



**REVISED**

**CITY OF MIAMI SPRINGS, FLORIDA**

**Mayor Maria Puente Mitchell**

**Vice Mayor Victor Vazquez, Ph. D.  
Councilwoman Jacky Bravo**

**Councilman Bob Best  
Councilman Walter Fajet, Ph. D.**

*Decorum: "Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the City Council, shall be barred from further audience before the City Council by the Mayor, unless permission to continue or again address the City Council is granted by the majority vote of the City Council members present. In accordance with the foregoing, the City Council has determined that racial or ethnic slurs, personal attacks and comments unrelated to City matters or issues constitute prohibited comments from the podium."*

**CITY COUNCIL REGULAR MEETING AGENDA**

**Monday, October 10, 2022 – 7:00 p.m.**

**City Hall, Council Chambers, 201 Westward Drive, Miami Springs, Florida  
(In-person and virtually. See pages 3-4 for additional information)**

- 1. Call to Order/Roll Call**
- 2. Invocation:** Mayor Maria Mitchell  
**Pledge of Allegiance:** Audience will lead the Pledge of Allegiance and Salute to the Flag
- 3. Agenda / Order of Business**
- 4. Awards & Presentations:**
  - A) Presentation by Assistant Principal Desiree Gonzalez-Martinez from the Miami Springs Adult & Community Education Center on new educational programs
  - B) Yard of the Month Award for October 2022 – 550 Hunting Lodge Drive – Olga Garcia-Moreno
  - C) Recognizing Artist of the Month City Hall for October and November 2022 Miami Springs Senior High School Students from Ms. Beth Goldstein's art classes
- 5. Open Forum:** Persons wishing to speak on items of general City business, may do so in person (*subject to capacity restrictions*) or virtually by following the instructions on pages 3-4. This portion of the meeting also includes any pre-screened video submittals. *The purpose of Open Forum is to encourage residents and members of the public to address their concerns and make comments on any item. The City Council will not enter into a dialogue at this time. City staff will gladly address any question, issue, and/or comment after the meeting. The Mayor is the presiding officer of all Council meetings and shall conduct the meetings accordingly.*
- 6. Approval of Council Minutes:**
  - A) September 26, 2022 – Regular Meeting
- 7. Reports from Boards & Commissions: None.**

**8. Public Hearings: None.**

**9. Consent Agenda: (Funded and/or Budgeted):**

A) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Authorizing The Negotiation And Execution Of A Sixty-Six Month Lease With DLL Finance, LLC For The City's Golf And Country Club Golf Cart Fleet From Club Car, LLC In An Amount Not To Exceed \$404,960.16 Utilizing The Terms And Conditions Of An Omnia Partners Cooperative Contract Pursuant To Section 31-11(E)(5) Of The City Code; Approving An Early Lease Termination Of The City's Existing Golf Cart Lease; Providing For Implementation; And Providing For An Effective Date

B) Recommendation by Golf that Council approve an expenditure to Acushnet, as a sole source provider, on an "as needed basis" in the amount of \$40,000, for purchasing Titleist and Foot Joy merchandise to be re-sold in the golf pro shop as there is only one source (proof attached) for the required materials and as funds were budgeted in the FY22/23 Budget pursuant to Section §31.11 (E)(6)(c) of the City Code

C) Recommendation by Golf that Council waive the competitive bid process in the best interests of the City because of the installation of the free satellite tank monitors which has lowered the overall fuel costs to the city by an estimated \$15,600 in comparison to previous years and approve an expenditure to Tropic Oil, on an "as needed basis" in the amount of \$50,000, for fuel supply services of diesel and regular fuel at Miami Springs Golf & Country Club as funds were budgeted in the FY22/23 Budget pursuant to Section §31.11 (E)(6)(g) of the City Code

D) Recommendation by Golf that Council approve an expenditure to Hector Turf, as the sole distributor within the Southeast Florida region, as a sole source provider, on an "as needed basis" in the amount of \$35,000, for parts needed to repair our Toro golf equipment and for irrigation supplies as there is only one source (proof attached) for the required supplies and as funds were budgeted in the FY22/23 Budget pursuant to Section §31.11 (E)(6)(c) of the City Code

E) Recommendation by staff that Council authorize the issuance and/or execution of a Purchase Order with Toshiba American Business Solutions, Inc., utilizing the State of Florida Alternate Contract Source Number 44000000-NASPO-19-ACS- led by the State of Colorado's ASPO Value Point Master Agreement number: 140604 (attached), in an amount not to exceed \$31,500.00 which includes the City's currently leased 9 Toshiba copiers citywide (\$18,705.00 annually) and the Managed Print Services for the maintenance and replacement of ink cartridges for citywide desktop printers under NASPO Value Point Program (\$10,870.00 annually), and \$1,925.00 for any overages for excessive copies over our monthly allowances as funds were budgeted in the FY22/23 departmental budgets pursuant to Section §31.11 (E)(5) of the City Code

**10. Old Business: None.**

**11. New Business:**

A) **Ordinance – First Reading** – An Ordinance Of The City Of Miami Springs, Florida, Approving A Small Scale Comprehensive Plan Amendment To The City's Future Land Use Map (FLUM) From "Public Facility" To "Single Family Residential" For A 37,751 Square Foot (±0.86 Acre) Parcel Of Property Generally Located At 1101 Wren Avenue; Providing For Authorization;

Providing For Conflicts; Providing For Severability; And Providing For An Effective Date

B) **Ordinance – First Reading** – An Ordinance Of The City Of Miami Springs, Florida, Amending Section 32-68, “Mitigation Of Fines,” Of The City’s Code Of Ordinances To Establish Procedures And Guidelines For The Mitigation Of Code Enforcement Fines, Penalties And Liens; Providing For Codification; Providing For Severability; Providing For Conflicts; And Providing For An Effective Date

C) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Providing For The First Budget Amendment To The Fiscal Year 2022-2023 General Fund, Special Revenue, And Capital Projects Fund Budgets By Re-Appropriating Reserved Fund Balances To Fund Open Encumbrances Through September 30, 2022; And Providing For An Effective Date

**12. Other Business:**

A) Vote of Confidence for the City Manager as Required by Section 4.02 (2) of the City Charter

B) Request by Councilman Fajet to discuss reviewing parking requirement ordinances in the City

C) Update on Annexation Application

**13. Reports & Recommendations:**

A) City Attorney

B) City Manager

C) City Council

**14. Adjourn**



## CITY OF MIAMI SPRINGS PUBLIC MEETING NOTICE

The City of Miami Springs will hold a Council meeting on:  
**Monday, October 10, 2022 at 7:00 p.m. at**  
**City Hall, Council Chambers, 201 Westward Drive, Miami Springs, Florida**  
**(Physical Meeting Location)**

The meeting agenda is available online at: <https://www.miamisprings-fl.gov/meetings>

Elected officials and City staff will participate from the physical meeting location. Members of the public may attend the meeting in person at the physical meeting location, or, alternatively, may watch or call in to the meeting by following these instructions:

### ATTEND THE MEETING IN PERSON AT THE PHYSICAL MEETING LOCATION

The meeting will be held in person at the physical meeting location stated above. Admission to the physical meeting location is on a first-come, first-serve basis and space is limited. Doors will open 30 minutes prior to the meeting start time. The City highly encourages those in attendance to wear facial coverings and abide by social distancing as recommended by the CDC.

### WATCH THE MEETING

- **Comcast/Xfinity:** Channel 77 (Meeting will not be live broadcast, but will be available for later viewing)
- **YouTube:** <https://www.youtube.com/channel/UC2at9KNngUxZRSw1UkhdHLQ/featured>
- **From your computer/mobile device:** <https://www.miamisprings-fl.gov/meetings>

### CALL IN TO THE PUBLIC MEETING

**Dial 305-805-5151 or 305-805-5152**

*(Alternatively, you may also dial the phone numbers below to join the meeting:*  
1 (646) 558 8656, 1 (301) 715 8592, 1 (312) 626 6799, 1 (669) 900 9128, 1 (253) 215 8782,  
1 (346) 248 7799) **then input the Meeting ID: 863-9512-4146, followed by #.**  
**There is no participant ID. Press # again.**

Any person requiring special accommodations to access this proceeding is asked to advise the City at least 2 days before the proceeding by contacting the City Clerk at [cityclerk@miamisprings-fl.gov](mailto:cityclerk@miamisprings-fl.gov)

### PUBLIC COMMENTS WILL BE ACCEPTED BY THE FOLLOWING MEANS:

**EMAILED COMMENTS:** Members of the public may email their public comments to the City in advance of the meeting. Please email the City at [cityclerk@miamisprings-fl.gov](mailto:cityclerk@miamisprings-fl.gov) by 12:00 p.m. on the day of the meeting with the subject line "PUBLIC COMMENT" and the following information in the body of the email: Your Name, Address, if you are a hired Consultant or City Employee, and/or if you are engaged in Lobbying Activities and/or representing an organization. Please limit your comments to no more than 350 words. Public comments received via email may be read into the record during the public comment portion of the agenda, if any.

**IN-PERSON COMMENTS:** Members of the public may attend the meeting at the physical meeting location stated above and deliver their public comments in person during the public comment portion of the agenda.

**VIRTUAL COMMENTS:** *Public comments will also be accepted during the meeting using the virtual meeting platform as follows:*

**By telephone:** To ask to speak during the meeting, call in to the meeting using the instructions above. Please press \*9 from your telephone and you will be called on to speak during public comments and identified by the last 4-digits of your telephone number.

During the meeting, when your name or the last 4-digits of your telephone number is called, you will be unmuted and you may deliver your comments.

Please be sure to be in a quiet area to avoid unnecessary noise. Please provide the following information before delivering your comments: Your Name, Address, if you are a hired Consultant or City Employee, and/or if you are engaged in Lobbying Activities and/or representing an organization.

A time limit may be imposed for each speaker during public comment.  
Your cooperation is appreciated in observing the time limit.

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the City Council, shall be barred from further audience before the City Council by the Mayor, unless permission to continue or again address the City Council is granted by the majority vote of the City Council members present. In accordance with the foregoing, the City Council has determined that racial or ethnic slurs, personal attacks and comments unrelated to City matters or issues constitute prohibited comments when addressing the Council during public comments.

#### **PUBLIC RECORDS**

The meeting will be recorded for later viewing and is a public record. The virtual chat, if any, will be saved and is a public record. Minutes of the meeting will be taken and will be made available.

#### **NOTICE PURSUANT TO §286.0105, FLORIDA STATUTES**

**IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.**

#### **AMERICANS WITH DISABILITIES ACT**

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this proceeding is asked to advise the City at least 2 days before the proceeding by contacting the City Clerk's Office at 305-805-5006.

#### **LOBBYING ACTIVITIES**

In accordance with Section 33-01 of the City Code, adopting Section 2-11.1(s) of the Miami-Dade County Code, any person engaging in lobbying activities, as defined therein, must register at the City Clerk's Office before addressing the City Council on the agenda items or engaging in lobbying activities. Specifically, all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the City Council; (2) any action, decision, recommendation of any City Board or Committee; or (3) any action, decision or recommendation of City personnel during the time period of the entire decision-making process on such action, decision or recommendation which will be heard or reviewed by the City Council, or a City Board or Committee shall register with the City before engaging in any lobbying activities on forms prepared for this purpose and shall state under oath his or her name, business address, the name and business address of each person or entity which has employed said registrant to lobby, and the specific issue on which he or she has been employed to lobby. A copy of the lobbyist registration form is available from the Office of the City Clerk and online at: <https://www.miamisprings-fl.gov/cityclerk/lobbyist-registration-form-0>.

**Have questions or need additional information?**

**Write:** [cityclerk@miamisprings-fl.gov](mailto:cityclerk@miamisprings-fl.gov)

**Call:** 305-805-5006

**Mail:** 201 Westward Drive, Miami Springs, FL 33166



# **CERTIFICATE OF RECOGNITION**

Presented to

***Olga Garcia-Moreno***

Of

***550 Hunting Lodge Drive***

for their home being designated as

***“YARD OF THE MONTH”  
October, 2022***

Presented this 10<sup>th</sup> day of October, 2022.

**CITY OF MIAMI SPRINGS, FLORIDA**

Maria Puente Mitchell  
Mayor

**ATTEST:**

Erika Gonzalez, MMC  
City Clerk

## Erika Gonzalez-Santamaria

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**From:** Shannen M. Jaser  
**Sent:** Tuesday, October 4, 2022 9:03 AM  
**To:** Erika Gonzalez-Santamaria  
**Subject:** FW: 6 of 20 participants

Art @ City Hall Month of October

This is a student designed student taught lesson.

Miami Springs Senior High launches their first Art Club meeting of the year with a whimsical, new project. Students created personalized trading cards, featuring all the qualities that make them unique. Each card showcases their marker, color pencil skills, and individuality. Get to know the students of Miami Springs and witness creative artwork.

Thank you!

**Shannen Jaser** 

**Public Information & Professional Services Specialist**



**CITY OF MIAMI SPRINGS**

201 Westward Drive  
Second Floor – Professional Services  
Miami Springs, Florida 33166  
(O) 305-805-5010  
(City Cell) 786-606-1282  
(E) [JaserS@miamisprings-fl.gov](mailto:JaserS@miamisprings-fl.gov)



Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

 Please save a tree. Don't print this e-mail unless it's really necessary.

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**From:** beth goldstein <goldsteinbs@hotmail.com>  
**Sent:** Tuesday, October 4, 2022 8:52 AM  
**To:** Shannen M. Jaser <jasers@miamisprings-fl.gov>  
**Subject:** 6 of 20 participants







## **City of Miami Springs, Florida**

City Council Meeting

Regular Meeting Minutes

Monday, September 26, 2022 7:00 p.m.

City Hall Council Chambers, 201 Westward Drive, Miami Springs, Florida

Virtual Council Meeting using Communications Media Technology Pursuant to  
Governor's Executive Order 20-69

1. **Call to Order/Roll Call:** The meeting was called to order by the Mayor at 7:00 p.m.

Present were the following:

Mayor Maria Puente Mitchell

Vice Mayor Walter Fajet, Ph.D.

Councilman Bob Best

Councilwoman Jacky Bravo

Councilman Victor Vazquez, Ph.D.

City Manager/Finance Director William Alonso

Assistant City Manager Tammy Romero

City Clerk Erika Gonzalez-Santamaria

City Attorney Haydee Sera (via Zoom)

Police Chief Armando Guzman

Planning Director Chris Heid

2. **Invocation:** Offered by Councilwoman Jacky Bravo

**Pledge of Allegiance:** The audience participated in leading the pledge.

3. **Agenda / Order of Business**

4. **Awards & Presentations:**

A) Recognizing Charles Hill for Eighteen (18) Years of Service on the Historic Preservation Board

**Mayor Mitchell welcomed**

5. **Open Forum:** The following members of the public addressed the City Council: Kristopher Fernandez.

6. **Approval of Council Minutes:**

A) August 29, 2022 – Workshop Meeting

B) September 12, 2022 – Regular Meeting

**Councilman Best moved to approve the minutes of August 15, 2022 Budget Workshop and August 22, 2022 Regular Meeting. Councilman Vazquez seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

**7. Reports from Boards & Commissions: None at this time.**

**8. Public Hearings:**

**A) Resolution – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Adopting The Final Millage Rate For The Fiscal Year Commencing October 1, 2022 And Ending September 30, 2023 In The Amount Of 6.9100 Mills, Which Is 4.14 % Higher Than The Roll-Back Rate Of 6.6352 Mills; Announcing The Percentage Increase In Property Taxes; And Providing For An Effective Date**

**City Attorney Haydee Sera read the Resolution by title.**

**Mayor Mitchell opened the public hearing; there were no speakers. The public hearing closed.**

**Councilman Best moved to approve the Resolution adopting the final millage rate. Vice Mayor Fajet seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

**B) Resolution – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Adopting A Final Budget For The Fiscal Year Commencing October 1, 2022 And Ending September 30, 2023; Providing For Expenditure Of Budgeted Funds; Providing For Budgetary Controls; Providing For Grants And Gifts; Providing For Budget Amendments; Providing For Encumbrances; And Providing For An Effective Date**

**City Attorney Haydee Sera read the Resolution by title.**

**Mayor Mitchell opened the public hearing; there were no speakers. The public hearing closed.**

**Councilman Best moved to approve the Resolution adopting the final budget. Councilwoman Bravo seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

**C) Ordinance – Second Reading – An Ordinance Of The City Of Miami Springs, Florida, Amending Section 31-11, “Purchasing, Procurement, And Sale Procedures” Of The City’s Code Of Ordinances To Update The City’s Procurement Provisions; Providing For Conflicts; Providing For Severability; Providing For**

Codification; And Providing For An Effective Date

**City Attorney Haydee Sera read the Ordinance by title.**

**Mayor Mitchell opened the public hearing; there were no speakers. The public hearing closed.**

**Councilwoman Bravo moved to approve the Ordinance on second reading. Councilman Best seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

D) **Resolution** – A Resolution Of The Mayor And The City Council Of The City Of Miami Springs, Florida, [Approving/Denying] A Variance Application By Juan A. Calvo For Property Located At 400 Park Street To Provide A 10'8" Front Yard Setback Where Section 150-060(E) Of The Code Requires A Minimum Required Front Yard Of Not Less Than 30 Feet Or The Average Depth Of The Front Yard Of The Lot Or Lots Next Adjacent Thereto On Either Side, Whichever Is The Lesser Of The Two; Providing For Conditions; Providing For Violations; And Providing For An Effective Date

**City Attorney Haydee Sera read the Resolution by title and provided a statement on quasi-judicial matters. City Clerk Erika Gonzalez swore-in those that were present to speak on the application. City Planner Chris Heid gave his oral report on the applicant's request. Mr. Juan Calvo addressed the City Council and answered their questions.**

**Mayor Mitchell opened the public hearing; there were no speakers. The public hearing closed.**

**Councilman Best moved to approve Resolution as read. Councilman Vazquez seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

**9. Consent Agenda: (Funded and/or Budgeted):**

A) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Approving The Purchase Of Three Vehicles From Duval Ford, LLC In An Amount Not To Exceed \$172,693.57 Utilizing The Terms And Conditions Of The Florida Sheriffs Association Contract Nos. FSA 20-Veh18.0 And FSA 20-Vel28.0 Pursuant To Section 31-11(E)(5) Of The City Code; Declaring Certain Vehicles As Surplus Property; Authorizing The Sale Or Disposition Of Surplus Property; Providing For Implementation; And Providing For An Effective Date

**City Manager William Alonso read the Resolution by title.**

**Councilman Best moved to approve Item 9A. Councilwoman Bravo seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor**

**Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

**10. Old Business: None at this time.**

**11. New Business:**

A) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Selecting Amerant Bank, N.A. For Banking Services Pursuant To Request For Proposals No. 05-21/22; Approving A Treasury Management Master Agreement; Providing For Authorization; And Providing For An Effective Date

**City Manager William Alonso read the Resolution by title and the staff memo for the record.**

**Councilman Best moved to approve the Resolution. Councilman Vazquez seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

B) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Selecting Downtown Towing Company, Inc. For Citywide Towing Services Pursuant To Request For Proposals No. 01-21/22; Providing For Authorization; And Providing For An Effective Date

**City Manager William Alonso read the Resolution by title. Police Chief Armando Guzman was present to answer any of the City Council’s questions.**

**Councilman Best moved to approve the Resolution. Vice Mayor Fajet seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

C) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Establishing The Centennial Committee; Providing For Authorization; And Providing For An Effective Date

**City Manager William Alonso read the Resolution by title.**

**After some discussion, Councilman Vazquez moved to approve the Resolution. Councilman Best seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

D) **Resolution** – A Resolution Of The Mayor And City Council Of The City Of Miami Springs, Florida, Extending The Term Of The Business And Economic Development Task Force From September 30, 2022, Through November 30, 2022; Providing For Implementation; And Providing For An Effective Date

**City Manager William Alonso read the Resolution by title.**

**City Attorney Haydee Sera stated that the Resolution was amended to reflect an extension to November 30, 2022. Councilwoman Vazquez moved to approve the Resolution. Councilman Best seconded the motion, which carried 5-0 on roll call vote. The vote was as follows: Vice Mayor Fajet, Councilman Best, Councilwoman Bravo, Councilman Vazquez and Mayor Mitchell voting Yes.**

**12. Other Business: None at this time.**

**13. Reports & Recommendations:**

**A) City Attorney**

**City Attorney Haydee Sera stated that in the upcoming week or so, it is expected that the City will receive a proposed Interlocal Agreement from Miami-Dade County on the annexation. She explained that as soon as the agreement is received and reviewed it will come to the City Council for consideration.**

**B) City Manager**

**City Manager William Alonso stated that the Assistant City Manager Tammy Romero had just lost her father and had to leave the Council meeting. He gave his deepest condolences to her and her family. He announced all the upcoming City events and stated that more information is available on the City website.**

**C) City Council**

**Councilman Best requested for a moment of silence for Assistant City Manager's recent loss of her father. He recognized Judge Charles Hill for his service to the Historic Preservation Board. He also stated that the proposed War Memorial funding continues to be underway and hopes to see more fundraising in the upcoming months. He wished everyone a Happy Rosh Hashanah.**

**Councilwoman Bravo sending her prayers to west coast Florida for the impacts of Hurricane Ian. She expressed that she has someone in mind for the Centennial Committee, she stated that Michael Gavila would be her choice for the board.**

**Vice Mayor Fajet expressed his condolences to Tammy Romero and family for her recent loss. He stated that the City Council did a great job on the budget and were able to allocate funds to the community for continued City services with a reduction in the millage rate.**

**Councilman Vazquez also expressed his condolences to Tammy Romero for the loss of her father. He stated that there are disaster relief efforts for Puerto Rico due to the devastation of Hurricane Fiona, if anyone is interested to please reach out to him for more information. He stated that it is Hispanic Heritage Month and**

recognizes that Hispanics are differ from country to country, and appreciates the national recognition this month.

Mayor Mitchell mentioned that the appointments for the Centennial Committee should be submitted to the City Clerk as soon as possible in order to coordinate the first meeting. She stated that the free breast cancer mobile service in conjunction with Senator-elect Bryan Avila for assisting the City in coordinating this service for the community. Mayor Mitchell reminded the public that the Farewell Evening for Commissioner Sosa is Wednesday, September 28<sup>th</sup> at the Curtiss Mansion at 7:00 p.m. Mayor Mitchell expressed her deepest condolences to Tammy Romero and her family of the unexpected loss of her father.

#### **14. Adjourn**

There being no further business to be discussed the meeting was adjourned at 9:00 p.m.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, MMC  
City Clerk*

*Adopted by the City Council on  
This 10th day of October, 2022.*

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*Maria Puente Mitchell, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE CITY HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE CITY FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.



# AGENDA MEMORANDUM

**Meeting Date:** 10/10/2022

**To:** The Honorable Mayor Maria P. Mitchell and Members of the City Council

**Via:** William Alonso, City Manager/Fin. Director

**From:** Paul O'Dell, Golf and Country Club Director

**Subject:** New Golf Cart Fleet leased via De Lange Landen Financial Solutions Partner / DLL Finance, LLC. & Club Car, LLC.

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**RECOMMENDATION:** Recommendation by Golf that Council authorize the City Manager to issue a letter of intent to enter into a lease agreement with De Lange Landen Financial Solutions Partner / DLL Finance, LLC., through ClubCar, LLC., utilizing Omnia Partners Contract #EV2671-01, for the leasing of a new golf cart fleet consisting of (85) gasoline powered carts, (1) Beverage Café Cart, and (1) 4 passenger Transporter Cart financed for a (66) sixty-six month term, for \$6,135.76 per month beginning October 1, 2023 for an amount not to exceed \$404,960.16 over the life of the lease pursuant to Section §31-11 (E)(5) of the City Code and to negotiate and execute a lease consistent with Club Car's proposal and the terms of the Omnia Contract

**DISCUSSION:** The City of Miami Springs (the "City") currently leases a fleet of eighty-five (85) 2014 Club Car gasoline-powered golf carts, a beverage cart, and a utility vehicle (collectively, the "2014 Fleet") from DLL Finance, LLC (the "Leasing Company") pursuant to a 2018 Lease Agreement which provides for a five-year term ending September 30, 2025 (the "2018 Lease").

