.

16. **NOTICES:** All notices required to be given under this Agreement shall be in writing and shall be sent by U.S. first class mail to the parties as follows: To Customer at the address listed on the front of this Agreement and to KMBS, at 100 Williams Drive, Ramsey, NJ 07446, Attention: Office of Direct Administration.

17. **INDEMNIFICATION:** Customer shall bear all risk of theft, loss or damage not caused by KMBS employees or agents, to all equipment installed under this Agreement. Customer agrees to indemnify, defend and hold harmless KMBS, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorneys' fees) arising out of Customer's use of the equipment, including but not limited to liabilities arising from bodily injury, including death, or property damage to any person, unless caused solely as the result of a negligent or intentional act or omission by KMBS.

18. **WARRANTY:** KMBS WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS AND SPECIFICATIONS FOR THE EQUIPMENT. KMBS MAKES NO OTHER WARRANTIES WHATSOEVER EXPRESS OR IMPLIED WITH REGARD TO THE SERVICE, THE SOFTWARE INCLUDED WITH THE EQUIPMENT OR ITS INSTALLATION, AND MAINTENANCE, AND EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

19. **REMEDY LIMITATIONS:** The equipment may not be returned to KMBS without KMBS' written consent. CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPAIR OF THE EQUIPMENT OR REPLACEMENT OF A NONCONFORMING PART, AT KMBS' OPTION. Customer expressly waives its rights to special, consequential, exemplary, incidental or punitive damages. KMBS' LIABILITY IS LIMITED TO THE COST OF MAINTENANCE SERVICES PURCHASED BY THE CUSTOMER FROM KMBS. KMBS SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES DUE TO LOSS OF DATA OR INFORMATION OF ANY KIND, LOSS OF OR DAMAGE TO REVENUE, PROFITS OR GOODWILL, DAMAGES DUE TO ANY INTERRUPTION OF BUSINESS, DAMAGE TO CUSTOMER'S COMPUTERS OR NETWORKS, EVEN IF KMBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. **APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of New York without regard to choice of law principles. In the event of litigation or other proceedings by KMBS to enforce or defend any term or provision of this Agreement, Customer agrees to pay all costs and expenses sustained by KMBS, including but not limited to, reasonable attorney's fees.

21. **FORCE MAJEURE:** Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any act of God, civil commotion, labor dispute, or any other occurrence beyond its reasonable control.

22. **SEVERABILITY:** If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

23. **WAIVER:** Failure by KMBS to enforce any provisions of this Agreement or any rights hereunder, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the party's right to later enforce or exercise the same or other provisions, rights, or elections it may have under this Agreement.

24. **ORIGINAL DOCUMENT:** Customer further agrees (a) that facsimile or electronic signatures shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. KMBS may accept orders electronically from Customer pursuant to this Agreement. Neither party shall raise any objection to the authenticity of this Agreement or any document created hereunder, based on either the use of a facsimile signature or the use of a copy retrieved from an electronic storage system.

25. **Supplies Included in the Base/Print Charges.** If this option has been selected, KMBS (or designated servicer) will provide Customer with supplies, including but not limited to toner, developer, copy cartridges, staples and PM kits ("Consumable Supplies") throughout the term of this Agreement. Customer agrees that the Consumable Supplies are KMBS property until used by Customer. Customer will use Consumable Supplies only with the contracted Equipment and run them to their cease-function point. Customer will return any unused Consumable Supplies to KMBS at the end of this Agreement. Should Customer's use of Consumable Supplies exceed the typical use pattern (as determined solely by KMBS) for these items by more than 10%, Customer agrees that KMBS shall have the right to charge for any such excess usage.

ENTIRE AGREEMENT: This is the entire Agreement between Customer and KMBS and supersedes any proposal or prior agreement, oral or written, or any other communications relating to maintenance services for KMBS equipment and it may not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each party. Customer agrees that any Purchase Order or other documentation issued to KMBS covering the equipment or maintenance is issued for purpose of authorization and Customer's internal use only, and any terms and conditions contained therein shall not modify or add to the terms and conditions of this Agreement. This Agreement will not be effective until accepted by an authorized representative of KMBS. Notice of acceptance is hereby waived by Customer.