The City intends to begin renovations at the City-owned Golf and Country Club in April 2023. During the period of renovations, the 2014 Fleet will not be in use. The City has begun negotiations with Club Car and the Leasing Company to provide an early termination of the 2018 Lease, as the 2014 Fleet will not be in use while the renovations are taking place. The intent is that Club Car will retrieve the 2014 Fleet at the commencement of the renovations at the Golf Course and waive the balance remaining on the lease payments due under the 2018 Lease (i.e., a total of \$24,038.70, which is equivalent to \$4,807.74 per month).

Due to the supply chain issues related to the Covid-19 pandemic, any equipment or vehicle will need to be procured and ordered a minimum of 12 months in advance, in order to arrive at the desired date. The City anticipates that the renovations at the Golf Course will be completed on or around October 2023.

The Leasing Company has agreed to an early termination of the 2018 Lease in exchange for a new, 66-month lease of eighty-five (85) 2022 Club Car Tempo gasoline-powered golf carts, a 2022 beverage cart, and a 2022 utility vehicle (collectively, the "2022 Fleet") for \$6,135.76 per month beginning October 1, 2023 for an amount not to exceed \$404,960.16 over the life of the lease, all as set forth in the Proposal attached hereto as Exhibit "A" (collectively, the "2022 Lease Proposal"). The 2022 Lease Proposal is based on a competitively procured contract through Omnia



Partners, Public Sector, a purchasing cooperative, which has agreements with Club Car for the golf carts, beverage carts, and utility vehicles needed by the City.

The proposed new rate schedule for the new sixty-six month lease term, set to commence approximately on September 30, 2023 is as follows:

<u>Number of Cars</u>	<u>Type of Car</u>	<u>Lease Term</u>	<u>Payment Per Month</u>	<u>Total monthly Payments over (66) months</u>
85	2022 Tempo Gas Fleet Car	(66) months	\$66.99 x 85 cart	\$5,694.15
1	2022 Café Express	(66) months	\$296.84 x 1 cart	\$296.84
1	2022 Transporter Four	(66) months	\$144.77 x 1 cart	\$144.77
<b>TOTAL COMBINED MONTHLY PAYMENT (87 Carts)</b>				<b>\$6,135.76</b>
<b>TOTAL COMBINED PAYMENT OVER (66) MONTH TERM – (87 Carts)</b>				<b>\$404,960.16</b>

It is recommended that the City Council authorize the City Manager to issue a letter of intent to enter into a lease agreement with the Leasing Company for the 2022 Fleet, consistent with the terms of the 2022 Lease Proposal in an amount not to exceed \$404,960.16 over the life of the lease.

It is further recommended that the City Council authorize the City Manager to negotiate and execute a lease agreement with the Leasing Company for the 2022 Fleet consistent with the 2022 Lease Proposal attached hereto as Exhibit “A” to the resolution and consistent with the terms and conditions of the Omnia Contract in an amount not to exceed \$404,960.16 over the term of the 2022 Lease Agreement.

It is further recommended that the City Council approve the early termination of the 2018 Lease.

**Submission Date and Time:** 9/27/2022 1:52 PM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
Department: <u>Golf</u>	Dept. Head: _____	Dept./ Desc.: <u>Golf Course Maintenance</u>
Prepared by: <u>Laurie Bland</u>	Procurement: _____	Account No.: <u>001-5707-572-4400</u>
Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Asst. City Mgr.: _____	Additional Funding: <u>N/A</u>
Budgeted/ Funded: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City Manager: _____	Amount previously approved: \$ <u>0</u>
		Current request: \$ <u>\$404,960.16</u>
		Total vendor amount: \$ _____

**RESOLUTION NO. 2022-\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AUTHORIZING THE NEGOTIATION AND EXECUTION OF A SIXTY-SIX MONTH LEASE WITH DLL FINANCE, LLC FOR THE CITY'S GOLF AND COUNTRY CLUB GOLF CART FLEET FROM CLUB CAR, LLC IN AN AMOUNT NOT TO EXCEED \$404,960.16 UTILIZING THE TERMS AND CONDITIONS OF AN OMNIA PARTNERS COOPERATIVE CONTRACT PURSUANT TO SECTION 31-11(E)(5) OF THE CITY CODE; APPROVING AN EARLY LEASE TERMINATION OF THE CITY'S EXISTING GOLF CART LEASE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the "City") currently leases a fleet of eighty-five (85) 2014 Club Car gasoline-powered golf carts, a beverage cart, and a utility vehicle (collectively, the "2014 Fleet") from DLL Finance, LLC (the "Leasing Company") pursuant to a 2018 Lease Agreement which provides for a five-year term ending September 30, 2025 (the "2018 Lease"); and

**WHEREAS**, the City intends to begin renovations at the City-owned Golf and Country Club in April 2023 and during the period of renovations, the 2014 Fleet will not be in use; and

**WHEREAS**, the Leasing Company has agreed to an early termination of the 2018 Lease in exchange for a new, 66-month lease of eighty-five (85) 2022 Club Car gasoline-powered golf carts, a beverage cart, and a utility vehicle (collectively, the "2022 Fleet") for \$6,135.76 per month beginning October 1, 2023 for an amount not to exceed \$404,960.16 over the life of the lease, all as set forth in the Proposal attached hereto as Exhibit "A" (collectively, the "2022 Lease Proposal"); and

**WHEREAS**, Omnia Partners, Public Sector, is a purchasing cooperative for state and local governments, which has competitively procured agreements with Club Car (the "Vendor") for golf carts, beverage carts, and utility vehicles (collectively, the "Omnia Contract"); and

**WHEREAS**, Section 31-11(E)(5) of the City's Code of Ordinances (the "Code")

provides that purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector cooperative purchasing or not-for-profit companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases; and

**WHEREAS**, in accordance with Section 31-11(E)(5) of the City's Code of Ordinances, the City Council authorizes the City Manager to negotiate and execute a lease agreement with the Leasing Company for the 2022 Fleet consistent with the Proposal attached hereto as Exhibit "A" and consistent with the terms and conditions of the Omnia Contract; authorizes the expenditure of budgeted funds in an amount not to exceed \$404,960.16 over the term of the 2022 Lease Agreement; and approves of the early termination of the 2018 Lease; and

**WHEREAS**, the City Council finds that this Resolution is in the best interest and welfare of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Authorization.** That the City Council hereby authorizes the City Manager to negotiate and execute a lease agreement with the Leasing Company for the 2022 Fleet consistent with the Proposal attached hereto as Exhibit "A" and consistent with the terms and conditions of the Omnia Contract, subject to approval by the City Attorney as to form, content, and legal sufficiency. That the City Council hereby authorizes the expenditure of budgeted funds in an amount not to exceed \$404,960.16 over the term of the 2022 Lease Agreement.

**Section 3. Approval.** That the City Council hereby approves of the early termination of the 2018 Lease.

**Section 4. Implementation.** That the City Manager is further authorized to execute any purchase order or required documentation for the purchases described in this Resolution, subject to approval by the City Attorney as to form and legality; and to take any action that is reasonably necessary to implement the purpose of this Resolution,

including the issuance of a letter of intent to enter into a lease agreement consistent with the terms provided for herein.

**Section 5. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Dr. Walter Fajet	_____
Councilman Bob Best	_____
Councilwoman Jacky Bravo	_____
Councilman Dr. Victor Vazquez	_____
Mayor Maria Puente Mitchell	_____

PASSED AND ADOPTED this 26<sup>th</sup> day of September, 2022.

ATTEST:

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY

**EXHIBIT A**

**CLUB CAR PROPOSAL**



# Miami Springs Golf Club Miami Springs, Fla.

June 3, 2022  
Presented by: David Kelly

GAME FOR MORE...  
*possibilities*

Our love of golf runs deep.





## Company Profile

Club Car combines a quality-driven philosophy, an innovative spirit, and a solutions-oriented approach to business. Club Car has established itself as a leading global manufacturer of vehicles that serve the golf, rough terrain, private owner, and commercial markets.

With over 60 years of experience of innovation and design in producing small-wheel vehicles, Club Car is a leading manufacturer of gas and electric golf, utility and personal transportation vehicles.

Founded in 1958, the Club Car product portfolio has grown to include much more than golf cars, now encompassing vehicles for commercial and consumer markets, built with an uncompromised desire for superior performance.

As an industry leader in electrification and sustainability, Club Car is proud to be on the forefront of environmentally responsible Zero Emission Vehicle (ZEV) technologies.



Personal Transport



Fleet Golf



Turf



Transport



Street Legal (LSV)



Utility 4x2



Mobile Merchandising



Tempo Walk



Utility 4x4



Fit-to-Task



Club Car Connect

This proposal shall expire thirty days from its date, unless Club Car, LLC. agrees to extend the time frame. In consideration of receipt of this proposal, The County Club of Buffalo agrees that it will hold its contents in confidence and will not disclose, use or copy the same in whole or in part for any purpose other than to evaluate this proposal.



PROPOSAL

## Golf Partnerships

Club Car honors the game in its service to customers and support of the golf industry



PGA

Official Golf Car of The PGA of America



ClubProcure



U.S. KIDSGOLF



GCSAA  
Golf Course Superintendents Association of America



NATIONAL  
CLUB  
ASSOCIATION  
Advocacy | Insight | Governance



CLUB  
MANAGEMENT  
ASSOCIATION  
OF AMERICA

### How Do These Partnerships Benefit You?

- Club Car sponsors PGA section events, educational seminars and local chapters to grow the game of golf.
- If you are a member of VGM, ask about rebates on golf car fleets.
- If you involved with US Kids, Club Car funds the coaches to educate the future of golf.





PROPOSAL

# Gas Engine Technology



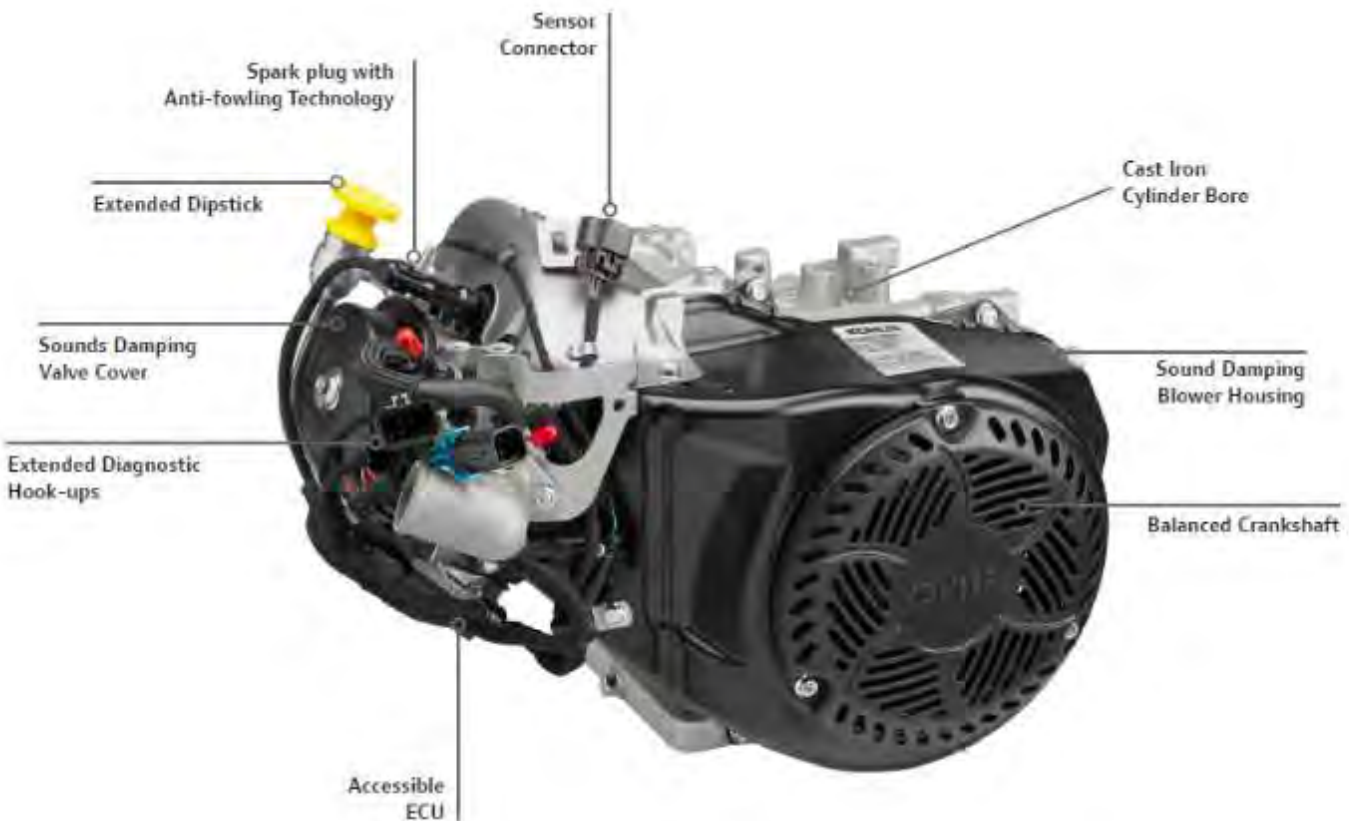
## EFI OVERHEAD CAM ENGINE

**PERFORMANCE:** Increased reliability, quieter valve train, reduced vibration, increased horsepower and improved fuel economy.

**VALUE:** The best warranty in golf means zero stress and excellent resale value.

**COST OF OWNERSHIP:** Lower operational, maintenance and fuel costs accrue year after year, repaying your investment in long-term returns. Tempo EFI has the lowest cost of ownership among typical four to five year fleet golf operations.

**FUEL ECONOMY:** Club Car's Tempo with EFI enjoys a 35% power boost over our previous gas engine while using 35% less fuel.





**PROPOSAL**

We are pleased to present the following quotation for your consideration. See the following specifications page(s) for a detailed list of standard vehicle features and benefits.

**TEMPO GASOLINE FLEET**

**OMNIA CONTRACT # 2671-01**

**STANDARD EQUIPMENT INCLUDES:**

<b>QTY</b>	<b>DESCRIPTION</b>	<b>OMNIA</b>	<b>OMNIA</b>
85	-Tempo Gasoline Powered Fleet Car	\$6,470.75	\$550,013.75
	-Body Color (choice of 6 colors)	no charge	no charge
	-Golf Package Gas	\$272.00	\$23,120.00
	-Number Decals (2 per car)	no charge	no charge
	-Canopy Top	no charge	no charge
	-Club Protector Bag Cover	\$237.15	\$20,157.75
	-Permanent Deluxe On Board Towing	\$270.30	\$22,975.50
	-Kenda Hole-N-1 18x8.50x8 4 Ply Steel Wheel	no charge	no charge
	-Standard Wheel Cover	no charge	no charge
	-Hinged Windshield	Golf Pkg.	Golf Pkg.
	-Deluxe info holder	\$24.65	\$2,095.25
	-Sand Bucket Kit (2 per car)	Golf Pkg.	Golf Pkg.
	-Miami Springs Logo	\$23.80	\$2,023.00
	-Freight	\$204.00	\$17,340.00



**PROPOSAL**

We are pleased to present the following quotation for your consideration. See the following specifications page(s) for a detailed list of standard vehicle features and benefits.

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
85	New 2023 Tempo Gasoline Powered Fleet Car	\$7,298.65	\$620,385.25
	Additional Club Car Discount	<\$1,860.00>	<u>&lt;\$158,100.00&gt;</u>
			<b>\$462,285.25</b>

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
1	New 2023 Café Express	\$20,251.20	\$20,251.20
	Additional Club Car Discount	<\$2,471.20>	<u>&lt;\$2,471.20&gt;</u>
			<b>\$17,780.00</b>

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
1	New 2023 Transporter Four Gas Powered	\$13,135.25	\$13,135.25
	Additional Club Car Discount	<\$3,530.25>	<u>&lt;\$3,530.25&gt;</u>
			<b>\$9,605.00</b>

**The City of Miami Springs' final payment to be paid on the current contract will be the April 2023 installment. At this point, Club Car LLC agrees to pick up all of the current assets and will submit payoff to DLL Financial for the balance due on the lease. Miami Springs' obligation to the current lease will terminate at this point.**



## Lease Quotation

Number of Cars	Type of Car	Lease Term	Payment Per Month	Total Monthly Payment
85	2022 Tempo Gas Fleet Car	66 months	\$66.99	\$5,694.15
1	2022 Café Express	66 months	\$296.84	\$296.84
1	2022 Transporter Four	66 months	\$144.77	\$144.77
	<b>TOTAL MONTHLY PAYMENT</b>			<b>\$6,135.76</b>

### Select Golf Car Color Options

- **Body Color** White\_\_\_ Green \_\_\_ Platinum \_\_\_ Cashmere \_\_\_
- **Canopy Top Color** Beige\_\_\_ White\_\_\_ Black \_\_\_
- **Seat Color** Beige \_\_\_ White \_\_\_ Gray \_\_\_ Black \_\_\_
- **Club Protector Bag Cover** Beige\_\_\_ Black\_\_\_ Green \_\_\_

City of Miami Springs

Club Car

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## LIMITED WARRANTY

### WARRANTY

Club Car, LLC ("Club Car") hereby warrants to the original purchaser or lessee, as those terms are defined herein, and subject to the provisions, limitations and exclusions in this limited warranty, that its new vehicle or new component purchased from Club Car or an Authorized Dealer or Distributor shall be free from defects in material and workmanship under normal use and service for the periods stated below, subject to the provisions, limitations and exclusions in this limited warranty.

This limited warranty covers material, workmanship and repair labor cost as to those items specifically listed below for the periods specified. Such repair labor shall be performed only by Club Car, its Authorized Dealers or Distributors, or a service agency approved by Club Car. For repairs made by qualified technicians other than Club Car's factory technicians or an Authorized Dealer or Distributor, Club Car will provide only the replacement parts or components.

If the warranty registration form is not completed and returned to Club Car at the time of the original retail sale, the Purchaser must provide proof of date of purchase with any warranty claim.

### WARRANTY TIMEFRAME

ITEM	SUB-ITEMS	COVERAGE
VEHICLE MAINFRAME	Not applicable	Limited Lifetime
SUSPENSION	Steering gearbox, steering column, shocks, and leaf springs	4 years
POWERTRAIN	Engine, transaxle, torque converter (drive and driven)	5 years
GASOLINE SYSTEMS	Air intake system, exhaust system, and starter generator	3 years
PEDAL GROUP	Pedal group mechanical assembly, brake cluster assemblies, and brake cables	4 years
SEATS	Seat bottom, seat back, and armrests	4 years
CANOPY SYSTEM	Canopy, rear canopy supports, drainage system, and structural accessory module (SAM)	4 years
BODY GROUP	Beauty panels and front/rear underbody	3 years
ALL REMAINING COMPONENTS	Solenoid, limit switches, voltage regulator, F&R switch, and options and accessories supplied by Club Car, including components not specified otherwise	2 years

### EXCLUSIONS

Excluded from any Club Car warranty is damage to a vehicle or component resulting from a cause other than a defect including poor maintenance, neglect, abuse, accident and collision, maintenance adjustments, unreasonable or unintended strain or use, improper installation of accessories.



# AGENDA MEMORANDUM

**Meeting Date:** 10/10/2022

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** William Alonso, City Manager/Fin. Director

**From:** Paul O'Dell, Golf and Country Club Director

**Subject:** Acushnet

## RECOMMENDATION:

Recommendation by Golf that Council approve an expenditure to Acushnet, as a sole source provider, on an "as needed basis" in the amount of \$40,000, for purchasing Titleist and Foot Joy merchandise to be re-sold in the golf pro shop as there is only one source (proof attached) for the required materials and as funds were budgeted in the FY22/23 Budget pursuant to Section §31.11 (E)(6)(c) of the City Code.

**DISCUSSION:** Acushnet owns the rights to Titleist and Foot Joy Brand. We purchase their merchandise through a discounted program and re-sale them at market price at our golf shop.

Spent in FY 21/22: \$ 59,400

**Submission Date and Time:** 9/27/2022 2:23 PM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
Department: <u>Golf</u>	Dept. Head: _____	Dept./ Desc.: <u>Golf Course Operations</u>
Prepared by: <u>Laurie Bland</u>	Procurement: _____	Account No.: <u>001-5707-572-5205</u>
Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Asst. City Mgr.: _____	Additional Funding: <u>N/A</u>
Budgeted/ Funded: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City Manager: _____	Amount previously approved: \$ <u>0</u>
		Current request: \$ <u>40,000.00</u>
		Total vendor amount: \$ <u>40,000.00</u>

**ACUSHNET COMPANY**

October 16, 2020

Miami Springs Country Club  
Attn: Mason Kegley

Re: Sole Source Letter

Dear Mr. Kegley

Thank you for your interest in Acushnet Company products. This letter is to inform you that Acushnet Company is the exclusive manufacturer of Titleist®, FootJoy® and Pinnacle ® golf products.

The Company sells directly to retailers without the assistance of any distributors. The Company's direct accounts are not authorized to sell the Company's products to other points-of-sale. Therefore, the Company is the sole source of the products at wholesale prices.

Should you have any questions regarding the content of this letter, please do not hesitate to contact me at (508) 979-3355.

Sincerely,



Peter E. Pateline

Sr. Director of Sales Admin/Ops - FootJoy

*Titleist®*

P.O. Box 965  
Fairhaven, MA 02719-0965



508-979-2000 phone  
800-577-1002 fax



# AGENDA MEMORANDUM

**Meeting Date:** 10/10/2022

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** William Alonso, City Manager/Fin. Director

**From:** Paul O'Dell, Golf and Country Club Director

**Subject:** Tropic Oil

**RECOMMENDATION:** Recommendation by Golf that Council waive the competitive bid process in the best interests of the City because of the installation of the free satellite tank monitors which has lowered the overall fuel costs to the city by an estimated \$15,600 in comparison to previous years and approve an expenditure to Tropic Oil, on an "as needed basis" in the amount of \$50,000, for fuel supply services of diesel and regular fuel at Miami Springs Golf & Country Club as funds were budgeted in the FY22/23 Budget pursuant to Section §31.11 (E)(6)(g) of the City Code.

**DISCUSSION:** Tropic Oil installed a free satellite tank monitor which has lowered the overall costs of fuel to the Miami Springs Golf & Country Club. We have been testing the monitoring system for the past several years and currently have saved approximately \$15,600. Because our fuel storage tanks can only hold up to 1000 gallons, 500 gallons for unleaded and 500 gallons for dyed off road diesel, this new technology has allowed us to better monitor our fuel consumption, efficiency, and bring our costs down overall. Only fueling as needed when fuel levels measure below an overall threshold of 600 gallons combined and we do not have to pay any delivery fees. In the event of a natural disaster or state of emergency Tropic Oil has agreed to supply us with a secondary/temporary fuel storage tank should our storage tank fail.

Spent in FY 21/22: \$ 50,000

**Submission Date and Time:** 9/27/2022 2:25 PM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
Department: <u>Golf</u>	Dept. Head: _____	Dept./ Desc.: <u>Golf Course Maintenance</u>
Prepared by: <u>Laurie Bland</u>	Procurement: _____	Account No.: <u>001-5708-572-5202</u>
Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Asst. City Mgr.: _____	Additional Funding: <u>N/A</u>
Budgeted/ Funded: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City Manager: _____	Amount previously approved: \$ <u>0</u>
		Current request: \$ <u>50,000.00</u>
		Total vendor amount: \$ <u>50,000.00</u>





# AGENDA MEMORANDUM

**Meeting Date:** 10/10/2022

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** William Alonso, City Manager/Fin. Director

**From:** Paul O'Dell, Golf and Country Club Director

**Subject:** Hector Turf

## RECOMMENDATION:

Recommendation by Golf that Council approve an expenditure to Hector Turf, as the sole distributor within the Southeast Florida region, as a sole source provider, on an "as needed basis" in the amount of \$35,000, for parts needed to repair our Toro golf equipment and for irrigation supplies as there is only one source (proof attached) for the required supplies and as funds were budgeted in the FY22/23 Budget pursuant to Section §31.11 (E)(6)(c) of the City Code.

**DISCUSSION:** Hector Turf is the sole distributor for the Southeast Florida region that carries the parts and supplies needed in order to maintain all of the Toro golf equipment at the golf course.

Spent in FY 21/22: \$ 35,000

**Submission Date and Time:** 9/27/2022 2:24 PM

<u>Submitted by:</u>	<u>Approved by (sign as applicable):</u>	<u>Funding:</u>
<b>Department:</b> <u>Golf</u>	<b>Dept. Head:</b> _____	<b>Dept./ Desc.:</b> <u>Golf Course Maintenance</u>
<b>Prepared by:</b> <u>Laurie Bland</u>	<b>Procurement:</b> _____	<b>Account No.:</b> <u>001-5708-572-4600</u>
<b>Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Asst. City Mgr.:</b> _____	<b>Additional Funding:</b> <u>N/A</u>
<b>Budgeted/ Funded:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>City Manager:</b> _____	<b>Amount previously approved:</b> \$ <u>0</u>
		<b>Current request:</b> \$ <u>35,000.00</u>
		<b>Total vendor amount:</b> \$ <u>35,000.00</u>



The Toro Company

8111 Lyndale Avenue South, Bloomington, Minnesota 55420-1196  
▪ Phone 952-888-8801 ▪ www.thetorocompany.com ▪ Fax 952/887-8258

June 15, 2022

Miami Springs Golf Club  
Attn: Ms. Laurie Bland  
650 Curtiss Parkway  
Miami Springs, Florida 33166

Via E-mail: blandl@miamisprings-fl.gov

Dear Laurie,

This letter is to inform you that Hector Turf, at 1301 NW 3<sup>rd</sup> Street, Deerfield Beach, FL 33442 (954-429-3200) is the sole source for Toro commercial turf equipment and parts and Toro golf course irrigation products for your geographic area. The Toro commercial product line includes Greensmasters, Groundsmasters, Reelmasters, Utility Vehicles, Sprayers, Debris Equipment, Aeration Equipment, Sand Pros, Commercial Parts, and Irrigation Products.

Thank you for being a valued Toro customer and we look forward to assisting you in the near future.

If you have any questions regarding this, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Scott Papania". The signature is written in a cursive, flowing style.

Scott Papania, CSE  
District Sales Manager  
The Toro Company  
Commercial Products Division  
Scott.papania@toro.com



# AGENDA MEMORANDUM

**Meeting Date:** 10/10/2022

**To:** The Honorable Mayor Maria Puente Mitchell and Members of the City Council

**Via:** William Alonso, City Manager/Fin Director

**From:** Tammy Romero, Assistant City Manager

**Subject:** Toshiba Copier Leases and Managed Print Services Program - Citywide

**RECOMMENDATION:** Recommendation by staff that Council authorize the issuance and/or execution of a Purchase Order with Toshiba American Business Solutions, Inc., utilizing the State of Florida Alternate Contract Source Number 44000000-NASPO-19-ACS- led by the State of Colorado's ASPO Value Point Master Agreement number: 140604 (attached), in an amount not to exceed \$31,500.00 which includes the City's currently leased 9 Toshiba copiers citywide (\$18,705.00 annually) and the Managed Print Services for the maintenance and replacement of ink cartridges for citywide desktop printers under NASPO Value Point Program (\$10,870.00 annually), and \$1,925.00 for any overages for excessive copies over our monthly allowances as funds were budgeted in the FY22/23 departmental budgets pursuant to Section §31.11 (E)(5) of the City Code.

**DISCUSSION:** The City currently leases 9 copiers from Toshiba in which we are currently in our twenty-sixth month of our 48-month lease. In addition to the leased copiers the City also utilizes Toshiba's Managed Print Services Program for maintenance and replacement ink cartridges for all of the qualifying desktop printers within the City. The current State contract offers lower monthly rates over the 48-month lease utilizing the State of Florida's Agreement No. 44000000-NASPO-19-ACS via solicitation RFP-NP-18-001.

**FISCAL IMPACT:** None, as each department budgets for their own departmental copiers and printers.

**Submission Date and Time:** 10/5/2022 11:12 AM

<p><b><u>Submitted by:</u></b></p> <p>Department: <u>City Manager</u></p> <p>Prepared by: <u>Tammy Romero</u></p> <p>Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Budgeted/ Funded: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><b><u>Approved by (sign as applicable):</u></b></p> <p>Dept. Head: _____</p> <p>Procurement: _____</p> <p>Asst. City Mgr.: _____</p> <p>City Manager: _____</p>	<p><b><u>Funding:</u></b></p> <p>Dept./ Desc.: <u>various/Rentals &amp; Leases</u></p> <p>Account No.:</p> <p>City Clerk 001-0301-513-4400</p> <p>Bldg/Code 145-2401-524-4400</p> <p>Police 001-2001-521-4402</p> <p>CPO 650-2011-521-4402</p> <p>Finance 001-0501-513-4400</p> <p>PW 001-5401-541-5200</p> <p>SC 140-5101-519-4400</p> <p>Amount previously approved: \$ _____</p> <p>Current request: <b>\$ 31,500.00</b></p> <p>Total vendor amount: <b>\$ 31,500.00</b></p> <p>Total vendor amount: <b>\$32,200.00</b></p>
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NASPO ValuePoint

**PARTICIPATING ADDENDUM  
STATE OF FLORIDA**



**COPIERS AND MANAGED PRINT SERVICES**

Led by the State of Colorado

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Master Agreement #: 140604

Contractor: Toshiba American Business Solutions Inc.

Participating State: Florida, Agreement No. 44000000-NASPO-19-ACS

1. **Scope:** This Addendum covers the NASPO ValuePoint Master Agreement for Copiers and Managed Print Services led by the State of Colorado, for use by state agencies and other entities located in the State of Florida and authorized by that state's statutes to utilize state contracts with the prior approval of the state's Chief Procurement Officer.
2. **Order of Precedence:**
  - a) This Participating Addendum and all Amendments;
  - b) State of Florida Additional Special Contract Conditions;
  - c) State of Florida Special Contract Conditions;
  - d) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
  - e) An Order issued against the Master Agreement;
  - f) The Solicitation, RFP-NP-18-001, Copiers and Managed Print Services;
  - g) The Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
  - h) The Contractor's Supplemental Documents, including all Attachments.
3. **Term of the Participating Addendum:**
  - a) **Initial Term:** The initial term of this Participating Addendum will become effective on the last date the document is signed by all Parties, whichever is later, and shall be effective through December 31, 2021, unless terminated earlier, in accordance with the Special Contract Conditions.
  - b) **Renewal:** Upon agreement of the Parties, the Department and the Contractor may renew this Participating Addendum in accordance with section 287.057(13), Florida Statutes, and Rule 60A-1.048, Florida Administrative Code. Renewals must be in writing and are subject to the same term, conditions, and modifications set forth in this Participating Addendum. The Contractor and Purchasing Entities may negotiate renewal term pricing, which shall not exceed the pricing provided during the initial term as set forth in the Master Agreement.
4. **Product Offerings:** The Contractor is authorized to provide the Products listed below:
  - **Group A – MFD, A3**
  - **Group C – Production Equipment**
  - **Group D – Single-function Printers**
  - **Group E – Large/Wide Format Equipment**
  - **Group F - Scanners**
  - **Managed Print Services (MPS)**

NASPO ValuePoint  
**PARTICIPATING ADDENDUM  
STATE OF FLORIDA**



**COPIERS AND MANAGED PRINT SERVICES**

Led by the State of Colorado

5. **Service Offerings:** The Contractor is authorized to provide Services listed below:

- **Managed Print Services – Attachment F (Toshiba MPS Statement of Work Template)**, of the Master Agreement, provides a framework for any ensuing MPS engagement. Prior to any commencement, all MPS engagements must be agreed to and signed by both Customer and Contractor.
- **Maintenance Agreements:**
  - Automatic renewals are not permitted under the Master Agreement
  - Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet
  - **Manual Meter Reads** - As part of its Services, Contractor may, at its discretion and dependent upon device capabilities, provide electronic remote meter reading and equipment monitoring. This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Product failure and may enable firmware upgrades
  - **Customer-Owned Equipment** - Customers may elect to enter into a Maintenance Agreement for Equipment they already own, or Equipment they acquire through an up-front purchase. The Maintenance Agreement may be priced on a flat rate fee, which shall include parts, labor, Preventative Maintenance (if applicable) and Service calls. Supplies may or may not be included. The Maintenance Agreement shall not be subject to automatic renewals.
  - **Lease or Rental Equipment** - Contractor shall be required to provide a Maintenance Agreement on all Equipment that is leased or rented by a Customer. The Maintenance Agreement shall be priced based on a cost per click rate, or a monthly base charge.

Participating State or Entity must check one of the boxes below. These modifications or additions apply only to actions and relationships within the State of Florida. A Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to its contractual relationship with the Contractor under the Terms and Conditions of the State of Colorado NASPO ValuePoint Master Agreement.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions:

- Exhibit A – Additional Special Contract Conditions
- Exhibit B – Special Contract Conditions

NASPO ValuePoint

**PARTICIPATING ADDENDUM  
STATE OF FLORIDA**



**COPIERS AND MANAGED PRINT SERVICES**

Led by the State of Colorado

6. **Master Price Agreement Number:** All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement number: **140604**
7. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):


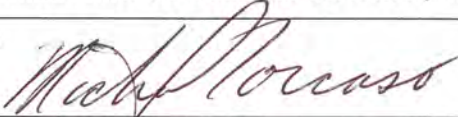
Contractor

Name	Christina Fisher
Address	25530 Commercentre Drive, Lake Forest, CA 92630
Telephone	949.462.6325
E-mail	christina.fisher@tabs.toshiba.com

Participating Entity

Name	Christia Nunnery
Address	4050 Esplanade Way, Tallahassee, FL 32399-0950
Telephone	850.488.8367
E-mail	Christia.Nunnery@dms.myflorida.com

**IN WITNESS WHEREOF**, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: Florida	Contractor: Toshiba America Business Solutions, Inc.
By:  991459A211104A3...	By: 
Name: Tami Fillyaw	Name: Michael Torcaso
Title: Chief of Staff	Title: Senior VP and CFO
Date: 3/9/2020   3:18 PM EDT	Date: 03/09/2020

NASPO ValuePoint

**PARTICIPATING ADDENDUM  
STATE OF FLORIDA**



**COPIERS AND MANAGED PRINT SERVICES**

Led by the State of Colorado

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For questions on executing a Participating Addendum, please contact:

**NASPO ValuePoint**

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	<a href="mailto:tfosket@naspovaluepoint.org">tfosket@naspovaluepoint.org</a>

**[Please email fully executed PDF copy of this document to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org), to support documentation of participation, and to post in appropriate data bases]**



# **NASPO ValuePoint Master Agreement Terms and Conditions**

## **For Copiers and Managed Print Services**

**A Contract for the NASPO ValuePoint Cooperative Purchasing Program  
Acting by and through the State of Colorado (Lead State)**

**Department of Personnel & Administration  
State Purchasing & Contracts Office  
1525 Sherman Street, 3<sup>rd</sup> Floor  
Denver, Co 80203**

**And**

**Toshiba America Business Solutions, Inc.  
25530 Commercentre Drive  
Lake Forest, CA 92630**

**Master Agreement Number: 140604**



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# 1. NASPO VALUEPOINT MASTER AGREEMENT OVERVIEW

## 1.1. Parties

This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and Toshiba America Business Solutions, Inc. (hereinafter called "Contractor"), for the procurement of A3 MFD's, Production Equipment, Single-function Printers, Large/Wide Format Equipment, Scanners, Software, Supplies, Managed Print Services, and other Products and Services as approved per this Master Agreement, for the benefit of Participating States, Entity's, and Purchasing Entities. The Contractor and the Lead State hereby agree to the following terms and conditions.

## 1.2. Effective Date

This Master Agreement shall not be effective or enforceable until the date on which it is approved and signed (hereinafter called the "Effective Date") by the Colorado State Controller or designee.

## 1.3. Master Agreement Order of Precedence

1.3.1. Any Order placed under this Master Agreement shall consist of the following documents:

- a) A Participating Entity's Participating Addendum ("PA"), including its Attachments, Exhibits and schedules;
- b) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
- c) An Order issued against this Master Agreement;
- d) The Solicitation, RFP-NP-18-001 Copiers and Managed Print Services;
- e) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- f) Contractor Supplemental Documents, including all Attachments.

1.3.2. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and shall be incorporated into this Master Agreement.

## 1.4. Term of this Master Agreement

1.4.1. **Initial Term-Work Commencement.** The Parties' respective performances under this Master Agreement shall commence on the Effective Date or August 1, 2019, whichever occurs later. This Master Agreement shall terminate on December 31, 2021, unless terminated sooner, as specified in §6.10, **Defaults and Remedies**, or extended further as specified in §1.4.2 below.

1.4.2. **Extension of Agreement.** This Master Agreement may be extended beyond the original Contract period for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, by written Amendment. The total duration of this Master Agreement, including any extensions, shall not exceed five (5) years.

1.4.3. **Amendments.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State.

1.4.4. **Cancellation.** This Master Agreement may be canceled by either party upon sixty (60) days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, and rights attending any warranty or default in

performance in association with any Order. Cancellation of this Master Agreement due to Contractor default may be immediate.

## 2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

<b>Term</b>	<b>Description</b>
<b><i>A3 MFD</i></b>	A Multi-function Device which is designed to handle letter, legal, ledger and some smaller paper sizes, such as postcards and envelopes.
<b><i>Acceptance</i></b>	A written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which Acceptance Testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.
<b><i>Acceptance Testing</i></b>	The process set forth in this Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity.
<b><i>Accessory</i></b>	A compatible item that is added to the Base Unit to enhance its capabilities and functions.
<b><i>Authorized Dealer ("Dealer")</i></b>	The Contractor's authorized sales and Service center (also known as a Dealer, or Partner) that must be certified by the Contractor to sell the Contractor's Products, and perform machine installation and maintenance on Devices offered by the Contractor. A Purchasing Entity must be able to, at a minimum, visit the sales and Service center to view and test Equipment.
<b><i>Base Unit</i></b>	The copier, printer, Scanner, Large/Wide Format and Production Equipment that includes all standard Accessories and parts, and excludes optional Accessories and/or software.
<b><i>Blended Rate</i></b>	A rate that is derived by taking the b&w and color cost per click rates on one or more Devices and calculating one rate that a customer will be billed for all copies, regardless of Device type and b&w or color output. Allows for simplicity when billing copies run.
<b><i>Bronze Standard</i></b>	Devices which meet less than 50% of the 28 optional EPEAT criteria.
<b><i>Business Day</i></b>	Any day other than Saturday, Sunday or a legal holiday.
<b><i>Buyout to Keep</i></b>	The early termination option on an FMV or \$1 Buyout Lease that involves the acquisition of the Equipment by the Purchasing Entity, and consists of any current and past due amount, plus the remaining stream of Equipment Payments, plus, with respect to an FMV Lease, the FMV of the Equipment to compensate for payment on the residual value.
<b><i>Buyout to Return</i></b>	The early termination option on an FMV, \$1 Buyout or Straight Lease that involves the return of the Equipment by the Purchasing Entity to Contractor, in good working condition (ordinary wear and tear excepted), and consists of any current and past due amounts, plus the remaining stream of Equipment Payments.
<b><i>Ceiling Pricing</i></b>	Pricing that is established as a "not-to-exceed" amount; the maximum price Contractor may charge for Products, Services, and Supplies.

<b>Chief Procurement Officer</b>	The individual who has the authority to supervise and approve the procurement of all Products and Services needed by the Lead State or a Participating State.
<b>Contractor</b>	The person or entity delivering Products or performing Services under the terms and conditions set forth in this Master Agreement.
<b>Coterminous</b>	Two or more leases that end at the same time. The original lease payment is modified to reflect the addition of a new piece of Equipment or Accessory. The original term of the lease is not modified as a result of a Coterminous addition.
<b>Device</b>	Also referred to as "Equipment." The Base Unit, either with or without optional Accessories and/or software.
<b>Direct Material</b>	Materials which are easily identified, measured, and charged to the cost of production; part of the finished Product. Examples include timber for furniture and leather for shoes.
<b>EULA</b>	End User License Agreement
<b>Electronic Product Environmental Assessment Tool (EPEAT)</b>	A tool which evaluates and selects Equipment according to a list of preferred environmental attributes. EPEAT registered means Devices meet the 1680.2 IEEE Standard for Environmental Assessment of Imaging Equipment, as amended.
<b>Embedded Software</b>	One or more software applications which permanently reside on a computing Device.
<b>Energy Star</b>	The U.S. Environmental Protection Agency's standard for energy efficiency.
<b>Equipment</b>	Also referred to as "Device." The Base Unit, either with or without optional Accessories and/or software.
<b>Equipment Downtime</b>	The period of time that a Device is waiting for Service to be completed.
<b>Equipment Payment</b>	The Equipment portion of the payment, less any Service, Supplies, and maintenance.
<b>Equipment Trade-In</b>	An agreed upon transaction between the Purchasing Entity and Contractor, in which Contractor takes ownership of Purchasing Entity's owned Device, often for a discounted amount.
<b>Equipment Upgrade or Downgrade</b>	A replacement of the Purchasing Entity's existing lease Equipment, with a different piece of Equipment, of either greater or lesser value. A new lease is then originated for the new piece of Equipment, with the remaining lease payments on the old Equipment wrapped into it. The old lease is closed out, and the Equipment is returned to Contractor.
<b>Free on Board (FOB) Destination</b>	Contractor is responsible for transportation and handling charges and the sale does not occur until the Products arrive at the Purchasing Entity's specified location.
<b>Group</b>	The Device classification for the different types of Equipment in this Master Agreement. Groups are determined by the Devices primary functions and/or capabilities.
<b>Independent Contractor</b>	A natural person, business, or corporation that provides Products or Services to another entity under the terms specified in a contract. An employer-employee relationship does not exist.

<b><i>Initial Lease Term</i></b>	The length of time (i.e. 12, 18, 24, 36, 48, or 60 months) that a Purchasing Entity enters into a lease agreement.
<b><i>Intellectual Property</i></b>	Any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
<b><i>Large/Wide Format Equipment</i></b>	A Device that prints on a large paper via a variety of output options.
<b><i>Lead State</i></b>	The State that is centrally administering this Master Agreement.
<b><i>Legacy Equipment</i></b>	Equipment that was purchased, leased, or rented under a prior NASPO ValuePoint or WSCA Master Agreement, another program, or via any other means.
<b><i>Lease</i></b>	<p>Per the Governmental Accounting Standards Board (GASB), a lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction.</p> <p>For the purposes of this Master Agreement, a Lease shall contain the following options:</p> <ol style="list-style-type: none"> <li>1. Short-Term Lease: Maximum possible term is 12 months, including any renewal or extension options.</li> <li>2. Straight Lease: A type of agreement in which ownership is not an option and the Total Monthly Payment amount remains firm throughout the Initial Term.</li> <li>3. Fair Market Value Lease (FMV): A lease in which the Purchasing Entity can either 1) Take title to the Equipment at the end of the Initial Lease Term by paying the residual value to Contractor, 2) Enter into a Renewal Term for the Equipment, or 3) Return the Equipment to Contractor at the end of the Initial Lease Term.</li> <li>4. \$1 Buyout Lease: A lease in which title to the Equipment will automatically pass from the Contractor to the Purchasing Entity at the end of the Initial Lease Term, and the Purchasing Entity will not be subject to additional payments in order to assume ownership.</li> </ol>
<b><i>Maintenance Agreement</i></b>	An agreement in which the Contractor provides monthly Service, parts, Supplies, and Preventative Maintenance on purchased, leased or rented Devices.
<b><i>Managed Print Services (MPS)</i></b>	The management, Service, and support of the Purchasing Entity's entire enterprise and output infrastructure of printed materials, with the objective of creating a solution that improves the print process and reduces the expense of printed material.
<b><i>Manufacturer</i></b>	A company that, as its primary business function, designs, assembles, and owns the trademark/patent and markets a Product. Also referred to as Contractor.
<b><i>Manufacturer's Suggested Retail Price (MSRP)</i></b>	The list price or recommended retail price of a Product in which the Manufacturer recommends that the retailer sell the Product.
<b><i>Master Agreement</i></b>	Also referred to as "Contract"; the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint

	program, and the Contractor, as now or hereafter amended.
<b>Multi-function Device (MFD)</b>	A Device which incorporates the functionality of multiple Devices into one, such as print, fax, copy and scan. Each feature can work independently of the other.
<b>NASPO ValuePoint</b>	The NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO). NASPO ValuePoint is identified in this Master Agreement as the recipient of reports and may perform Contract administration functions relating to collecting and receiving reports as well as other Contract administration functions as assigned by the Lead State.
<b>Newly Manufactured</b>	Devices that have not been Refurbished, Remanufactured, rented, leased, sold, or used in a demonstration, and are currently being marketed by the Manufacturer.
<b>Normal Business Hours</b>	8:00 a.m. to 5:00 p.m., Monday through Friday (state holidays excluded), regardless of time zone.
<b>Not Specifically Priced (NSP)</b>	NSP items are items that enhance or compliment the Contractor's Product, and may be acquired by a Purchasing Entity under Contractor's Master Agreement, but are not listed or priced in Contractor's NASPO ValuePoint Price List. NSP's may include Coin Op equipment, empowering software, etc. NSP items do not include Services.
<b>OEM</b>	Original Equipment Manufacturer.
<b>Order</b>	Any type of encumbrance document or commitment voucher, including, but not limited to, a purchase order, contract, MPS statement of work, Maintenance Agreement, lease agreement, etc.)
<b>Participating Addendum</b>	A bilateral agreement executed by a Contractor and a Participating State or Entity incorporating this Master Agreement and any other additional Participating State or Entity specific language or other requirements (e.g. ordering procedures, other terms and conditions).
<b>Participating Entity</b>	A government entity within a state, or an eligible Non-Profit association, that is properly authorized to enter into a Participating Addendum.
<b>Participating State</b>	A state, which encompasses all government entities within that state, or the District of Columbia, or one of the territories of the United States, that enters into a Participating Addendum.
<b>Power Filter</b>	An electronic filter which is placed between an external power line and a Device for the purpose of removing frequencies or electromagnetic interference.
<b>Preventative Maintenance</b>	The servicing of a Device for the purpose of maintaining a satisfactory operating condition by providing systematic inspection, detection, and correction of failures either before they occur or before they develop into major defects.
<b>Private Label</b>	Products that are manufactured by one company and sold under a retailer's brand name.
<b>Product</b>	Devices, Accessories, parts, software, and/or Supplies provided or created by the Contractor pursuant to this Master Agreement.

<b><i>Production Equipment</i></b>	A high-speed, high-quality printing Device that typically has advanced finishing functionality.
<b><i>Public Record</i></b>	All books and Public Records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and Public Records.
<b><i>Purchasing Entity</i></b>	A city, county, district, institution of higher education, and some non-profits who issue an Order against this Master Agreement via their Participating State or Entity's Participating Addendum.
<b><i>Refurbished</i></b>	A Product which has received extensive maintenance and/or minor repair, including the replacement of all standard parts subject to wear during the normal course of use. Refurbished Equipment shall not have more than 750,000 original copies on it. In addition, Refurbished Equipment must only contain OEM parts. Refurbished Equipment must be certified by the Manufacturer.
<b><i>Remanufactured</i></b>	The process of disassembling Devices known to be worn or defective that can be reused or brought up to OEM specification by cleaning, repairing or replacing it in a manufacturing environment and then reassembling and testing it, so that it will operate like a new Device. Remanufactured Equipment must be certified by the Manufacturer.
<b><i>Renewal Term</i></b>	A lease term that supersedes the Initial Lease Term, and which a Purchasing Entity may enter into upon thirty (30) days prior written notice to Contractor. Each Renewal Term shall not exceed 12 months, the residual value of the Equipment, or the Useful Life of the Equipment. \$1 Buyout Leases are excluded from going into renewal.
<b><i>Resell</i></b>	Any payment in exchange for transfer of tangible Products, or assignment of the right to Services.
<b><i>Response Time</i></b>	The time from when the original Service Call is placed with the Contractor or Authorized Dealer, to when the Service technician arrives at the Purchasing Entity's location.
<b><i>Scanner</i></b>	A Device that scans documents and converts them into digital data.
<b><i>Segment</i></b>	The various speeds that Devices are categorized by.
<b><i>Service Base Location</i></b>	The place of business where the Contractor or Authorized Dealer stores parts and provides training for service technicians.
<b><i>Service Call</i></b>	An on-site Service technician visit due to Device error or malfunction.
<b><i>Services</i></b>	The labor required to be performed by Contractor pursuant to this Master Agreement or an Order.
<b><i>Single-function Printer</i></b>	An inkjet or laser Device that only prints and is not capable of other functions such as copying, faxing or scanning.
<b><i>Solicitation</i></b>	A written offer or attempt to purchase Products and/or Services through an official Proposal, Evaluation, and Award process.
<b><i>Supplemental Documents</i></b>	Documents include, but are not limited to, lease agreements, Maintenance Agreements, and software or click-wrap agreements that are pertinent to the Products being offered.



<b>Supplies</b>	<u>Consumable</u> items that gets used up or are discarded once used, such as ink cartridges.
<b>Third Party</b>	Someone who may be indirectly involved but is not a principal party to an arrangement, contract, deal, lawsuit or transaction.
<b>Total Monthly Payment</b>	The Equipment portion of the payment, as well as any Service, Supplies or maintenance, and less any applicable taxes.
<b>Useful Life</b>	Period during which a Device is expected to be usable for the purpose in which it was manufactured.

### 3. NASPO VALUEPOINT PROGRAM PROVISIONS

#### 3.1. Price and Rate Guarantee Period

- 3.1.1.** The Price List(s) in Exhibit A (Price Lists), identifies a complete listing of all Products and Services the Contractor can provide under this Master Agreement, with the exception of NSP items.
- 3.1.2.** MSRP/List Price discount percentages must be guaranteed throughout the term of this Master Agreement, including any renewal terms; however, Contractor may increase its discount percentage at any time. The Lead State must be notified of any such discount percentage increase, and provided with a copy of the new Group Price List(s).
- 3.1.3.** MSRP/List Price shall remain firm during the first twelve (12) months of the Master Agreement. After this period, Awarded Vendors may update their MSRP/List Price on a quarterly basis, according to the following guidelines:
- a) All requested price increases must include documentation from Direct Material suppliers detailing cost escalations, and Awarded Vendors must describe how those escalations impact current Product offerings.
  - b) With the exception of Direct Material cost increases, no price increase requests will be allowed.
  - c) Updated Price Lists must be submitted to the Lead State by the 1st day of each quarter.
  - d) Pricing will not go into effect unless, or until, it is approved by the Lead State.
- 3.1.4.** The Master Agreement pricing IS Ceiling Pricing. Contractor may offer lower pricing on a per Order basis to Purchasing Entity's; likewise, Purchasing Entity's may request lower pricing on a per Order basis from Contractor.
- 3.1.5.** Contractor may offer state-wide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. Contractor must notify the Participating State or Entity Contract Administrator of special state-wide promotional discounts.
- 3.1.6.** Any revisions to Product offerings (new Products, altered item or model numbers, etc.) must be pre-approved by the Lead State, and will be allowed once per month.
- 3.1.7.** Product updates are required by the 1st of the month and shall go into effect upon approval by the Lead State.
- 3.1.8.** Any Product additions must be updated with Buyer's Lab within ninety (90) days of submission to the Lead State. Failure to adhere to this requirement will result in the Product(s) being removed from the Master Agreement Price List(s) until such time as they can be verified on Buyer's Lab.
- 3.1.9.** Updates to lease rates must be submitted by the 1st day of each quarter.

- 3.1.10. Price Lists received after the 1st of the month may not be approved for up to thirty (30) days following submission. In addition, errors in the Contractor's Price Lists may delay the approval process further.
- 3.1.11. All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Contractor shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated.
- 3.1.12. All-inclusive Cost Per Copy (CPC) programs may be offered upon request by the Participating State or Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Participating State or Entity with their pricing breakdown which enables the Participating State or Entity to easily compare the pricing in the CPC structure against the pricing in this Master Agreement.
- 3.1.13. Pricing must include all standard shipping, delivery, and installation costs associated with the Products. Excess installation charges or expedited shipping however, may be billable. Refer to §4.9.5 for more information.

## 3.2. Participants and Scope

- 3.2.1. Contractor may not deliver Products or perform Services under this Master Agreement until a Participating Addendum acceptable to the Participating State or Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating State or Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating State or Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. Order) used by the Purchasing Entity to place the Order.
- 3.2.2. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating States or Entities authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Officer.
- 3.2.3. Obligations under this Master Agreement are limited to those Participating States and Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States and Entities are limited to the Orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Contractor shall email a fully executed PDF copy of each Participating Addendum to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.
- 3.2.4. Participating States and Entities may, through a Participating Addendum, limit:
  - a) Available financial vehicles;
  - b) Device Groups, Segments, Products, Services (including MPS); and
  - c) Any additional items as deemed necessary by the Participating State or Entity.

- 3.2.5.** A Participating State or Entity must sign a new Participating Addendum with Contractor, regardless of whether Contractor has signed Participating Addenda under a prior Master Agreement(s).
- 3.2.6.** NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to this Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO ValuePoint cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- 3.2.7.** Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor, and any such language shall be void and of no effect:
- a) Term of this Master Agreement;
  - b) Amendments;
  - c) Participants and Scope;
  - d) Administrative Fee;
  - e) NASPO ValuePoint Summary and Detailed Usage Reports;
  - f) NASPO ValuePoint Cooperative Program Marketing and Performance Review;
  - g) NASPO ValuePoint eMarket Center;
  - h) Right to Publish;
  - i) Price and Rate Guarantee Period; and
  - j) Individual customers.
- 3.2.8.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Officer of the state where the Participating Entity is located. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 3.2.9.** Purchasing Entities may not Resell Products. This limitation does not prohibit the following; however, any sale or transfer must be consistent with license rights granted for use of Intellectual Property:
- a) Payments by employees of a Purchasing Entity for Products;
  - b) Sales of Products to the general public as surplus property; and
  - c) Fees associated with inventory transactions with other governmental or non-profit entities, and consistent with a Purchasing Entity's laws and regulations.

### **3.3. Administrative Fees**

- 3.3.1.** The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter.
- 3.3.2.** The NASPO ValuePoint Administrative Fee is not negotiable.

- 3.3.3. The Contractor shall report on all actual Equipment sales, and on estimated Service and Supply sales. This method will no longer require the Contractor to capture the actual Service and Supply revenues that are billed to the customer each month.
- 3.3.4. Industry research has shown close to a 1:1 ratio between sales price on a piece of Equipment and the actual amount of Service and Supply costs required to operate that Equipment over its Useful Life. Therefore, to simplify the reporting process and remove the burden to capture the actual Service and Supply costs, the Contractor shall report as follows:
- a) **Purchased Equipment:** Contractor shall report the actual amount invoiced (less any taxes) for all Equipment sold under the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as "Estimated Service and Supplies" providing the customer elects to enter into a Maintenance Agreement. Thus, in the Contractor's Detailed Sales Report, for each item sold, there will be two-line items: one for the piece of Equipment, and one for the Estimated Service and Supplies. The amounts reflected for the Estimated Service and Supplies must be equal to the amount of the Equipment.
  - b) **Lease Equipment:** Contractor shall report sales according to the Purchased Equipment methodology described in §3.3.4(a), or they may report the actual amount invoiced (less any taxes) for the lease during the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as "Estimated Service and Supplies." Thus, in the Contractor's Detailed Sales Report, for each item leased there will be two-line items: one for the invoice amount to the customer for the Equipment, and one for the Estimated Service and Supplies. The amounts reflected for the Estimated Service and Supplies must be equal to the amount of the invoiced Equipment.
- 3.3.5. Some Participating States may require a fee be paid directly to the Participating State on sales made by Purchasing Entities within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments will be incorporated into the Participating Addendum. The Contractor may adjust this Master Agreement pricing accordingly for sales made by Purchasing Entities within the jurisdiction of the Participating State requesting the additional fee.

#### 3.4. NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor shall provide the following NASPO ValuePoint reports:

- 3.4.1. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the Contract shall be reported as cumulative totals by state, which are inclusive of all line items identified in the Detailed Sales Report. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 3.4.2. **Detailed Sales Report.** Contractor shall also report detailed sales data by:
- a) State;
  - b) Customer Type (e.g. local government, higher education, K-12, non-profit);
  - c) Customer bill-to name and address;
  - d) Contractor or Authorized Dealer Order number;
  - e) Customer purchase order number;
  - f) Customer number;
  - g) Order type (e.g. sales Order, credit, return, upgrade);
  - h) Purchase order date;
  - i) Ship date;

- j) Invoice date and number;
- k) Product number and description
- l) List Price/MSRP;
- m) Contract Price;
- n) Quantity;
- o) Total Price;
- p) NASPO ValuePoint Admin Fee amount; and
- q) Dealer.

**3.4.3.** Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM or flash drive. Detailed sales reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in **Exhibit E (NASPO ValuePoint Detailed Sales Reporting Template)**.

**3.4.4.** Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Report data for employees should be limited to **ONLY** the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.

**3.4.5.** Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

**3.4.6.** Timely submission of these reports is a material requirement of this Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

### **3.5. NASPO ValuePoint Cooperative Program Marketing and Performance Review**

**3.5.1.** Contractor agrees to work cooperatively with NASPO ValuePoint personnel to ensure that Contractor's personnel will be educated regarding the provisions of this Master Agreement, as well as the competitive nature of NASPO ValuePoint procurements, the Participating Addendum process, and the manner in which Participating Entities can utilize this Master Agreement.

**3.5.2.** Contractor agrees, as Participating Addenda are executed, and if requested by NASPO ValuePoint personnel, to provide plans to launch this Master Agreement program within the Participating State. Plans will include timeframes to implement this Master Agreement and Participating Addendum, as well as confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the Participating State.

**3.5.3.** Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the Participating Addendum. Contractor shall ensure that their sales force is aware of this contracting option.

- 3.5.4. Contractor agrees to fairly, actively, and equally promote and advertise their NASPO ValuePoint Master Agreement at all trade shows and Dealer meetings whereby Contractor displays or makes reference to their government contract award offerings.
- 3.5.5. Contractor agrees, within 30 days of this Master Agreement effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement, or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.
- 3.5.6. Contractor agrees to participate in person at an annual performance review, which may include a discussion of marketing action plans, target strategies, marketing materials, reporting, and timeliness of administration fee payments. The location of the performance review shall be determined by the Lead State and NASPO ValuePoint.
- 3.5.7. Contractor agrees that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing materials until a logo-use agreement is executed with NASPO ValuePoint.
- 3.5.8. The Lead State shall evaluate the utilization of this Master Agreement at the annual performance review. The Lead State may, in its discretion, cancel this Master Agreement pursuant to §1.4, or not exercise an option to renew, when Contractor utilization does not warrant further administration of this Master Agreement. The Lead State may exercise its right to not renew this Master Agreement if Contractor fails to record or report revenue for three consecutive quarters, upon a 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of this Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel this Master Agreement pursuant to §1.4.4 or to terminate for default pursuant to §6.10.

### 3.6. NASPO ValuePoint eMarket Center

- 3.6.1. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint customers to access a central online website to view and/or shop the Products and Services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- 3.6.2. The Contractor shall have visibility in the eMarket Center through one of the following no-cost options:
  - a) **Ordering Instructions**
    - i. The Contractor shall provide a link to their website, their Price list, their Dealer list, and any additional information they would like the customer to have in regards to placing Orders.
    - ii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have thirty (30) days to provide NASPO ValuePoint with the Ordering Instructions.
  - b) **Hosted Catalog**
    - i. The Contractor shall provide a list of its awarded Products and Services pricing via an electronic data file, in a format acceptable to JAGGAER.
    - ii. In order to maintain the most up-to-date version of its Product offerings, the Contractor must submit electronic data to the eMarket Center no more than four (4) times per calendar year.

- iii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have fifteen (15) days to set up an enablement schedule with NASPO ValuePoint and JAGGAER. The schedule shall include future calls and milestone timeframes related to testing and go-live dates.
- iv. The Contractor shall have ninety (90) days from the receipt of written request, to provide the Hosted Catalog to NASPO ValuePoint.
- v. The Hosted Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
- vi. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
- vii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although Suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. SciQuest will deliver the appropriate contract files to the user viewing the catalog.

**c) Punch-Out Catalog**

- i. The Contractor shall provide its own online catalog, which must be capable of being integrated with the eMarket Center via Commerce eXtensible Markup Language (cXML).
- ii. The Contractor shall validate that its online catalog is current by providing a written update to the Lead State every four (4) months, verifying that they have audited the offered Products and Services pricing.
- iii. The Contractor shall have ninety (90) days from the receipt of the written request, to deliver the Punch-Out Catalog to NASPO ValuePoint.
- iv. The Punch-Out Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
- v. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
- vi. The site must also return detailed UNSPSC codes for each line item.
- vii. Contractor shall provide e-Quote functionality to facilitate volume discounts.
- viii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. It is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. JAGGAER will deliver the appropriate contract files to the user viewing the catalog.

**3.6.3. Revising Pricing and Products**

- a) Any revisions to Product offerings (new Products, altered SKU's, etc.) must be pre-approved by the Lead State, and will be allowed once per month.

- b) Updated Product files are required by the 1<sup>st</sup> of the month and shall go into effect upon approval by the Lead State.
  - i. Files received after the 1st of the month may not be approved for up to thirty (30) days following submission.
  - ii. Errors in the Contractor's submitted files may delay the approval process.

#### **3.6.4. Supplier Network Requirements for Hosted and Punch-Out Catalogs**

- a) Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use the JAGGAER's Supplier Portal to import the Contractor's catalog and pricing files into the JAGGAER system.
- b) Contractor can receive Orders through electronic delivery (cXML) or through low-tech options such as fax.
- c) More information about the SQSN can be found at [www.sciquest.com](http://www.sciquest.com), or by contacting the JAGGAER Supplier Network Services team at 800-233-1121.

#### **3.6.5. Order Acceptance Requirements for Hosted and Punch-Out Catalogs**

- a) Contractor must be able to accept Orders via fax or cXML.
- b) The Contractor shall provide confirmation via phone or email within 24 hours of Order receipt.
- c) If the Order is received after 3pm (EST) on the day prior to a weekend or holiday, the Contractor must provide confirmation via phone or email on the next business day.

#### **3.6.6. UNSPSC Requirements**

- a) Contractor shall support use of the United National Standard Product and Services Code (UNSPSC). UNSPSC versions that Contractors must adhere to are provided by JAGGAER and upgraded each year.
- b) NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC, and Contractor shall be required to support the migration effort.
- c) All line items for Products and Services provided under this Master Agreement must be associated to a UNSPSC code.
- d) All line items must be identified at the most detailed UNSPSC level, indicated by segment, family, class, and commodity.

#### **3.6.7. Applicability.** Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center, and that NASPO ValuePoint may elect at any time to remove any Contractor offerings from the eMarket Center.

#### **3.6.8.** Several NASPO ValuePoint Participating States and Entities currently maintain separate JAGGAER eMarket Place accounts. In the event that one of these Participating States or Entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarket Center), but publish the information to their own eMarket Place, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint, and agrees to take commercially reasonable efforts to implement such separate JAGGAER catalogs.

### **3.7. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State, prior approval for the release of any information, including any written correspondence, which pertains to the potential work or activities covered by this Master Agreement. The Contractor shall not make any



representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the Products and Services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of this Master Agreement for cause.

### **3.8. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of this Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in this Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in this Master Agreement and applicable Participating Addendum. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **4. STATEMENT OF WORK**

### **4.1. Overview**

- 4.1.1.** Contractor guarantees a continuing supply and consistent quality of Equipment, Accessories, software, Supplies, and Services offered.
- 4.1.2.** Contractor may not provide Products that have not been approved by the Lead State, with the exception of NSP items, as referenced in §4.3.9.
- 4.1.3.** Contractor shall maintain compliance with all requirements of this Master Agreement throughout the duration of the Contract.
- 4.1.4.** A Purchasing Entity that purchases or leases Equipment may issue an Order, pursuant to the terms and conditions that are incorporated into this Master Agreement, and according to the requirements listed in their states' Participating Addendum, including, but not limited to, the issuance of Contractor's Supplemental Documents, which are attached as **Attachment A through Attachment J**. Each Participating State or Entity shall be responsible for negotiating the terms and conditions of each of the aforementioned Attachments.
- 4.1.5.** Per Section 508 of the United States Workforce Rehabilitation Act of 1973, Contractor provides Devices under Groups A, C, D, E, and F which are accessible to people with disabilities.
- 4.1.6. MPS:**
  - a)** Contractor may provide MPS on Group A, Group B, Group C, Group D, Group E, and Group F.
  - b)** Contractor may not provide MPS maintenance or repair Services on any Devices that are being leased to a Purchasing Entity by another Manufacturer, unless they have a written agreement with the Manufacturer to do so.
- 4.1.7. Survivability:**
  - a)** Any Order placed under this Master Agreement shall survive the expiration of this Master Agreement unless otherwise specified in a Participating Addendum.
  - b)** Contractor is not permitted to increase pricing on any Order that was placed prior to the expiration of this Master Agreement.
- 4.1.8.** Contractor shall notify the Lead State, Participating States, Participating Entities and all Purchasing Entities of any recall notices, warranty replacements, safety notices, or any applicable notice regarding the Products being sold. This notice must be received in writing (via postal mail or email) within thirty (30) calendar days of Contractor learning of such issues.

**4.2. Authorized Dealers**

- 4.2.1. Contractor may engage Authorized Dealers, who shall be Contractor’s agent and Subcontractor for providing sales and support for the Products and/or Services purchased by the Purchasing Entity under this Master Agreement.
- 4.2.2. In the event Contractor elects to use Authorized Dealers in the performance of the specifications, Contractor shall serve as the primary Contractor, and shall be fully accountable to the Lead State for assuring that the Authorized Dealers comply with the terms and conditions of this Master Agreement, and shall be liable in the event that Authorized Dealers fail to comply with such terms and conditions.
- 4.2.3. Authorized Dealers shall be expected to stay current with Contractor’s Products, pricing, Master Agreement, and Participating Addendum requirements.
- 4.2.4. Authorized Dealers shall have the ability to accept Orders from a Purchasing Entity and invoice them directly.
- 4.2.5. Contractor must disclose to the Lead State, a list of all Authorized Dealers that provide Products and/or Services, utilizing **Exhibit C (Authorized Dealers by State)**.
- 4.2.6. Contractor shall send notice to the Lead State, utilizing **Exhibit D (Authorized Dealer Form)** and the Authorized Dealers by State, within three (3) calendar days of engaging or removing a Dealer.
- 4.2.7. The Lead State reserves the right to deny the addition of any Authorized Dealer and will provide notification to the Contractor with justification as to why the decision was reached. In addition, it will be at the discretion of each Participating State or Entity as to whether they will utilize the Authorized Dealers as approved by the Lead State.
- 4.2.8. If an Authorized Dealer is performing unsatisfactorily, or is not in compliance with this Master Agreement, then it shall be at the discretion of the Lead State, upon recommendation from the Participating State, to either remove the Dealer from the Contract, or in the case of multiple branch locations in one state, or multiple states, remove them as a Dealer from the location in which they are not in compliance. Alternatively, the Contractor may investigate and consult with the Participating State and/or the Purchasing Entity as appropriate, and use commercially reasonable efforts to resolve the dispute.

**4.3. Product Offerings**

**4.3.1. Group Segments.** Contractor shall offer Products under the following Groups:

<b>Group A – MFD, A3 B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
2	20 – 30
3	31 – 40
4	41 – 50
5	51 – 60
6	61 – 70
7	71 – 90

<b>Group C – Production Equipment B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	65 – 79
2	80 – 89
3	90 – 110
4	111 – 130
5	131+

<b>Group D – Single-function Printers B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	Up to 20
2	21 – 40
3	41 – 60
4	61+

<b>Group E – Large/Wide Format Equipment B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>A1 or D Size PPM*</b>
Low	1 – 3
Medium Low	4 – 8
Medium High	9 – 19
High	20+

\*Speeds denoted above are based on b&w output

<b>Group F - Scanners</b>	
<b>Segment</b>	<b>PPM</b>
1	10 – 29
2	30 – 49
3	50 – 69
4	70 – 89
5	90 – 110
6	111 – 130
7	131+

**4.3.2. Device Configurations.** Contractor's Devices shall be equipped, at a minimum, with the following Accessories/capabilities:

- a) **Group A – MFD, A3**
  - i) New Power Filter;
  - ii) Duplex for Segment 3 and above;
  - iii) Standard paper drawer(s) equal to or greater than:
    - 1) One (1) paper supply for Segment 2;
    - 2) Two (2) paper drawers for Segments 3 and 4; and/or

- 3) 2,000 sheet paper capacity for Segments 5 and above.
  - iv) Paper size capacity up to 11" x 17"; and
  - v) Bypass paper supply, if applicable for Segment.
- b) Group C – Production Equipment**
- i) New Power Filter;
  - ii) Bypass paper supply;
  - iii) Standard paper drawer(s) equal to or greater than:
    - 1) One (1) paper supply for Segments 1 and 2;
    - 2) Two (2) paper drawers for Segments 3 and 4; and/or
    - 3) 2,000 sheet paper capacity for Segments 5 and above.
  - iv) Paper size capacity up to 8 ½" x 14"; and
  - v) Envelope adjustment capability.
- c) Group D – Single-function Printers**
- i) Must include an inkjet, light emitting diode (LED), or laser print engine;
  - ii) Standard paper drawer(s);
  - iii) Standard paper capacity; and
  - iv) Network connectivity.
- d) Group E – Large/Wide Format Equipment**
- i) Hard-Disk drive;
  - ii) Network connectivity;
  - iii) Touch screen control panel; and
  - iv) Automatic Media Selection – a built-on sensor detects the size of the original and the proper media size is then selected.
- e) Group F – Scanners**
- i) Charge-Coupled Device (CCD) or Contact Image Sensor (CIS);
  - ii) Automatic Document Feeder (ADF);
  - iii) Letter or legal paper size capacity;
  - iv) Color depth of at least 24 bytes; and
  - v) Single pass duplex scan.

**4.3.3. Device Standards.** Devices shall meet the following requirements:

- a) Group A Base Units are OEM only;
- b) Group A must be EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List;
- c) Group D must be Energy Star compliant or EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List;
- d) If Contractor's Devices fail to meet the EPEAT Bronze Standard, or be Energy Star compliant (applicable to Group D Devices only) within one (1) year, then they will be removed from the Price List;

- e) Must be Newly Manufactured, current, Remanufactured, or Refurbished, except as specified in a Participating Addendum;
- f) Devices, when installed, and if available, must be set-up to receive automatic software updates and patches. For new software versions or upgrades that carry an additional cost, updates will not be done automatically; rather, Contractor or their Authorized Dealer will inform the Purchasing Entity of the new version and assist them in their decision to upgrade based on needed functionality and compatibility with their existing Equipment.
- g) Specifications must be published on Contractor's website;
- h) MSRP must not exceed what is listed with Buyers Laboratory Inc., or List Price must not exceed what is published on the Manufacturer's website;
- i) Must maintain a PPM speed, according to Segment classification; and
- j) Must be compatible with using recycled paper, up to and including, 100% Post-Consumer Waste (PCW) paper. Contractor may not fault the use of recycled paper for Device failures, as long as the recycled paper in use meets the standard paper specifications (e.g., multi-purpose, copy, or laser paper).

#### **4.3.4. Device Exceptions**

- a) Group C, Group D, Group E, and Group F will not be restricted to OEM, and do not have to be Private Labeled;
- b) Group C, Group E, and Group F are not required to be EPEAT registered or Energy Star compliant;
- c) Digital Duplicators may be offered by Contractor, and shall be priced based on the minimum discount offered in the Segment to which they belong (refer to the Group A Price List for Segment discounts).
- d) Inkjet and Digital Presses may be offered by Contractor, and shall be priced based on the minimum discount offered in the Segment to which they belong (refer to the Group C Price List for Segment discounts);
- e) Roll-Fed Wide Format Printers may be offered by Contractor, and shall be priced based on a minimum discount of 10%.
- f) Contractor may offer Large/Wide Format Equipment that accommodates all paper sizes. Pricing shall be based on the discount offered for the Segment in which the Device belongs (refer to the Group E Price List for Segment discounts).

#### **4.3.5. Accessories**

- a) Contractor shall provide OEM and/or Third Party compatible Accessories that compliment or enhance the features of the Device.
- b) Purchasing Entities may add Accessories to Devices that have been purchased, leased or rented under prior NASPO ValuePoint and/or WSCA Master Agreements, as well as via any other means.

#### **4.3.6. Software**

- a) Contractor shall provide software to enhance the capabilities of the Devices, or software may be provided as a standalone option on any pre-owned, purchased or leased Device.

- b) Contractor shall provide OEM and/or Third Party Software.
- c) All software drivers shall be, at a minimum, Windows 7 compliant, and all Devices must have universal software drivers.
- d) Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software, as referenced in **Attachment I**, and as additionally provided by Contractor upon Order placement. However, the Master Agreement will supersede and control if there is conflicting language between it, and any software license agreement.

**4.3.7. Consumable Supplies**

- a) Contractor shall offer OEM or compatible Ink and Roll paper for Group E Devices. The Ink and/or paper may be purchased as standalone items, and will not be included as part of a Maintenance Agreement, nor will it be wrapped into the Total Monthly Payment on a lease agreement.
- b) Contractor shall offer OEM or compatible consumable for Supplies for Groups A, C, D, and F. These Supplies may be purchased as standalone items or included as part of a Maintenance Agreement. Under no circumstances may the Supplies, regardless of quantity, be financed, unless they are start-up Supplies. The Supplies that may be offered are:
  - i) Toner;
  - ii) Staples;
  - iii) Print Cartridges;
  - iv) Imaging Kits;
  - v) Waste Toner Bottles;
  - vi) Developer; and
  - vii) Maintenance Kits.
- c) Toner must be free of carcinogenic, mutagenic, or teratogenic substances.
- d) Contractor shall provide the Purchasing Entity with a method to return the empty toner cartridges at no additional charge.
- e) Supplies for Products shall be delivered within three business days on average.

**4.3.8. Remanufactured/Refurbished Equipment**

- a) Contractor may offer Remanufactured and/or Refurbished Equipment under Group A, C, D, E, and F.
- b) Remanufactured and Refurbished Equipment is not required to be EPEAT registered or Energy Star compliant.
- c) Equipment may be acquired via a purchase or lease agreement.
- d) Contractor must notify the Purchasing Entity in writing, when Remanufactured or Refurbished Equipment is being offered.
- e) All Remanufactured or Refurbished Equipment must be clearly labeled as such, and must be certified by the Manufacturer.
- f) Remanufactured Equipment must be priced according to the minimum discount offered for similar Equipment in Groups A, C, D, E, and F.

- g) Refurbished Equipment shall be offered at a minimum discount of 10% less than the lowest priced Device of the Group and Segment to which the Refurbished Equipment belongs.
- h) Service and Supplies for Remanufactured and Refurbished Equipment will receive the same pricing as the published price for the Group and Segment to which it belongs.

#### **4.3.9. Open Market Items**

- a) Contractor may offer Not Specifically Priced (NSP) items that compliment or enhance the Products and/or Services. NSP items will not include:
  - i) Interactive White boards;
  - ii) Computers, monitors, or other related items;
  - iii) Fax machines;
  - iv) Overhead Projectors; and
  - v) Cameras.
- b) NSP items may only be acquired through the Contractor or their Authorized Dealers and must be reported quarterly with all other sales.
- c) NSP items must be priced at a minimum discount of 15% from MSRP or List Price.
- d) NSP items shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order shall be determined by the Participating State or Entity.
- e) It shall be at the discretion of the Participating State or Entity to allow Open Market Items in their Participating Addendum.

#### **4.3.10. Emerging Technologies**

- a) Upon approval from the Lead State, Contractor may add new, related technology.
- b) Technology does not have to be restricted to OEM, nor does it have to be Private Labeled.
- c) Any new technology that a Contractor requests to add to their Price List must contain a full description of the Product, along with MSRP and pricing information, as well as an explanation/justification as to how the Product conforms to the requirements of this Master Agreement.
- d) Any new technology must be priced at a minimum discount of 7.4%.

### **4.4. Service Offerings**

#### **4.4.1. Managed Print Services**

- a) Contractor shall provide the following:
  - i) **Free Initial Assessment** – which shall include the following:
    - 1) Document workflow
    - 2) Identification of Service, Supplies, and parts
    - 3) Current output
    - 4) Total Cost of Ownership (TCO)
    - 5) Employee to Device ratio
    - 6) Preliminary estimated cost savings

- ii) **Implementation** – which shall consist of the following:
    - 1) Plan Development
    - 2) Hardware and Software Installation and Set-up
  - iii) **Remote Device Monitoring** – which shall include the following:
    - 1) Job Accounting
    - 2) Automated Meter Reads
    - 3) Automated Toner Replenishment
  - iv) **End-user Support** – which shall include the following:
    - 1) Training
    - 2) Help Desk Services
  - v) **Account Management** – which shall include the following:
    - 1) Reporting
    - 2) Invoicing
    - 3) Customer Business Reviews
- b) Contractor may also provide the following:
- i) **Maintenance**
    - 1) Preventative Maintenance
    - 2) Service and Repair
    - 3) On-site break/fix
    - 4) Parts Management
    - 5) Warranty Management
  - ii) **Ongoing Fleet Management and Optimization**
    - 1) Consumable Spend
    - 2) Continual Assessments
    - 3) Green Initiatives
    - 4) Add/Move/Change Services
    - 5) Disaster Recovery
  - iii) **Cost Based Assessment**
    - 1) Asset Mapping
    - 2) End-user Survey
    - 3) Detailed Recommendation
    - 4) Analysis and Plan Design
  - iv) **Change Management**
  - v) **Professional Services**
    - 1) Consulting
    - 2) Project Management



- 3) Records Management
  - 4) Network and Data Security
  - 5) Document Workflow Consulting
  - 6) Document Scanning
  - 7) Back-file Conversion
  - 8) Mail-Room Services
- c) All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, as referenced in **Attachment F (Toshiba MPS Statement of Work)**, and it must be approved by both parties prior to the initiation of any engagement.
  - d) The free initial assessment shall not constitute a commitment on behalf of the Purchasing Entity. Upon request from a Purchasing Entity, Contractor must provide the assessment with the understanding that the Purchasing Entity is under no obligation to enter into an MPS engagement.
  - e) MPS pricing and billing options shall be flexible, as long as pricing doesn't exceed Master Agreement pricing, and the Purchasing Entity will drive the complexity of the solution required with a staged approach to implementation.

#### 4.4.2. Maintenance Agreements

##### a) Pricing

- i) Pricing shall include a zero base, cost per click rate for b&w and/or color for Groups A, C and D.
- ii) Pricing for a monthly base charge, a set copy allowance and an overage rate for b&w and/or color shall also be provided.
- iii) Pricing must be provided that includes all parts, labor, Preventative Maintenance, Service Calls, and Supplies for Groups A, C and D.
- iv) A pricing option for ALL Groups shall include parts, labor, Preventative Maintenance (if applicable), and Service Calls, but **excludes** Supplies.
- v) Paper and ink for Group E Devices shall not be included as part of the Service and Supply pricing.
- vi) Contractor may increase their Service and Supply pricing to include staples (if applicable to the Device).
- vii) Contractor may charge flat rate fees for Services performed on any Accessories.
- viii) Service Calls due to misuse, neglect or abuse shall not be covered by the Maintenance Agreement, and Contractor and Authorized Dealers may bill the Purchasing Entity at an hourly rate for Services rendered.
- ix) **11"x17" impressions:**
  - 1) Shall be counted as two (2) clicks on Group A Devices; and
  - 2) May be counted as two (2) clicks on Group C Devices.
- x) Contractor shall offer a one (1) click rate that encompasses all paper sizes for Group C Devices.
- xi) A two-sided document shall be counted as two (2) clicks.
- xii) Contractor must not charge for scans on any MFD.
- xiii) **Initial Term:**

- 1) Pricing shall remain firm for the initial term of the Maintenance Agreement.
- 2) For lease Equipment, the Maintenance Agreement term is equal to the term of the lease (i.e. 12, 18, 24, 36, 48, 60 months etc.).
- 3) For purchased Equipment, the initial term is whatever period of time the Purchasing Entity elects, as long as it does not exceed 60 months on Group A, Group D, Group E, and Group F Devices and 84 months on Group C Devices.

**xiv) Renewal Term:**

- 1) If a Purchasing Entity wishes to renew a Maintenance Agreement for Equipment that was acquired under this Master Agreement, then the Contractor may negotiate new pricing. This pricing shall not exceed this Master Agreement pricing.
- 2) If a Purchasing Entity wishes to renew a Maintenance Agreement for Equipment that was acquired under Master Agreement (3091), then §4.4.2(f) shall apply.

**b) Blended Rates**

- i) Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet, and the Blended Rate must cover all units in the fleet.
- ii) The Blended Rate must be divided between b&w and color.
- iii) Contractor shall provide the Purchasing Entity with the Blended Rate calculation prior to Order placement.
- iv) Utilizing a Blended Rate shall be at the discretion of the Participating State or Entity.

**c) Manual Meter Reads**

- i) Contractor may collect meter reads from a Purchasing Entity via electronic means.
- ii) Meter reads may be submitted via the Contractor's online portal, or through e-mail, or facsimile.
- iii) A Participating State or Entity may also elect, at their discretion, to submit meter reads through the Device.

**d) Customer Owned Equipment**

- i) Purchasing Entity's may elect to enter into a Maintenance Agreement for Equipment they already own, or Equipment they acquire through an up-front purchase.
- ii) The Maintenance Agreement may be priced on a flat rate fee, which shall include parts, labor, Preventative Maintenance (if applicable) and Service calls. Supplies may or may not be included.
- iii) The Maintenance Agreement shall not be subject to automatic renewals.

**e) Leased Equipment**

- i) Contractor shall be required to provide a Maintenance Agreement on all Equipment that is leased by a Purchasing Entity.
- ii) The Maintenance Agreement shall be priced based on a cost per click rate, or a monthly base charge.

**f) Legacy Equipment**

- i) Upon request from the Purchasing Entity, Contractor may provide Maintenance Agreements on any Equipment that is owned or was leased or rented through Master Agreement (3091), or via any other means, providing the following conditions are met:
  - 1) The Device has not reached the end of its Useful Life;

- 2) The maximum term of the Maintenance Agreement does not exceed the Useful Life of the Device, unless otherwise specified in a Participating Addendum; and
  - 3) The Maintenance Agreement adheres to the same requirements as outlined in §4.4.2(d) and §4.4.2(e).
- ii) Devices that were previously serviced by another Dealer or Manufacturer must be inspected and repaired, if necessary. Upon mutual agreement, Contractor may charge Purchasing Entity for any parts and/or labor required to bring the Device up to acceptable maintenance levels.
  - iii) If the Device has been at the Purchasing Entity's location for less than five (5) years, then Maintenance Agreement pricing shall not exceed this Master Agreement pricing, until the Purchasing Entity reaches the five (5) year mark. Refer to §4.4.2(f)(iv) below for additional information.
  - iv) If the Device has been at the Purchasing Entity's location for more than five (5) years, then Maintenance Agreement pricing shall not exceed 107% of the Service and Supply pricing in this Master Agreement for years 5 through 7, and 110% for years 8 and beyond. The Service and Supply pricing that will be used for this calculation will be based on the following:
    - 1) The Group and Segment to which the Device is categorized; and
    - 2) The Service and Supply pricing for that Group and Segment, as listed under Newly Manufactured Equipment in this Master Agreement.

#### 4.4.3. Service Requirements

- a) **Technicians.** All technicians shall be factory trained by the OEM and certified to Service the Devices.
- b) **Standard Service Levels.** Participating States and/or Entities shall negotiate their own Service Level Agreement (SLA) with the Contractor. The SLA, must, at a minimum, adhere to the following requirements:
  - i) **End-User Training**
    - 1) An initial, no charge, on-site, one-hour training session for each Device, must be offered by Contractor for all non-desktop Products placed at each Purchasing Entity's location. For drop-shipped or desktop Products, Contractor shall offer an initial, one-hour, no charge, web-based, or on-line training session.
    - 2) Technical support training shall also be included in the initial, no charge training, and will include network connectivity and print driver installation. This training will be in addition to the one-hour of free training for Device operation.
    - 3) If Purchasing Entity elects to exercise the training option, then Contractor shall provide the training within ten (10) Business Days of Purchasing Entity's request.
    - 4) Contractor shall offer additional on-site, one-hour training sessions for a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
    - 5) Contractor must provide on-site or off-site operational training to designated Purchasing Entity personnel, until the personnel are able to operate the Equipment independently. Pricing for operational training shall be based on a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
    - 6) Contractor shall provide Product literature, user-manuals, and access to on-line resources, if available, at no charge to the Purchasing Entity.

- 7) Contractor shall provide a toll-free end-user technical support number that Purchasing Entities can utilize for everyday minor troubleshooting. A Purchasing Entity must be able to obtain assistance during Normal Business Hours.
  - 8) Contractor shall provide phone/technical support within two (2) hours of Purchasing Entity's request for assistance.
- ii) **Preventative Maintenance.** Contractor shall perform all Preventative Maintenance Services at the Manufacturer's suggested intervals, or as specified in an Order. Preventative Maintenance shall not be a requirement on desktop Devices.
- iii) **Equipment Performance**
- 1) Equipment Downtime shall be calculated from the time a service call is placed with Contractor or with Dealer's dispatch department until the time the technician completes the repair.
  - 2) Equipment Downtime due to lack of consumable Supplies is not acceptable.
  - 3) Contractor shall guarantee that the fleet of Devices for each Purchasing Entity will be operational at least 98% of the time, during Normal Business Hours for Groups A, D, E, and F.
  - 4) If any fleet of Devices fails to perform at the operation level specified in §4.4.3(b)(iii)(3) then §4.11.11 shall apply.
  - 5) Contractor must provide daily communication to the Purchasing Entity regarding inoperable Equipment, including updates regarding resolution timeframe, and any parts, Accessories, or Devices on back-order.
- iv) **Loaner Equipment.** If any Device is inoperable for two (2) Business Days, due to Equipment malfunction, as reasonably determined by Contractor, then Contractor shall provide the Purchasing Entity with:
- 1) A loaner Device of similar speed and capabilities until such time as the inoperable Device(s) are now operable; or
  - 2) Provide the Purchasing Entity with off-site manned production capabilities to accomplish the work of the unit that is inoperable at the sole expense of the Contractor. Such costs shall be limited to the cost of production (Service and Supplies), Equipment, labor, and transportation to and from the off-site production facility and the Purchasing Entity location.
- v) **Repair Parts**
- 1) Contractor shall guarantee the availability of repair parts for a minimum of five (5) years after the Purchasing Entity's Acceptance of any Device.
  - 2) All Device components, spare parts, application software, and ancillary Equipment that is supplied under this Master Agreement, must conform to Manufacturer specifications.
  - 3) Contractor shall be responsible for ensuring that any repair parts are operable and installed in accordance with Manufacturer specifications.
  - 4) Repair parts may be new, reconditioned, reprocessed or recovered.
- vi) **Replacement Equipment**
- 1) If Purchasing Entity is not satisfied with any Device, Contractor will, at Purchasing Entity's written request, replace it without charge with an equivalent unit or, upon mutual agreement with the Purchasing Entity, with a Device of comparable features and capabilities.

- 2) Prior to installing a substitute Device, Contractor will be allowed thirty (30) days to remedy any quality or reliability issues.

**vii) Service Zones**

- 1) Unless otherwise specified in a Participating Addendum, Contractor shall adhere to the following Service Call Response Times based on the distance that their Service Base Location is from the Purchasing Entity:

Service Zone	Definition	Response Time
Urban	Within 60 miles	4 - 6 Hours
Rural	60 – 120 miles	1 - 2 Business Days
Remote	120+ miles, or only accessible by plane or by boat	4 - 5 Business Days

- 2) Repair or replacement of parts and/or Devices shall occur within four (4) Business Days of Contractor arriving at Purchasing Entity's location, with the following exception:
  - If Contractor is drop-shipping a new Device to replace a defective Device, then Purchasing Entity must receive the new Device within three (3) Business Days.
- 3) Contractor may charge different rates according to each Service zone.

**viii) Service Logs**

- 1) Contractors shall maintain a Service log which describes the maintenance and repair Services provided for each Device.
- 2) A no-cost copy of Service logs/reports must be provided to the Purchasing Entity or Participating State or Entity, within five (5) Business Days of the request.

**ix) Equipment Relocation**

- 1) Equipment relocation Services include dismantling, packing, transporting, and re-installing Equipment.
- 2) Contractor may charge for this Service based on the following table:

Service Zone	Distance from original placement of Device	Charge
1	Within the same building (once per Device, per year)	No Charge Allowed*
2	Up to 50 miles from building in which Device was originally placed	Flat Rate Fee, plus Per Mile or Hourly Fee
3	More than 50 miles from building in which Device was originally placed	Flat Rate Fee, plus Per Mile or Hourly Fee

\*Contractor may charge Purchasing Entities a mutually agreed upon price for special rigging in the event a Purchasing Entity's demographics require such rigging for Zone 1 relocation's. The price shall be agreed upon in writing by Contractor and Purchasing Entity prior to any Equipment relocation in Zone 1.

- 3) Contractor shall not charge for any fees incurred due to fuel or tolls.
- 4) Moves must be performed within thirty (30) calendar days of the Purchasing Entity request. Request may be verbal or written, but Contractor must confirm the request in

writing and provide a date that the move will occur. Written confirmation must be sent to the Purchasing Entity within three (3) Business Days of request. In the event that there will be a delay in these Services, Contractor shall communicate with Purchasing Entity and agree on a mutually beneficial time-frame.

**c) Meter Read Invoicing**

- i) In order for Contractor to generate accurate invoices, Purchasing Entities shall provide meter reads within the Contractor's requested time-frame.
- ii) Invoices that are generated without receiving the proper meter read information from the Purchasing Entity will not be considered inaccurate.
- iii) The Purchasing Entity shall provide written notice of any such alleged invoicing issue and the Contractor will be allowed a thirty (30) day cure period to address any such issue. During the thirty (30) day cure period, the Purchasing Entity will not be assessed any late fees for failure to submit payment by the invoice due date.
- iv) Failure on the Contractor's part to maintain accurate invoicing shall result in a \$25.00 per instance credit on the following month's invoice.

**d) Service Level Calculations**

- i) At the discretion of the Participating State or Entity, Contractor shall produce reports that can be measured against the required SLA components. Refer to §4.4.3(e) for reporting requirements.
- ii) The Participating State or Entity shall determine how the reports will be utilized and whether liquidated damages will be assessed for failure to meet the SLA requirements. Any liquidated damages or penalty structure shall be defined in the Participating State or Entity's Participating Addendum.

**e) Reporting.** Contractor shall provide periodic reporting to all Purchasing Entities upon request. The reports shall be provided on a quarterly basis, or at the discretion of the Participating State or Entity.

- i) The report shall include the following:
  - 1) Up-time percentage (%) per fleet of Devices;
  - 2) Number of Service Calls placed;
  - 3) Response Time per Device;
  - 4) Dates that Preventative Maintenance was performed, if applicable;
  - 5) Hours of end-user training performed; and
  - 6) Estimated end of Useful Life per Device, based on current usage.
- ii) The report may include, but not be limited to, the following:
  - 1) Location of Devices;
  - 2) Click usage per Device; and
  - 3) EPEAT certification level of each Device.

**f) Service Dispatch Hours.** Contractor's National Dispatch Center shall be available by toll free telephone, email and fax or their web portal, between 5:00am and 5:00pm Pacific Time, Monday through Friday, excluding recognized holidays. All calls placed to the Dispatch Center after these hours shall be returned the next Business Day.

**4.4.4. Software Subscriptions**

- a) Software pricing shall be inclusive of available software patches and any updates.

- b) Purchasing Entities shall have the option to finance software subscriptions according to the lease rates listed in Groups A, C, D, E, and F of the Master Agreement.
- c) Any new releases of software versions (upgrades) shall be chargeable to the Purchasing Entity; however, Contractor may not charge for the installation of the software upgrade.
- d) License fees and support fees shall remain firm throughout the term of the agreement.
- e) Software subscriptions shall not be subject to automatic renewals. Should there be any conflicting language between the software EULA and the Master Agreement, the Master Agreement shall govern and control.
- f) Contractor shall be responsible for communicating all updates, patches, and new releases/versions to Purchasing Entities.
- g) Contractor shall provide a web-based or toll-free hotline during Normal Business Hours for Purchasing Entities to report software problems or answer software related questions.

**4.5. Purchase and Lease Programs**

4.5.1. Contractor shall offer the following acquisition methods:

Financial Vehicle	Standard Terms Offered
Purchase	N/A
Fair Market Value Lease	12, 18, 24, 36, 48 and 60 months
\$1 Buyout Lease	
Straight Lease	

4.5.2. All Products on Contractor’s Price List may be purchased or leased, either as a packaged-deal, or stand-alone item.

4.5.3. Contractor shall also offer 72 and 84-month lease rates for Group C Devices only.

**4.5.4. Equipment Trade-In**

- a) A Purchasing Entity shall have the option, at the Contractors sole discretion, and based upon Participating State or Entity regulations and laws, and Purchasing Entity policies, to do an Equipment Trade-In, when placing a purchase, lease Order.
- b) The value for the Equipment Trade-In shall be negotiated by the Purchasing Entity and the Contractor, and shall not include any disposal or shipping fees.

**4.5.5. Lease Rates**

- a) The rate for any lease shall remain fixed throughout the Initial Lease Term.
- b) Equipment Payments for Renewal Terms shall never exceed Master Agreement pricing.
- c) If a Purchasing Entity enters into a Renewal Term, then the Equipment Payment will be subject to the lease rates listed in the most recent Price List(s) posted on the NASPO ValuePoint website.
- d) Contractor may update lease rates on a quarterly basis to allow for changes in the financial market. The rates must be indexed against the US Daily Treasury Yield Curve Rates, or something similar, and must be the rate in effect at the end of each calendar quarter. Refer to <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield> for additional information.

- e) Contractor shall offer Cotermious lease rates to any Purchasing Entity wishing to add Products to an existing lease agreement.

#### **4.5.6. Leasing Overview**

- a) All lease programs must remain with the Contractor or Authorized Dealers through an in-house leasing program, or through the financial branch or subsidiary of the Contractor. In addition, Contractor and their Authorized Dealers may use Third Party leasing companies, but all billing must be invoiced in the name of the Contractor or their Authorized Dealer, and all contractual obligations shall remain with the Contractor.
- b) A Purchasing Entity may lease Equipment pursuant to the terms and conditions identified herein.
- c) Lease agreements shall not be subject to automatic renewals.
- d) In the event that the term of a lease agreement extends beyond the term of the Participating Addendum, the terms and conditions of this Master Agreement and Participating Addendum shall continue to apply.
- e) A lease agreement issued prior to the termination of this Master Agreement and Participating Addendum, shall survive the termination of this Master Agreement and the Participating Addendum.
- f) With the exception of a \$1 Buyout Lease arrangement, or unless exercising the purchase option on an FMV Lease, a Purchasing Entity shall return the Equipment at the end of the Initial Lease Term, or at the end of the Renewal Lease Term, or the Contractor may pick the Equipment up, without any further financial obligations to the Purchasing Entity.
- g) Equipment pickups must be performed within thirty (30) calendar days of the end of the Initial or Renewal Term.
- h) Equipment returns must be performed within thirty (30) calendar days after the Contractor or Authorized Dealer provides return shipping instructions to the Purchasing Entity.
- i) Contractor shall be responsible for all Product pickup and return costs.
- j) The maximum term on any Initial Lease Term shall be 60 months, with the exception of Group C Devices, which shall have a maximum term of 84 months.
- k) The length of a Renewal Term shall be at the discretion of the Participating State or Entity, but at no time shall the Renewal Term exceed the Useful Life of the Equipment.
- l) All Renewal Terms shall be billed on a monthly basis.

#### **4.5.7. Leasing Options**

- a) **FMV Lease**
  - i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months for Group A, Group C, Group D, Group E and Group F, at the discretion of the Participating State or Entity. In addition, a Participating State or Entity may elect to enter into 72 and 84 month terms for Group C only.
  - ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
    - 1) Exercise their purchase option;



- 2) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
- 3) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**b) \$1 Buyout Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months for Group A, Group C, Group D, Group E and Group F, at the discretion of the Participating State or Entity. In addition, a Participating State or Entity may elect to enter into 72 and 84 month terms for Group C only.
- ii) Upon the expiration of the Initial Lease Term, the Contractor shall provide title to the Equipment to the Purchasing Entity, or as otherwise determined in a Participating Addendum, and the Purchasing Entity shall not be subject to any additional expense in order to assume possession of the Equipment.

**c) Straight Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months for Group A, Group C, Group D, Group E and Group F, at the discretion of the Participating State or Entity. In addition, a Participating State or Entity may elect to enter into 72 and 84 month terms for Group C only.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 2) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**4.5.8. Leasing Terms and Conditions**

**a) Possession and Return of Lease Equipment**

- i) Purchasing Entity is responsible for risk of loss to the Products while the Products are in Purchasing Entity's possession. Purchasing Entity shall be relieved of all risks of loss or damage to the Products during periods of transportation and de-installation.
- ii) Contractor or Authorized Dealer must notify a Purchasing Entity, in writing, of their End of Term (EOT) options at least sixty (60) to ninety (90) days prior to the end of any Initial Lease Term. Such notification may include, but not be limited to, the following:
  - 1) Any acquisition or return options, based on the type of lease agreement;
  - 2) Any renewal options, if applicable; and/or
  - 3) Hard drive removal and surrender cost, if applicable.
- iii) If a Purchasing Entity desires to exercise a purchase, renewal, or return of the Equipment, it shall give Contractor at least thirty (30) days written notice prior to the expiration of such lease term. Notwithstanding anything to the contrary, if Purchasing Entity fails to notify Contractor of its intent with respect to the exercise of a purchase, renewal, or return of the Equipment, the Initial Lease Term shall be terminated on the date as stated in the Order and removal of the Product will be mutually arranged, unless otherwise specified in a Participating State or Entity's Participating Addendum.
- iv) If Purchasing Entity does not exercise the purchase or renewal option, it will immediately make the Product available to Contractor in as good of condition as when Purchasing Entity received it, except for ordinary wear and tear.

- b) **Payment.** The first scheduled payment (as specified in the applicable Order), will be due following the Acceptance of the Products, or such later date as Contractor may designate. The remaining payments will be due on the same day of each subsequent month, unless otherwise specified in the applicable Order.
- c) **Buyout to Keep Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Keep option on an FMV or \$1 Buyout Lease.
- d) **Buyout to Return Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Return option on an FMV, \$1 Buyout or Straight Lease, and return the Equipment to the Contractor in good working condition (ordinary wear and tear excepted).
- e) **Equipment Upgrade or Downgrade.** A Purchasing Entity may do an Equipment Upgrade or Downgrade on a lease at any time throughout the term of the lease agreement. The Purchasing Entity and the Contractor shall negotiate the price of the Equipment Upgrade or Downgrade, but at no time shall the total cost of the Equipment Upgrade or Downgrade be less than the remaining stream of Equipment Payments.
- f) **Non-appropriation of Funds.** The continuation of any lease agreement will be subject to, and contingent upon, sufficient funds being made available by the Participating State Legislature and/or federal sources. The Purchasing Entity may terminate any such lease agreement, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Purchasing Entity's funding sources are not available.
- g) **Assignment**
  - i) Purchasing Entity has no right to sell, transfer, encumber, sublet or assign the Product or any lease agreement without Contractor's prior written consent (which consent shall not be unreasonably withheld).
  - ii) Purchasing Entity agrees that Contractor may not sell or assign any portion of Contractor's interests in the Product and/or these Lease Terms or any Order for leases without notice to Purchasing Entity even if less than all the payments have been assigned. In that event, the assignee (the "Assignee") will have such rights as Contractor assigns to them, but none of Contractor's obligations (Contractor will keep those obligations) and the rights of the Assignee will not be subject to any claims, defenses or set offs that Purchasing Entity may have against Contractor.
  - iii) No assignment to an Assignee will release Contractor from any obligations Contractor may have to Purchasing Entity.
- h) **Early Termination Charges**
  - i) Except in the case of Non-appropriation of funds, FMV, \$1 Buyout, and Straight Leases shall be subject to an early termination charge, and shall involve the return of the Equipment (in good working condition; ordinary wear and tear excepted) by the Purchasing Entity to the Contractor. With respect to the Equipment, the termination charge shall not exceed the balance of remaining Equipment Payments (including any current and past due amounts), and with respect to Service or maintenance obligations, the termination charge shall not exceed four (4) months of the Service and Supply base charge or twenty-five percent (25%) of the remaining Maintenance Agreement term, whichever is less.
  - i) **Default.** Each of the following is a "default" under these lease terms:
    - i) Purchasing Entity fails to pay any payment or any other amount within forty-five (45) days (or as otherwise agreed to in a Participating Addendum) of its due date;

- ii) Any representation or warranty made by Purchasing Entity in these lease terms is false or incorrect and Purchasing Entity does not perform any of its obligations under these lease terms, and this failure continues for forty-five (45) days (or as otherwise agreed to in a Participating Addendum) after Contractor has notified Purchasing Entity;
  - iii) Purchasing Entity or any guarantor makes an assignment for the benefit of creditors;
  - iv) Any guarantor dies, stops doing business as a going concern, or transfers all or substantially all of such guarantor's assets; or
  - v) Purchasing Entity stops doing business as a going concern or transfers all or substantially all of Purchasing Entity's assets.
- j) **Remedies.** If a Purchasing Entity defaults on a lease agreement, then Contractor, in addition to, or in lieu of, the remedies set forth in this Master Agreement, and Participating Addendum, may do one or more of the following:
- i) Cancel or terminate any or all Orders, and/or any or all other agreements that Contractor has entered into with Purchasing Entity;
  - ii) Require Purchasing Entity to immediately pay to Contractor, as compensation for loss of Contractor's bargain and not as a penalty, a sum equal to:
    - 1) All past due payments and all other amounts payable under the lease agreement;
    - 2) All unpaid payments for the remainder of the lease term, discounted at a rate equal to three percent (3%) per year to the date of default; and
    - 3) Require Purchasing Entity to deliver the Product to Contractor per mutual arrangements.

#### 4.6. Security Requirements

##### 4.6.1. Network and Data Security

- a) Devices may be configured to include a variety of data security features. The set-up of such features shall be at the discretion of the Purchasing Entity, and all costs associated with their implementation must be conveyed by Contractor prior to Order placement.
- b) Contractor will not be permitted to download, transfer, or access print data stored on the Device in either hard drive or chip memory. Only system management accessibility will be allowed.
- c) Contractor shall ensure that delivery and performance of all Services shall adhere to the requirements and standards as outlined in each Participating State or Entity's Participating Addendum.

**4.6.2. Sensitive Information.** Sensitive information that is contained in any Legacy Equipment or applications shall be encrypted if practical. In addition, sensitive data will be encrypted in all newly developed applications. Since sensitive information is subjective, it shall be defined by each Participating State or Entity in their Participating Addendum.

**4.6.3. Data Breach.** Contractor shall have an incident response process that follows National Institute of Standards and Technology (NIST) standards as referenced in Special Publication 800-61, Revision 2 (available at <http://dx.doi.org/10.6028/NIST.SP.800-61r2>) and includes, at a minimum, breach detection, breach notification, and breach response.

##### 4.6.4. Authentication and Access

- a) Any network connected Device must offer authentication for all features via LDAP and/or Windows AD, as well as the ability to disable authentication for any or all features.

- b) Any network connected Device must have the ability to connect via Dynamic Host Configuration Protocol (DHCP) or Static IP address.
- c) The credential information for any remote authentication method may not be maintained within the Device's memory.
- d) Access to the Device's administrative functions must be password protected per the Participating State or Entity requirements, and the default settings must be changed at the time of Equipment installation.

#### **4.6.5. Hard Drive Removal and Surrender**

- a) With the exception of the conditions described in §4.6.5(b), Contractor shall ensure that all hard drive data is cleansed and purged (if capable) from the Device at the end of its Useful Life, or when any hard drive leaves the Purchasing Entity's possession; or
- b) At the Participating State or Entity's discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity's location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.
- c) If Contractor takes possession of any Device at the Purchasing Entity's location, then they shall also remove any ink, toner, and associated Supplies (drum, fuser, etc.) and dispose of them in accordance with applicable law, as well as environmental, and health considerations, or as otherwise specified in a Participating Addendum.
- d) With the exception of the conditions described in §4.6.5(b), hard drive sanitation shall be at no expense to the Purchasing Entity; however, Contractor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. Contractor must disclose the price for removal and surrender of the hard drive, prior to Order placement.
- e) If the hard drive is not removable, or the Device does not contain a hard drive, then Contractor must convey this to the Purchasing Entity at the time of Order placement. In the case of a non-removable hard drive, §4.6.5(a) shall apply.
- f) If a Contractor is removing another Manufacturer's Equipment, they are not permitted to remove the hard drive. Only the Manufacturer or their Authorized Dealer shall remove hard drives in their own Devices. Contractor shall work with the Manufacturer to ensure the requirements pursuant to this Subsection are met to the best of their abilities.

#### **4.7. Equipment Demonstration Requirements**

- 4.7.1. Contractor must offer trial or demonstration Equipment for Group A, and if requested by the Purchasing Entity, Group C, Group D, Group E, and Group F.
- 4.7.2. Trial or demonstration Equipment may be new or used; however, no used, Remanufactured, or Refurbished Devices shall be converted to a purchase or lease.
- 4.7.3. At the discretion of the Participating State or Entity, and upon request by a Purchasing Entity, showroom Equipment for Groups A and C may be converted to a purchase or lease, providing the following conditions are met:
  - a) The meter count on Group A Devices does not exceed 10,000 copies total (i.e. b&w and color combined);
  - b) The meter count on Group C Devices not exceed 50,000 copies total (i.e. b&w and color combined);

- c) The Device must be discounted by at least 5% off of this Master Agreement pricing for that same Device; and
- d) The Purchasing Entity and the Contractor indicate on the Order that the Device is a showroom model.

4.7.4. Any trial or demonstration period shall not exceed thirty (30) calendar days.

#### 4.8. Shipping and Delivery Requirements

- 4.8.1. All Orders, regardless of quantity, shall be delivered to the Purchasing Entity within thirty (30) calendar days after Contractor receipt of Order, unless otherwise specified by a Purchasing Entity.
- 4.8.2. Software related to the Device must be installed within five (5) Business Days of the Device installation, or as otherwise stated in an Order.
- 4.8.3. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. The minimum shipment amount, if any, will be found in the special terms and conditions. Any Order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- 4.8.4. Responsibility and liability for loss or damage shall transfer to the Purchasing Entity upon delivery of the Products, except as to material defects, fraud and Contractor's warranty obligations, which shall remain with the Contractor.
- 4.8.5. All deliveries shall be made during Normal Business Hours, which may vary for each Purchasing Entity of each Participating State.
- 4.8.6. It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.
- 4.8.7. The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.
- 4.8.8. The delivery days and delivery hours shall be established by the Purchasing Entity at the time of Order placement.
- 4.8.9. All deliveries, with the exception of drop-shipped or desktop Products, shall be made to the interior location specified by the Purchasing Entity. Specific delivery instructions will be noted on the Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- 4.8.10. Products shall be packaged and labeled so as to satisfy all legal and commercial requirements applicable for use by any Purchasing Entity, and shall include, without limitation and if applicable, OSHA material safety data sheets, and shall conform to all statements made on the label.
- 4.8.11. Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.
- 4.8.12. **Laws and Regulations.** Any and all Products and Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

#### **4.9. Equipment Installation Requirements**

**4.9.1.** Prior to Order acceptance, Contractor must advise Purchasing Entity of any specialized installation and site requirements for the delivery and installation of Device. This information should include, but is not limited to, the following:

- a) Air conditioning;
- b) Electrical;
- c) Special grounding;
- d) Cabling;
- e) Space;
- f) Humidity and temperature limits; and
- g) Other considerations critical to the installation.

**4.9.2.** The Purchasing Entity shall be responsible for furnishing and installing any special wiring or dedicated lines.

**4.9.3.** Network installation shall include configuration of the Device for the proper network protocols, and installation of the appropriate print drivers on up to five (5) computers per Device, or as otherwise specified in a Participating Addendum.

**4.9.4.** If applicable, all Devices must be set-up with Preventative Maintenance notifications turned on, and with the most environmentally responsible defaults enabled, including Energy Star saving settings.

**4.9.5.** Contractor may charge for excessive installation requirements, including rigging, access alterations, and access to non-ground floors via stairs. Any such excessive installation charges must be quoted to the Purchasing Entity prior to the signature of any Order, and shall be based on the actual expenditures of Contractor or Authorized Dealer. In addition, Contractor may charge for expedited shipping.

**4.9.6.** Contractor or Authorized Dealers shall affix a label or a decal to the Device at the time of installation which shows the name, address, and telephone number of Contractor or Authorized Dealer responsible for warranty Service of the Equipment.

**4.9.7.** Contractor shall clean-up and remove all debris and rubbish resulting from their work as required by the Purchasing Entity. Upon completion of the work, the premises shall be left in good repair and in an orderly, neat, clean, and unobstructed condition.

#### **4.10. Inspection and Acceptance**

**4.10.1.** All Products are subject to inspection at reasonable times and places before Acceptance.

**4.10.2.** If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option:

- a) Declare Contractor to be in breach and terminate the Order;
- b) Demand replacement Product from Contractor at no additional cost to Purchasing Entity; or,
- c) Continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of

Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

- 4.10.3. Purchasing Entity shall confirm delivery, installation and Acceptance of all Products covered by each purchase or lease Order, by signing a Delivery and Acceptance Certificate (D&A), as referenced in **Exhibit B (Toshiba D&A Certificate)**, which shows Acceptance of the Product(s) and allows Contractor to invoice for the Product(s).
- 4.10.4. Purchasing Entity agrees to sign and return the D&A to Contractor (which, at mutual agreement, may be done electronically) within five (5) Business Days after any Product is installed, or as otherwise stated in a Participating Addendum.
- 4.10.5. Failure to sign the D&A or reject the Product(s) within the foregoing five (5) day period shall be deemed as Acceptance by the Purchasing Entity; however, it does not relieve the Contractor of liability for material (nonconformity that substantially impairs value) defects subsequently revealed when Products are put to use. Acceptance of such Products may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor shall be liable for any resulting expense incurred by the Purchasing Entity in relation to the preparation and shipping of Product(s) rejected and returned, or for which Acceptance is revoked.

#### **4.10.6. Transfer of Title**

- a) Contractor shall have exclusive title to the Products being delivered and the Products shall be free and clear of all liens, encumbrances, and security interests. Title to the Device shall only pass to the Purchasing Entity upon:
    - i) Purchasing Entity up-front purchase of the Device;
    - ii) Purchasing Entity exercising the purchase option at the end of a Fair Market Value Lease;
    - iii) Upon expiration of a Purchasing Entity's \$1 Buyout Lease; or
    - iv) Purchasing Entity has secured Third Party financing and payment is being made directly to the Contractor by the Purchasing Entity.
  - b) Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 4.10.7. If any Services do not conform to Contract requirements, the Purchasing Entity may require the Contractor to perform the Services again in conformity with Contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and reduce the Contract price to reflect the reduced value of Services performed.

#### **4.11. Warranty Requirements**

- 4.11.1. The Warranty period shall begin upon Acceptance of the Products, and shall be for a minimum of ninety (90) days for purchase and leased Equipment.
- 4.11.2. Devices that are sold under this Master Agreement will come with the standard features as published on the Manufacturers website, and will not deviate from the stated specifications.
- 4.11.3. Products shall be in good working order, free from any defects in material and workmanship, and fit for the ordinary purposes they are intended to serve.

- 4.11.4.** If defects are identified, per mutual agreement of Contractor and the Purchasing Entity, Contractors obligations shall be limited solely to the repair or replacement of Products proven to be defective upon inspection.
- 4.11.5.** Replacement of Products shall be on a like-for-like basis and shall be at no cost to the Purchasing Entity.
- 4.11.6.** Repair of defective parts and/or Devices shall be at no cost to the Purchasing Entity.
- 4.11.7.** Upon significant failure of a Product, the warranty period shall commence again for the same amount of time as specified in §4.11.1. Significant failure shall be determined by the Participating State.
- 4.11.8.** Contractor warranty obligations shall not apply if:
- a) Product is installed, wired, modified, altered, or serviced by anyone other than Contractor and/or their Authorized Dealer;
  - b) If a defective or non-Contractor authorized Accessory, Supply, software, or part is attached to, or used in the Device; and
  - c) The Device is relocated to any place where Contractor Services are not available.
- 4.11.9.** Contractor agrees to perform its Services in a professional manner, consistent with applicable industry standards.
- 4.11.10.** It will be at the discretion of each Participating State or Entity to negotiate additional warranty requirements with the Contractor.
- 4.11.11. Lemon Clause**
- a) This clause shall apply to all Devices that are purchased or leased under this Master Agreement. Contractor shall utilize their Total Quality Commitment program to meet this requirement for Toshiba Devices.
  - b) This clause shall not apply if Supplies are used in the Devices that were not manufactured, provided, or authorized by the Contractor.
  - c) The application period is thirty-six (36) months from the date of Acceptance.
  - d) This clause shall take precedence over any other warranty or Services clauses associated with this Master Agreement, or as specified by a Participating State or Entity in their Participating Addendum.
  - e) A Purchasing Entity must maintain an uninterrupted Maintenance Agreement with Contractor or their Authorized Dealer on all purchased Devices in order for this clause to apply past the initial ninety (90) day warranty.
  - f) Any Device that fails (except due to operator error) to function in accordance with the Manufacturer's published performance specifications, four (4) times in any four (4) week period due to the same functional issue, shall be replaced with a like-for-like Device that meets or exceeds the requirements of the original Device, at no cost to the Purchasing Entity.

#### **4.12. Customer Service**

- 4.12.1. Key Personnel.** Contractor shall ensure that staff has been allocated appropriately to ensure compliance with this Master Agreement and subsequent Participating State or Entity requirements and that the individuals occupying the Key Personnel positions have adequate experience and



knowledge with successful implementation and management of a national cooperative contract. Contractor shall ensure that there is always a single point of contact for the following positions:

- a) **Master Agreement Contract Administrator** - the Lead State's primary contact in regards to Contract negotiations, amendments, Product and Price List updates, and any other information or documentation relating to this Master Agreement;
  - b) **NASPO ValuePoint Reporting Contact** - Responsible for submitting quarterly reports and the quarterly Administrative Fee to the appropriate personnel;
  - c) **Master Agreement Marketing Manager** - Responsible for marketing this Master Agreement, as well as creating Participating State websites, and ensuring that all uploaded data and content is current; and
  - d) **National Service Manager** - Responsible for overseeing the Regional Service Managers, Field Service Technicians, training, and inside Service operations. This position works with the Lead State Contract Administrator to ensure contractual obligations are met, while providing leadership for the Contractor's operations, as well as strategic planning of the Service department.
- 4.12.2. Contractor shall provide a single point of contact for each Participating State, who will handle any questions regarding the Products provided, as well as pricing, delivery, billing, status of Orders, customer complaints and escalated issues.
- 4.12.3. Contractor shall provide full Service and support for Products during Normal Business Hours.
- 4.12.4. Contractor shall have a designated customer service team who will be available by phone (via local or toll free number), fax, or email during Normal Business Hours.
- 4.12.5. Customer service representatives shall have online access to account information and will respond to inquiries concerning the status of Orders (shipped or pending), delivery, back-orders, pricing, Product availability, Product information, and account and billing questions.

## 5. ADMINISTRATION OF ORDERS

### 5.1. Ordering and Invoicing Specifications

- 5.1.1. Master Agreement Order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- 5.1.2. Contractor shall accept procurement credit cards as a form of payment from Purchasing Entity, with no additional charge or fee assessed.
- 5.1.3. Contractor shall provide a centralized billing option, upon request, and at the discretion of a Participating State or Entity.
- 5.1.4. Authorized Dealers may invoice the Purchasing Entity directly, unless otherwise specified in a Participating Addendum.
- 5.1.5. Contractor and/or Authorized Dealers may charge the Purchasing Entity a re-stocking fee for any Products that are not accepted. The amount of the fee shall be the lesser of 10% of the purchase price, or \$200.00, unless otherwise specified in a Participating Addendum.
- 5.1.6. Contractor may bill property tax separately or as otherwise indicated in a Participating Addendum or an Order.
- 5.1.7. Contractor and/or Authorized Dealers may estimate meter reads if a Purchasing Entity fails to submit the required information within the specified time-frame.

- 5.1.8.** This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other contractors having a NASPO ValuePoint Master Agreement, on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may, in its sole discretion, determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- 5.1.9.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of Products, and/or Services contemplated by this Master Agreement.
- 5.1.10.** Contractor shall not begin work without a valid purchase order or other appropriate commitment document compliant with the law of the Purchasing Entity.
- 5.1.11.** Orders must be placed consistent with the terms of this Master Agreement, and only during the term of this Master Agreement.
- 5.1.12.** All Orders pursuant to this Master Agreement, at a minimum, shall include:
- a) Name of Purchasing Entity;
  - b) The name, phone number, and address of the Purchasing Entity representative;
  - c) Order date;
  - d) Description of the Product and/or Service ordered;
  - e) Model number;
  - f) Serial number;
  - g) Price;
  - h) This Master Agreement number; and
  - i) Any additional information required by the Participating Entity.
- 5.1.13.** All software Orders must reference the Manufacturer’s most recent release or version of the Product, unless the Purchasing Entity specifically requests a different version.
- 5.1.14.** All communications concerning administration of Orders placed shall be furnished solely to the authorized individual within the Purchasing Entity’s location, or to such other individual identified in writing in the Order.
- 5.1.15.** Contractor shall not issue an invoice until the Purchasing Entity has confirmed Acceptance, per §4.10.3.
- 5.1.16.** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 5.1.17. Internet-based Portal and Electronic Catalogs.** If Contractor provides the ability to place an Order through an internet-based portal or electronic catalog, then Contractor shall maintain all necessary hardware, software, backup-capacity and network connections required to operate that

internet-based portal or electronic catalog. In addition, Contractor shall adhere to the following requirements:

- a) The internet-based portal or electronic catalog shall clearly designate that the Products are part of this NASPO ValuePoint Master Agreement, and shall link to the Participating State or Entity's designated web location;
- b) All Environmentally Preferable Products (EPP) shall be clearly listed;
- c) If the Contractor's electronic catalog will either be hosted on or accessed through the Participating State's eCommerce system, then Contractor shall comply with all policies, procedures and directions from the Participating State or Entity in relation to hosting its catalog on or making its catalog accessible through that system;
- d) All information made available through the Participating State or Entity's eCommerce system is accurate and complies with this Master Agreement and the Participating Addendum; and
- e) Paper catalogs or catalogs on other digital media must be supplied to the Participating State or Entity upon request.

**5.1.18.** Substitutions are not allowed. If an ordered Product is out-of-stock, Contractor shall notify the Purchasing Entity and request approval before substituting for the out-of-stock item. Contractor's request to substitute shall explain how the substituted Product compares with the out-of-stock item. Any substitute Product offered must be on this Master Agreement Price List.

**5.1.19.** Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery Order arrangement priced against this Master Agreement, may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery Order agreement.

**5.1.20.** Contractor's process for resolving disputed invoices, issuing refunds and/or credit, and addressing over-payments as well as Product returns is as follows:

- a) Purchasing Entity shall contact the Contractor via email or the customer service number provided on the invoice;
- b) Contractor shall research the issue and will then contact either Accounts Receivable (for hardware billing issues), Full Service Maintenance (for service billing issues), or Funding Source (for lease billing issues), as needed to resolve.
- c) Contractor shall follow up with the Purchasing Entity upon resolution, or periodically, to convey progress.
- d) If the billing issue is still outstanding after two weeks, Contractor shall escalate the billing issue to the Customer Service Manager. A courtesy follow-up call or email will be made to Purchasing Entity stating the progress and corrective actions being taken.
- e) If, after 30 days, the Purchasing Entity's billing issue still cannot be resolved, then it shall be escalated to the Director, ESS Customer Service – Operations Support Team to ensure the issue is resolved immediately.

In all instances of dispute resolution, the Purchasing Entity may contact the Participating State Contract Administrator, or the Lead State for assistance in resolving the dispute.

## **5.2. Payment**

Payment for completion of a Contract Order is normally made within thirty (30) days following the date the entire Order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days, the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per

month on the outstanding balance.

## **6. GENERAL PROVISIONS**

### **6.1. Insurance**

- 6.1.1.** Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.
- 6.1.2.** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
- a)** Commercial General Liability covering premises operations, Independent Contractors, Products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence, \$2 million general aggregate, \$2 million Products and completed operations aggregate and \$50,000 and any one fire. If any aggregate limit is reduced below \$2,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Participating Entity, a certificate or other document satisfactory to the Participating Entity, showing compliance with this provision.
  - b)** Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
  - c)** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
  - d)** Automobile Liability covering any auto (including owned, hired and non-owned), with a minimum limit of \$1,000,000 each accident combined single limit.
- 6.1.3.** Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.
- 6.1.4.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:
- a)** Names the Participating States identified in the Request for Proposal as additional insured's, and;
  - b)** Provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.
- 6.1.5.** Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within seven (7) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase

Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within fifteen (15) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**6.1.6.** Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Order.

## **6.2. Records Administration and Audit**

**6.2.1.** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or Orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any Order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

**6.2.2.** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of this Master Agreement or Orders, or underpayment of fees found as a result of the examination of the Contractor's records.

**6.2.3.** The rights and obligations herein right exist in addition to any quality assurance obligation in this Master Agreement requiring the Contractor to self-audit Contract obligations and that permits the Lead State to review compliance with those obligations.

## **6.3. Confidentiality, Non-Disclosure, and Injunctive Relief**

**6.3.1. Confidentiality.** Contractor acknowledges that it and its employees or Authorized Dealers may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or Authorized Dealers in the performance of this Master Agreement, including, but not necessarily limited to:

a) Any Purchasing Entity's records;

b) Personnel records;

c) Information concerning individuals is Confidential Information of Purchasing Entity. Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that:

i) Is or becomes (other than by disclosure by Contractor) publicly known;

- ii) Is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;
- iii) Is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
- iv) Is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
- v) Is disclosed with the written consent of Purchasing Entity; or
- vi) Is independently developed by employees, Dealers or Subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**6.3.2. Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and Authorized Dealers of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**6.3.3. Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

**6.3.4. Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

**6.3.5.** The rights granted to Purchasing Entities, and the Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to §6.2, **Records Administration and Audit**. To the extent permitted by law, Contractor shall notify the Lead State of any entity seeking access to the Confidential Information described in this subsection.

**6.4. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a non-exclusive, perpetual, irrevocable, unlimited license to use, modify, or dispose of the Intellectual Property and its derivatives, used or delivered under this Master Agreement solely for Purchasing Entity, but not created under it (“Pre-existing Intellectual Property”). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own reasonable expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**6.5. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity’s public information laws.

**6.6. Assignment/Subcontracts**

**6.6.1.** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State, which shall not be unreasonably withheld.

**6.6.2.** The Lead State reserves the right to assign any rights or duties, including written assignment of Contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

**6.7. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor’s Key Personnel, in writing within thirty (30) calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor’s proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed in the Contractor’s proposal.

**6.8. Independent Contractor**

**6.8.1.** Contractor shall perform duties as an Independent Contractor, and not as an employee. Neither the Contractor nor any employee or Authorized Dealer of the Contractor, shall be or deemed to be an employee of the Lead State, NASPO ValuePoint, and/or any Participating State or Entity.

**6.8.2.** Contractor acknowledges that its employees are not entitled to unemployment insurance benefits unless the Contractor or a Third Party provides such coverage, and that the Lead State, NASPO ValuePoint and any Participating State or Entity does not pay for or otherwise provide such coverage.

**6.8.3.** Contractor shall have no authority to bind the Lead State, NASPO ValuePoint and any Participating State or Entity to any agreements, liability, or understanding except as may be expressly set forth in this Master Agreement, Participating Addendum or an Order.

**6.9. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war or any other event which is beyond that party’s reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of this Master Agreement.

**6.10. Defaults and Remedies**

**6.10.1.** The occurrence of any of the following events shall be an event of default under this Master Agreement:

- a) Nonperformance of contractual requirements; or
- b) A material breach of any term or condition of this Master Agreement; or

- c) Any certification, representation or warranty by Contractor in this Master Agreement that proves to be untrue or materially misleading; or
- d) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- e) Any default specified in another section of this Master Agreement.

**6.10.2.** Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part, if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis.

**6.10.3.** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- a) Exercise any remedy provided by law;
- b) Terminate this Master Agreement and any related Contracts or portions thereof;
- c) Suspend Contractor from being able to respond to future Solicitations; and
- d) Suspend Contractor's performance.

**6.10.4.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in this Master Agreement, in addition to those set forth in its Participating Addendum.

**6.10.5.** Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

#### **6.11. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or an Order.

#### **6.12. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.



### **6.13. Indemnification**

- 6.13.1.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from negligent act(s), error(s), or willful omission(s) of the Contractor, its employees or Subcontractors or volunteers, at any tier, relating to the performance under this Master Agreement, except to the extent such death, injury, or damage to property arises out of or is caused by the negligence or willful misconduct of NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, or their officers, agents, and employees.
- 6.13.2. Indemnification – Intellectual Property.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim"), except to the extent such Intellectual Property Claim is arising out of or is caused by the actions of NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, or their officers, agents, and employees.
- 6.13.3.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other Product, system or method, unless the Product, system or method is:
- a) Provided by the Contractor or the Contractor's subsidiaries or affiliates;
  - b) Specified by the Contractor to work with the Product;
  - c) Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available Product, system or method capable of performing the same function; or
  - d) It would be reasonably expected to use the Product in combination with such Product, system or method.
- 6.13.4.** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. The Indemnified Party may assume the defense or settlement of the Intellectual Property Claim at any time and the Indemnified Party shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### **6.14. No Waiver of Sovereign Immunity**

- 6.14.1.** In no event shall this Master Agreement, any Participating Addendum or any Contract or any Purchase Order issued thereunder, or any act of a Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**6.14.2.** This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**6.15. Governing Law and Venue**

**6.15.1.** The construction and effect of this Master Agreement shall be governed by the laws of the Lead State. Venue for any administrative or judicial action relating to this Master Agreement shall be in the City and County of Denver, Colorado.

**6.15.2.** The construction and effect of any Participating Addendum or Order against this Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

**6.15.3.** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): The Lead State for claims relating to the procurement, evaluation, award, or Contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

**6.16. Assignment of Antitrust Rights**



Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any Goods or Services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**6.17. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.


**THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT**

\* Individual signing for Contractor hereby swears and affirms that they are authorized to act on Contractor's behalf and acknowledge that the Lead State is relying on their representations to that effect.

<p><b>CONTRACTOR</b> Toshiba America Business Solutions, Inc.</p> <p>By: Scott Maccabe Title: President &amp; CEO</p> <p>By: <u></u> *Signature</p> <p>Date: <u>08/01/2019</u></p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Personnel &amp; Administration State Purchasing &amp; Contracts Office Kara Veitch, Executive Director</p> <p>By: <u></u> John Chapman, State Purchasing Manager</p> <p>Date: <u>8/6/19</u></p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Master Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.

<p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: <u></u></p> <p>Date: <u>8/8/19</u></p>
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## **EXHIBIT A, PRICE LISTS**

**Group Price Lists (posted as separate file)**  
**MPS Price List (posted as separate file)**

**EXHIBIT B, TOSHIBA D&A CERTIFICATE**

**NASPO VALUEPOINT MASTER AGREEMENT NO. 140604  
AND THE STATE OF Insert Name of Participating State PARTICIPATING  
ADDENDUM NO.  
WITH Toshiba America Business Solutions, Inc.**

Re: Account Schedule Number \_\_\_\_\_ ("Contract")  
Financial Services Provider: Toshiba America Business Solutions, Inc. ("FS Provider")  
Lessee/Customer: \_\_\_\_\_ ("Customer")

This Certificate of Acceptance to the lease, loan or other form of financial services contract described above ("Contract") is by and between the FS Provider identified above and the Customer identified above.

Customer, through its authorized representative, hereby certifies to FS Provider and any assignee of FS Provider with respect to the Contract that:

1. All of the Equipment has been inspected and is (a) complete, (b) properly installed, (c) fully functioning, and (d) in good working order.
2. Customer is not in default under the Contract and all of Customer's statements and promises set forth in the Contract are true and correct.

**IN WITNESS HEREOF**, Customer's duly authorized representatives have executed this Acceptance Certificate as of the Acceptance Date.

Customer: \_\_\_\_\_

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

Title: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

**EXHIBIT C, AUTHORIZED DEALERS BY STATE**

**Toshiba Dealer List (posted as separate file)**

## EXHIBIT D, AUTHORIZED DEALER FORM

**Manufacturer Name:** \_\_\_\_\_

(Check one)

- The Dealer listed below is authorized to provide Products and Services in accordance with the NASPO ValuePoint Copiers and Managed Print Services Master Agreement.
- The Dealer listed below will no longer provide Products and Services under the NASPO ValuePoint Copiers and Managed Print Services Master Agreement for the following reason:

State(s) Serviced by Dealer:	
Dealer Name:	
Address:	
Phone (include Toll-Free, if available):	
Contact Person(s):	
Email Address:	
FEIN:	

Signed: \_\_\_\_\_  
(Contractor Representative)

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Authorized Dealer Representative)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print First and Last Name of Authorized Dealer Representative)

# EXHIBIT E, NASPO VALUEPOINT DETAILED SALES REPORTING TEMPLATE



NASPO ValuePoint  
Detailed Sales Repo



# ATTACHMENT A, TOSHIBA LEASE AGREEMENT

NASPO-ValuePoint  
CONTRACT # 140604

## AGREEMENT FOR LEASE OF EQUIPMENT

a Contract Between

“Lessee”

(NAME, ADDRESS, PHONE OF LESSEE)

and

Toshiba America Business Solutions, Inc. (“Supplier” and/or “Lessor”)

WHEREAS, Lessee is authorized to lease under the NASPO ValuePoint Master Agreement and the State of Participating Addendum thereto; and

WHEREAS, it is deemed that the lease of this equipment is both necessary and for the good of Lessee;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **LEASE TERM.** This Agreement shall be effective from the date of delivery and acceptance of Leased Equipment for the term set forth on the (i) NASPO ValuePoint Lease and Maintenance Order Form and if applicable its attached Schedule A or (ii) the Lessee’s Purchase Order (“PO”, such PO and NASPO ValuePoint Lease for Equipment and Maintenance Order Form, hereinafter referred collectively to as an “Order Form”) to which this Agreement is attached, unless sooner terminated by either party as set forth in Section 6 of this Agreement.

2. **DEFINITIONS.** “Lease Term” means the term of this Agreement as set forth in Section 1. “Leased Equipment” means the (i) equipment described in the Order Form, attached to this Agreement, and which is incorporated herein; (ii) any replacement equipment provided by Lessor; and (iii) any additional equipment described under subsequent Order Forms agreed to during the term of this Agreement. “Lessor” means Toshiba America Business Solutions, Inc. or, if applicable, its permitted assignee.

3. **CONSIDERATION (RENT).** The parties agree that for the Lease Term, Lessor leases to Lessee the equipment described in, and for the lease payments set forth in, the Order Form, excluding meter charges, late fees and applicable taxes. Except as provided in section 6(c), lessee’s payment obligations are absolute and unconditional and are not subject to cancellation, reduction or setoff for any reason whatsoever. Lessee does not agree to reimburse Lessor for expenses, unless otherwise specified in the incorporated documents. Any intervening end to a fiscal period shall not effect an existing Lease Term, which shall continue without changing the overall Agreement term.

#### 4. **POSSESSION, TITLE AND RETURN.**

(a) Lessee shall have possession of the Leased Equipment for the Lease Term, unless this Agreement is earlier terminated in accordance with Section 6 below and shall keep such Leased Equipment at the location specified in the Order Form or such other location as Lessor may agree in writing.

(b) Lessor covenants that it has good title to the Leased Equipment, except any intangible property or associated services such as periodic software licenses and prepaid database subscription rights included in the Leased Equipment, if any. If the Order Form indicates that this lease is a \$1 Buyout Lease and if this Agreement is deemed to be a secured transaction, Lessee grants Lessor a first priority security interest in the Leased Equipment to secure all of Lessee’s obligations under this Agreement, agrees not to permit any other liens on the Leased Equipment, and shall own such Leased Equipment as of the acceptance date and Lessee authorizes Lessor to record a UCC-1 to reflect such interest. At the end of the Lease Term, if Lessee is not in default, Lessor will release any security interest it may have in the Leased Equipment subject to such \$1 Buyout Lease, which will be retained by Lessee.

(c) At the expiration of the term of this Agreement and provided that the Order Form does not indicate this lease is a \$1 Buyout Lease, upon Lessee’s written request, Lessor shall remove the hard drive from the applicable Device and provide the Lessee with custody of the hard drive before the Device is removed from the Lessor’s location. Lessor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. The Lessee shall then be responsible for securely erasing or destroying the hard drive. All costs of removing and transporting the Leased Equipment at the expiration of the Lease Term shall be the responsibility of Lessor.

(d) Risk of loss of the Leased Equipment rests with Lessor until the Leased Equipment is delivered to Lessee's designated location and delivery is accepted by Lessee, at which time risk of loss passes to Lessee.

(e) If the Order Form indicates this lease is a Fair Market Value Lease, at the end of the Lease Term and upon 30 days' prior written notice to Lessor, Lessee may purchase all, but not less than all, of the Leased Equipment AS-IS and WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE, for the Lessor's Fair Market Value, plus applicable sales and other taxes, if any, or Lessee may return the Equipment pursuant to the terms and conditions of the NASPO ValuePoint Master Agreement.

5. **TAXES.** Lessee agrees to pay all fees, assessments, taxes and charges governmentally imposed upon Lessor's purchase, ownership, possession, leasing, renting, operation, control or use of the Leased Equipment.

6. **TERMINATION.**

(a) **Termination by Mutual Consent.** Any discretionary or vested right of renewal notwithstanding, this Agreement may be terminated upon written notice by mutual consent of both parties.

(b) **Termination by Lessee without Cause.** FMV, \$1 Buyout and Straight leases may be bought out and all Leased Equipment returned to Lessor (in good working condition, ordinary wear and tear excepted), although fair market value leases, straight leases, and \$1 buyout leases are subject to a termination charge. The termination charge is equal to the balance of unpaid lease payments and other amounts due hereunder (including any current or past due amounts) for leases and with regard to service or maintenance obligations, may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less.

(c) **Termination for Non-appropriation.** The continuation of this Agreement beyond the current fiscal period is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by Lessee's legislature, governing body and/or federal sources. If for any reason Lessee's funding is not appropriated Lessee may terminate this Agreement, and Lessor waives any and all claim(s) for damages, effective as of the end of the fiscal period in which written notice of such non-appropriation is provided by Lessee to Lessor. If Lessee terminates this Agreement because of non-appropriation Lessee will not purchase, lease or rent replacement equipment performing the same functions as the Leased Equipment during the subsequent fiscal period.

(d) **Termination for Default or Breach.** A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon written notice to the other party for any material breach or default by the other party of any terms, conditions, covenants, or obligations of this Agreement. Notice of termination for breach or default is effective 30 days following service of notice, or upon any subsequent date specified in the notice of termination. Termination by Lessor due to Lessee's material breach or default will be subject to a termination charge, which is equal to the balance of lease payments discounted at a rate equal to three percent (3%) per year to the date of default, and other amounts due hereunder (including any current or past due amounts) for leases and may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less, for service and maintenance charges. Defaulting Lessee shall be responsible for returning Equipment to the Lessor.

7. **INSURANCE.** At Lessor's request, Lessee shall provide to Lessor proof that the Leased Equipment is covered for the value thereof against property loss or damage while in Lessee's possession by Lessee's program of self-insurance (if approved by Lessor and Lessor's assignee, if any) or a policy of property insurance from a qualified insurer.

8. **LOSS OR DAMAGE.** If any item of Leased Equipment is lost, stolen or damaged, Lessee will, at Lessor's option and cost, either: (a) repair the item or replace the item with a comparable item reasonably acceptable to Lessor; or (b) pay Lessor the sum of: (i) all past due and current lease payments and other amounts due under this Agreement; (ii) the present value of all remaining lease payments for the effected item(s) of Leased Equipment, discounted at the rate of 3% per annum; and (iii) if this lease is not a \$1 Buyout Lease, the Fair Market Value of the effected item(s) of Leased Equipment. Upon Lessee's payment to Lessor under clause (b) above, Lessor will then transfer to Lessee all of Lessor's right, title and interest in the effected item(s) of Leased Product AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE. "Fair Market Value" means the item's fair market value at the end of the Lease Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by Lessor. No such loss or damage shall relieve Lessee of payment obligations hereunder.

9. **WARRANTY AND MAINTENANCE OF EQUIPMENT; WARRANTY DISCLAIMER.** All services performed under this Agreement shall be of workmanlike quality, consistent with the standards of the trade, profession or industry. Supplier shall assign to Lessee all manufacturer's warranties on the Leased Equipment, which shall be not less than a full six months' warranty. Supplier (and not its assignee) shall be responsible for ongoing service and maintenance of the Leased Equipment for the duration of the Lease Term. EXCEPT AS OTHERWISE STATED HEREIN, LESSOR MAKES NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE LEASED EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE LEASED EQUIPMENT IS MERCHANTABLE. Lessee acknowledges that none of Lessor or their representatives are agents of any assignee and none of them are authorized to modify the terms of this lease or on any Schedule. No representation or warranty of Supplier or Lessor with respect to the Leased Equipment will bind any assignee, nor will any breach thereof relieve Supplier

or Lessee of any of its obligations hereunder. THIS LEASE AGREEMENT AND EACH SCHEDULE CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE (the "UCC"). Lessee agrees that any manufacturer warranty or service agreement is a separate and independent obligation of Supplier to Lessee, that no assignee of the Lessor shall have any obligation to Lessee with respect to such warranty or service agreement and that Lessee's obligations under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim Lessee may have against Supplier.

10. **LESSOR REMEDIES.** If Lessee defaults, Lessor may do one or more of the following: (a) recover from Lessee, the sum of: (i) all past due and current lease payments and other amounts due under this Agreement; (ii) the present value of all remaining lease payments, discounted at the rate of 3% per annum; and (iii) if this lease is not a \$1 Buyout Lease, the Fair Market Value of the effected item(s) of Leased Equipment; (b) require Lessee to make the Leased Equipment available to Lessor for pickup at Lessee's premises (and Lessee shall be responsible for removing all data as provided in Section 4(c), charge Lessee for expenses incurred in connection with the enforcement of Lessor's remedies. If Lessor picks up the Leased Equipment, Lessor may sell, release or otherwise dispose of the Leased Equipment and apply the proceeds, less reasonable selling and administrative expenses, to the amounts due by Lessee and Lessee shall be responsible for any balance deficiency after such application. These remedies are cumulative, in addition to any other remedies provided by law, and may be exercised concurrently or separately. Any failure or delay by Lessor to exercise any right shall not operate as a waiver of any right. LESSOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES.

11. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Any services performed by Lessor before this Agreement is effective or after it ceases to be effective are performed at the sole risk of Lessor.

12. **LESSEE REPRESENTATIONS.** Lessee represents that: (a) this Agreement and any documents required to be delivered in connection with this Agreement (collectively, the "Documents") have been duly authorized by Lessee in accordance with all applicable laws, rules, ordinances and regulations; (b) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents, if applicable, have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signatures; (c) the Leased Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority and shall be used during the Lease Term only by Lessee to perform such function; (d) Lessee intends to use the Leased Equipment for the entire Lease Term and shall take all necessary action to include in Lessee's annual budget any funds required to fulfill Lessee's obligations each fiscal period during the Lease Term; (e) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations, required in connection with this lease and the debt under applicable state law; (f) unless this lease is a \$1 Buyout Lease, Lessee's obligations to remit Lease Payments constitutes a current expense and not a debt under applicable state law; (g) this Agreement is binding on Lessee and Lessee's successors and assigns; and (h) all financial information Lessee has provided is true and a reasonable representation of Lessee's financial condition.

13. **ASSIGNMENT.** Lessee may not assign or dispose of any rights or obligations under this Agreement or sublease the Leased Equipment without Lessor's prior written consent. Notwithstanding anything in the NASPO ValuePoint Master Agreement and/or the Participating Addendum to the contrary, Lessor may assign all or any portion of this Agreement or its interest in the Leased Equipment; provided that service obligations on the Leased Equipment shall remain with Toshiba America Business Solutions, Inc. and expressly not with Lessor's assignee and must conform to the terms of the NASPO ValuePoint Master Agreement and the State of Participating Addendum. Lessor's assignee shall have Lessor's rights under this Agreement, but none of Lessor's obligations. Lessee agrees not to assert any claims, defenses or offsets it may have against Lessor against such assignee.

14. **AGREEMENT AND MODIFICATION.** This Agreement is made pursuant to the NASPO ValuePoint Master Agreement identified above, and the State of Participating Addendum to that Master Agreement, the terms of which are incorporated herein by reference. In the event of conflict between the Master Agreement or the State of Participating Addendum and this Agreement, the Master Agreement and/or Participating Addendum shall govern and control. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties, unless the same is in writing and signed by the respective parties hereto.

15. **TIME PRICE.** If the NASPO ValuePoint Lease Order Form and Schedule indicates the lease is a \$1 Buyout Lease, Lessee understands that the Leased Equipment may be purchased for cash (the "Product Cost") or purchased pursuant to this Agreement for a Time Price equal to the amount of each Lease Payment times the number of Lease Payments, all as set forth on the NASPO ValuePoint Lease Order Form and Schedule and this Agreement, plus the Purchase Option amount stated on the NASPO ValuePoint Lease Order Form and Schedule, and by signing this Agreement, Lessee has chosen to purchase the Leased Equipment for that Time Price. The Product Cost may be determined by dividing the Lease Payment by the lease rate factor set forth on the NASPO ValuePoint Lease Order Form and Schedule. Each Lease Payment under a \$1 Buyout Lease includes a part of Lessor's investment in the Product Cost and a return on Lessor's investment in the \$1 Buyout Lease. The total return on Lessor's investment (the total finance charge) is determined by deducting the Product Cost (as determined above) from the Time Price. The difference so determined is the return to Lessor on its investment (the total finance charge). The rate of return (finance rate) may be determined by applying to the Product Cost, the rate that will amortize the Product Cost down to the Purchase

Option amount by applying as payments, the Lease Payments. For purposes of that amortization, each Lease Payment will be considered received on the date it is required to be paid under this Agreement.

16. **GOVERNING LAW. JURY TRIAL WAIVER.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of \_\_\_\_\_, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. **BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO THIS AGREEMENT AND THE LEASED EQUIPMENT.**

17. **NOTICE.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally in hand, (b) delivered by telephone, facsimile or email with simultaneous regular mail, or (c) mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above or such other address as the other party may have provided written notice of in accordance with this Section 17. For purposes of computing times from service of notice, service of notice by delivery in hand shall be effective on the date of delivery; notices that are mailed shall be effective on the third calendar day following the date of mailing.

18. **INDEMNITY:** Lessor is not responsible for any loss or injuries caused by the Equipment. To the extent permitted by applicable law, Lessee agrees to hold Lessor harmless and reimburse Lessor for loss and to defend Lessor against any claim for losses or injury or death caused by the Equipment. Lessor reserves the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Agreement.

19. **ELECTRONIC DOCUMENTATION.** This Agreement (including the Order Form) may be executed in counterparts and signed by the parties manually or electronically. The executed counterpart that has Lessor's original signature and/or is in Lessor's possession shall constitute chattel paper as that term is defined in the UCC and shall constitute the original agreement for all purposes. If Lessee signs and transmits this Agreement and Order Form to Lessor by facsimile or other electronic transmission, the transmitted copies shall be binding upon the parties. Lessee agrees that the facsimile or other similar electronic transmission of this Agreement and such Order Form manually or electronically signed by Lessor, when attached to the facsimile or other electronic copy signed by Lessee, shall constitute the original agreement for all purposes. Neither party may raise as a defense to the enforcement of this Agreement that it was signed or transmitted electronically.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

**LESSOR:**  
Toshiba America Business Solutions, Inc.

**LESSEE:**

Name:   
Title:   
Date:

By: \_\_\_\_\_  
Name:   
Title:   
Date:

# ATTACHMENT B, TOSHIBA LEASE ORDER FORM SCHEDULE

LESSEE \_\_\_\_\_

NASPO ValuePoint Document 8A12

**Schedule A to NASPO ValuePoint Lease Order Form - EQUIPMENT LEASE WITH SEPARATE MAINTENANCE PLAN**

v011119

This Schedule is solely for use with NASPO ValuePoint Participating Addendum only and should accompany the Lease Order Form  
For Use with Colorado RFP-NP-18-01 only

INCLUDE STAPLES:

DEPT. NAME	DIV NAME / CODE	STREET ADDRESS	FLOOR	ROOM / SUITE	CITY	ST	ZIP	PO B	TOSHIBA MODEL	CONFIGURATION SUMMARY / ITEM DESCRIPTION	LEASE TYPE: FMY, STRAIGHT, S1 BUYOUT	LEASE TERM: M, Y, Q, R, 60	EQUIPMENT LEASE PAYMENT (with PPT)	MAINTENANCE PLAN						
														No Base Plan, Only OPC for Usage	MAINT. OPTION 1 & OR 3	INCLUDED BASE NUMBER OF COPIES	MAINT. MONTHLY BASE CHARGE	DAY OVERTIME RATE	COLOR OVERTIME RATE	
EXAMPLE	0001	123 East Main Street	2nd Floor	201	Arlington	TX	76210		Toshiba eStudio 550C	A3 LXLIFR6W System		48	\$ 284.50	nil	2	25,000	\$177.50	\$1,000	\$1,000	
																0				
																0				
																0				
																0				
																0				
																0				
																0				
																0				
Total Monthly Equipment Lease Payment:												TOTAL PAYMENT - LEASE PLUS MAINTENANCE:		\$ -		Tot. Mo Base Chrg: \$ -				
TOTAL MONTHLY PAYMENT (Total Monthly Equipment Lease Payment + Total Mo Base Charge):												\$0.00								

This Schedule to the NASPO ValuePoint Lease for Equipment and Maintenance Order Form incorporates all of the Terms and Conditions of the Lease Agreement. Capitalized terms not defined herein shall have the same meaning as defined in the PA and/or the Agreement for Lease of Equipment.

LESSEE  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
(Please Print)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
(date of signature)

LESSOR: Toshiba America Business Solutions, Inc.  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
(Please Print)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
(date of signature)



# ATTACHMENT D, TOSHIBA MAINTENANCE AGREEMENT TERMS AND CONDITIONS

<b>TOSHIBA</b>	<b>MAINTENANCE AGREEMENT</b>
	<b>NASPO ValuePoint PARTICIPATING ADDENDUM</b>
	<b>Administered by the State of Colorado #RFP-NP-18-01</b>

These maintenance terms are pursuant to a Participating Addendum under NASPO ValuePoint Cooperative Purchasing Organization Master Agreement administered by the State of Colorado #RFP-NP-18-01 (the "Contract"). By accepting this Exhibit, Customer agrees to purchase the services as set forth in the Contract Maintenance Order Form. Contractor agrees to provide parts, labor, ink, toner, and toner collection containers (the "Maintenance Services") for the equipment listed in the Maintenance Order Form in accordance with the terms and conditions of the Contract and the Maintenance Agreement Terms below.

## MAINTENANCE AGREEMENT TERMS

1. **TERM:** Each asset shall be annually renewable on each yearly anniversary date for an additional one (1) year period. Contractor shall notify Customer in writing of any such pending anniversary date no later than ninety (90) days prior to such date, and Customer shall have until thirty (30) days prior to such date to notify Contractor in writing that it wishes to renew the term for an additional year in order for such renewal to take effect.
2. For each piece of equipment under this Maintenance Agreement there will be a Start Date & Start Meter. Service for each piece of equipment will be provided from the Start Date & Start Meter until this Maintenance Agreement is terminated or the equipment is withdrawn from service.
3. **REMOVAL FROM SERVICE.** Customer may withdraw individual equipment by providing thirty (30) day written notice prior to the Renewal Date. Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to Renewal Date.
4. **INVOICING CHARGES.** Customer will pay the charges set forth in the Contract. The first Minimum Payment is due upon receipt of an invoice. Thereafter, Minimum Payments will be due on the same date each month during the Term of this Maintenance Agreement. Customer's obligation to pay the Minimum Payment is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. Excess click charges or Overage Charges, as applicable, will be invoiced monthly for the period selected on the Maintenance Order Form.
5. If any part of a payment is not made by the Customer when due, Customer agrees to pay Contractor a Late Charge pursuant to the terms of the Contract.
6. Contractor may estimate the number of clicks used if requested Meter Readings are not received before a new billing period begins. Contractor will adjust the estimated charge for overage clicks upon receipt of actual Meter Readings. Notwithstanding any adjustment, the Customer will never pay less than the Minimum Payment. Customer will provide meter readings via an automated website. Contractor may charge a fee to recover the cost of meter collections if meters are not received.
7. **CONSUMABLE SUPPLIES.** All supplies delivered as part of this Maintenance Agreement remain the property of Contractor until and unless they are consumed by the equipment in the performance of this Agreement. Any supplies not consumed as specified and not surrendered to Contractor upon expiration or termination of the Maintenance Services for an asset will be invoiced to the Customer at Contractor's then Contract prices. Customer agrees to provide insurance coverage for supplies in case of loss under any circumstances. Notwithstanding the foregoing, the risk of loss of the consumable supplies shall be transferred from Contractor to Customer if such consumable supplies are stored at Customer's facility.
8. **TAXES.** Unless Tax Exempt (as evidenced by certificate or in the case of exempt sales to federal, state, and local government entities a seller may also document the exemption by retaining a copy of a government issued purchase order, government check or voucher in place of the exemption certificate). In addition to the charges due under this Maintenance Agreement, the Customer agrees to pay amounts equal to any taxes resulting from this Maintenance Agreement, or any activities hereunder, exclusive of taxes based upon net income.
9. **INSTALLATION AND ACCESS TO EQUIPMENT.** Customer agrees to provide adequate space, environment and appropriated electrical requirements including if required, a dedicated 120 volt or 220 volt electrical line, as published in the Operator and Service Manuals for the operation and maintenance of the equipment. If Contractor has installed a power filter/surge protector on the equipment, it must at all times remain continuously installed. If it is removed Customer agrees to purchase a replacement from Contractor immediately. Contractor shall have full and free access to the equipment to provide service thereon.
10. If persons other than Contractor representatives install conversions, feature additions, accessories or perform service on equipment and as a result further repair by Contractor is required, such repairs shall be made at Contractor's applicable Time and Material rates and terms, per the Contract. If such additional repair is required, Contractor may immediately withdraw the equipment from this Maintenance Agreement.
11. **KEY OPERATOR - END-USER TRAINING.** Customer agrees to designate a Key Operator for training on the use, applications and features of the equipment. The Key Operator will be responsible for normal Key Operator activities as detailed in the Operations Manual and for training additional end-user. If the Key Operator assignment changes, Customer agrees to designate a new Key Operator immediately. Contractor agrees to provide training for the designated Key Operator and to provide initial training for end-users on the use, applications and features of the equipment. Additional training requested by Customer after thirty (30) days from installation will be at Contractor rates.
12. **EXCLUSIONS.** Service under this Maintenance Agreement does not include:
  - a. Furnishing paper, staples (unless purchased by the Customer), replacement print heads, batteries, ribbons, media, periodic maintenance on thermal printers or any of the following;
  - b. Service of equipment if moved outside of Contractor's designated service area;
  - c. Repair of damage or increase in service time caused by accident, misuse, negligence, abuse or disaster;
  - d. Service of accessories, attachments or click control devices other than those of the same manufacturer as the equipment;
  - e. Painting or refinishing of the equipment;
  - f. Making specification changes;
  - g. Performing key operator functions as described in the operator manual;
  - h. Moving equipment, repair of damage or increase in service time caused by the use of the equipment for other than the ordinary use for which designed;
  - i. Repair of damage caused by electrical surges or lightning strikes. If equipment is connected to a Contractor supplied power filter/surge protector repairs will be included;
  - j. Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment as defined by the manufacturer, with all the facilities prescribed by Contractor including, but not limited to, adequate space, electrical power, air conditioning or humidity control;
  - k. Repair of equipment that has been designated as obsolete by the manufacturer and genuine OEM parts are no longer available;
  - l. Repair of damage or increase of service time caused by Customer's use of media outside the specifications as described in the operator manual.
13. This Maintenance Agreement is not assignable, its right, duties and obligations may not be assigned or transferred by the Customer without the prior written consent of Contractor. Any attempt to assign or transfer any of the rights, duties or obligations of this Maintenance Agreement without such consent is void. Contractor is not responsible for failure to render service due to causes beyond its control.

ATTACHMENT E, TOSHIBA MAINTENANCE AND SERVICES ACTIVATION SCHEDULE



**NASPO ValuePoint MAINTENANCE & SERVICES ACTIVATION SCHEDULE**

**CUSTOMER INFORMATION**

Customer Purchase Order Number	Date	FSM Number (Internal)	NASPO Customer No.
Maintenance Agreement Term		Agreement Term	
2 year <input type="checkbox"/> 3 year <input type="checkbox"/> 4 year <input type="checkbox"/> 5 year <input type="checkbox"/>		Start Date	End Date

**BILL TO INFORMATION**

**EQUIPMENT LOCATION**

Customer Name	Department	Customer Name	Department
Street		Street	
City	State Zip Code	City	State Zip Code
Contact Name	Fax Number	Contact	Fax Number
Telephone Number	Fax Number	Telephone Number	Fax Number

**SELLING SERVICE PROVIDER**

**INSTALLING SERVICE PROVIDER**

Dealership Name		Dealership Name	
Street		Street	
City	State Zip Code	City	State Zip Code
Contact Name	Fax Number	Contact Name	Contact Title
Telephone Number	Fax Number	Telephone Number	Fax Number

**BILLING INFORMATION**

Billing Cycle	Billing Performed by
<input type="checkbox"/> Monthly <input type="checkbox"/> Other	<input type="checkbox"/> Toshiba bills the customer; <input type="checkbox"/> Other
Billing Format	
<input type="checkbox"/> Per Machine <input type="checkbox"/> Consolidated Bill (Grouped by) <input type="checkbox"/> De-Centralized Billing (Each billing entity must sign separate Maintenance	
Addresses will be:	Tax Exempt (if multiple locations, indicate on P.O. for each state)
<input type="checkbox"/> Coterminal <input type="checkbox"/> Other	<input type="checkbox"/> No <input type="checkbox"/> Yes If YES, Certificate Number
Meter Read Submitted By Customer:	Customer P.O. Required? (If Yes, Attach Purchase Order)
E:bridge <input type="checkbox"/> FMAudit <input type="checkbox"/> E:meters online (Web) <input type="checkbox"/>	No <input type="checkbox"/> Yes <input type="checkbox"/> PO Number
Special Instructions:	

**CUSTOMER SIGNATURE**

*Signature on this page indicates acceptance of the Maintenance Plan set forth on Page 2 of this Order and all terms and conditions as stated in the NASPO Master Contract and State Participating Addendum.*

Name	Title
Signature	Date





## ATTACHMENT F, TOSHIBA MPS STATEMENT OF WORK

Toshiba will provide to Customer throughout the United States, the Services outlined in this Statement of Work during the Initial Term and Renewal Terms. This SOW sets forth the scope of managed print services, requirements and obligations of the parties and is subject to the terms and conditions of a Managed Print Services Agreement ("Agreement") by and between Customer and Toshiba America Business Solutions, Inc. ("Toshiba"), and will be incorporated therein by reference.

### 1. Assessment Phase

#### 1.1. Initial Assessment and Design

##### 1.1.1. Toshiba's responsibilities are to:

- 1.1.1.1. Work with Customer to determine the scope and discovery to include sites and device types
- 1.1.1.2. Develop a schedule for discovery and design
- 1.1.1.3. Work with Customer to ascertain any security and safety requirements
- 1.1.1.4. Work with Customer to obtain necessary badging requirements
- 1.1.1.5. Use Toshiba meter collection software, a network discovery tool, when necessary to facilitate and augment the discovery process
- 1.1.1.6. Identify and confirm equipment

##### 1.1.2. Customers responsibilities are to:

- 1.1.2.1. Provide a local onsite customer liaison to work with Toshiba at each site to assist with prioritization, coordination and communication of discovery
- 1.1.2.2. Provide the computer hardware necessary to operate the software
- 1.1.2.3. Provide the IP address, queue names, and any other network address required to perform Services
- 1.1.2.4. SNMP enable the networked equipment
- 1.1.2.5. Provide a specific list and location (name, address, building, floor, city, state, zip code, serial number, model number) for all meterable equipment
- 1.1.2.6. Provide any necessary access to floorplans and business areas
- 1.1.2.7. Provide and be responsible for all such telephone and modem lines, telephones, computers and peripheral devices, computer connections, and network access, as may be necessary for Toshiba to provide Services and to interconnect with Toshiba's network discovery and meter submission tool;
- 1.1.2.8. Provide Toshiba with current-state print device information to include: print queue names, device configuration, custom form, and IP addresses or host names for devices accepting print jobs from host or mainframe applications. Customer shall have the flexibility to direct output.

##### 1.1.3. Following discovery and design, Toshiba and Customer will mutually agree by location upon

- 1.1.3.1. The number and models of devices within the scope of Services
- 1.1.3.2. Fleet configuration, optimal mix, and future-state design including the placement of new Product and retention of Existing Equipment

### 2. Implementation Phase

#### 2.1. Toshiba and Customer shall:

##### 2.1.1. Toshiba's responsibilities consist of:

- 2.1.1.1. Maintain an Asset List of all Meterable equipment
- 2.1.1.2. Coordinate with Customer any network and phone installations needed to support new devices
- 2.1.1.3. Create and distribute Toshiba asset tags for all equipment having the following necessary information to facilitate a Help Desk calls for networked equipment and supply provisioning for equipment:
  - Toshiba's Supplies Ordering Web Portal URL
  - Serial Number or Asset Tag
  - Toll Free Phone Number or Web URL for Service Dispatch

##### 2.2 Customer's responsibilities consist of:

- Affix asset tags to all equipment and remove any previous service provider asset tags
- Provide and be responsible for all such telephone and modem lines, telephones, computers and peripheral devices, computer connections, and network access, as may be necessary for Toshiba to provide Services and to interconnect with Toshiba's network discovery and meter submission tool

### **3. Training**

3.1. Customer may engage Toshiba to provide a customized training program by working with Toshiba to develop a Training Plan and order such plan via an MPSA Order Form and Training Plan Schedule.

### **4. Fleet Management.**

Within ninety (90) calendar days following the Effective Date, Toshiba shall develop and thereafter maintain a comprehensive inventory of all Equipment that is discovered through Toshiba's electronic discovery tool:

- (a) equipment and network connections and infrastructure used by Toshiba to provide the services;
- (b) equipment, software and network connections and infrastructure used by Customer in connection with the Services. Toshiba shall provide an electronic copy of such inventory to Customer upon request.

### **5. Services & Help Desk**

5.1. In general, Toshiba is responsible for providing Services for Customer's networked Equipment identified through Toshiba's remote electronic discovery tool.

5.2. Toshiba's responsibilities include:

- To troubleshoot for the repair of the equipment and to attempt a phone resolution if one is available
- To provide on-site break fix services for technical hardware issues that cannot be resolved remotely
- Toshiba will provide all the support and materials necessary to maintain covered Existing Equipment in operating condition
- To bear financial responsibility for all time, material, and travel associated with break / fix activities
- To provide next business day break-fix service (for printers – refer to Attachment 1 Section 3.6 for MFD response time)
- To restore malfunctioning equipment to good working order during the Service Hours of 8:00 am to 5:00 pm, Monday through Friday - Holidays Excluded
- To provide toner required for the normal operation of equipment
- To meet reasonable security requirements identified by Customer
- To provide a status upon call completion to the on-site service requestor (End-User or representative of End User) prior to leaving the Customer's site

5.3. Toshiba is not responsible for:

- Adjustments, repairs or replacements made necessary resulting from non-Toshiba Third Parties performing any maintenance, repair or replacement
- Failures or damage resulting from accident, neglect, misuse, failure or inadequacy of electrical power or air conditioning or humidity control, or any causes other than ordinary use of the equipment
- Damage to equipment that is placed in an area that does not conform to manufacturer's electrical and environmental requirements
- Failure due to improper telephone or electrical power, Acts of God, lightning or other incidents of excess voltage or power surges
- Repairs necessary when Customer modifies, relocates, damages (including without limitation, unavoidable accidents) abuses or misuses the equipment (including without limitation, the spilling of toner or other substance in the machine) and the breakage of lids, hinges, cassettes, etc.
- Repairs necessary when equipment is altered, tampered, or interconnected with non-compatible Equipment
- Repairs relative to connectivity to the device
- Providing cabling required to connect the printer to the network
- Installing any customer-replaceable consumables including but not limited to paper and toner

5.4. Customer's responsibilities are:

- To provide reasonable access to the equipment
- To provide reasonable notice prior to Toshiba if a service request is cancelled
- To notify Toshiba of any required security requirements as required by Customer
- Support the diagnosis of malfunctioning devices by engaging by phone and/or in person with Toshiba technical support personnel as needed

### **6. Help Desk**

6.1. Help Desk Services are those services required to coordinate and respond to problems and service requests made by Customer in the United States. Toshiba shall be responsible for providing, direct or indirect Help Desk access with begin-to-end logging, tracking, and resolution and reporting of service calls.

6.2. Toshiba's will perform the following:

- Toshiba will provide Help Desk support for equipment
- To provide on-line and toll-free dispatch services to Customer
- To provide access to Toshiba's portal for the purpose of placing service calls
- To provide an estimated time of arrival for all service calls

6.3. Customers' Responsibilities are:

- To make all service calls through Toshiba's GSP or toll-free phone number
- To convey the end user name and location
- To convey the model type and serial number
- To convey the nature of the service call whether it is a problem or failure
- To promptly return any calls that Help Desk was unable to reach live

7. **Vendor Managed Supplies**

7.1. Toshiba responsibilities are to:

- Fulfill all orders for supply replenishment under the Billing Program F.O.B. destination
- Fulfill supply orders within three-days of order
- Provide access to the Toshiba GSP, with a single sign-on, for the purpose of ordering all supplies

7.2. Customer responsibilities consist of:

- Provide secure and environmentally appropriate storage for all supplies
- Customer will order supplies as required through Toshiba's GSP and will instruct Customer employees to order such supplies through Toshiba's GSP
- Installation of toner and other customer installable consumables
- Ensuring that all supplies ordered on behalf of Customer are protected against theft or misuse

8. **Parts**

Part(s) used in the repair of equipment will be new or refurbished, equivalent or better-than-new in functionality and are not necessarily brand name specific. Replaced parts become the property of Toshiba.

9. **Additional Activities**

9.1. Toshiba is not obligated, but may at its discretion and Customer's approval, perform the following services and charge the Customer a time and material rate of **\$150 an hour** for services associated with the following:

- Adjustments, repairs or replacements made necessary resulting from non-Toshiba Third Parties performing any maintenance, repair or replacement;
- Failures or damage resulting from accident, neglect, misuse, failure or inadequacy of electrical power or air conditioning or humidity control, or any causes other than ordinary use of the equipment;
- Damage to equipment that is placed in an area that does not conform to manufacturer's electrical and environmental requirements;
- Failure due to improper telephone or electrical power Acts of God, lightning or other incidents of excess voltage or power surges;
- Repairs necessary when Customer modifies, relocates, damages (including without limitation, unavoidable accidents), abuses or misuses the Equipment (including without limitation, the spilling of toner or other substance in the machine), and the breakage of lids, hinges, cassettes, etc.,
- Repairs necessary when Equipment is altered, tampered, or interconnected with non-compatible Equipment.

9.2. Outside of the Service Hours. After-hour services, weekend and Holidays are considered out-of-scope activities that do not fall within the Service Hours. Toshiba, at its discretion with Customer's consent and direction, may provide the out-of-scope services, provided that proper authorization is received from Customer. These services will be billed separately to Customer at \$250.00 per hour.

9.3. Network/Software/Other/Supply Replacement. Requests for the following types of services are out-of-scope and may be performed at Toshiba's discretion with Customer's consent, direction and proper authorization. In the event Toshiba is willing to perform the tasks, Customer shall be billed in addition to time spent and distance traveled fees for: (a) Driver support for single or individual user software applications (Toshiba will provide installation support for two workstations upon new equipment delivery), (b) Service requested to replace consumable items such as but not limited to printer supplies (paper, ink cartridges and toner), power strips, and batteries.

**10. Asset Management.**

Within ninety (90) calendar days following the Effective Date, Toshiba shall develop and thereafter maintain a comprehensive inventory of all Equipment that is discovered through Toshiba's electronic discovery tool: (a) equipment and network connections and infrastructure used by Toshiba to provide the services; (b) equipment, software and network connections and infrastructure used by Customer in connection with the Services. Toshiba shall provide an electronic copy of such inventory to Customer upon request.

## ATTACHMENT G, TOSHIBA PROFESSIONAL SERVICES TERMS AND CONDITIONS

This Professional Services Agreement (the "PSA") is entered into between Toshiba America Business Solutions, Inc. ("TOSHIBA"), located at 25530 Commercentre Drive, Lake Forest, CA 92630, and \_\_\_\_\_ ("PROJECT-OWNER"), located at \_\_\_\_\_.

This PSA, along with Statement(s) of Work ("SOW") signed by TOSHIBA and PROJECT-OWNER referencing this PSA set forth the complete terms and conditions pursuant to which TOSHIBA agrees to provide certain professional consulting services and deliverables as more specifically defined in the SOW for the benefit of PROJECT-OWNER.

### **TERMS**

"Project Services" is defined as those certain professional consulting services and deliverables more specifically defined in the SOW which are produced or provided for PROJECT-OWNER's use, including documentation, materials, and other information provided by TOSHIBA in connection with this PSA.

The parties acknowledge that the Project Services may be associated with TOSHIBA's proprietary software and/or equipment. If PROJECT-OWNER has previously licensed the TOSHIBA proprietary software and/or equipment described in the SOW, then PROJECT-OWNER's use of such Project Services shall be governed by the terms of the applicable proprietary license agreement between TOSHIBA and PROJECT-OWNER. No license for the TOSHIBA software is granted to PROJECT-OWNER hereunder. PROJECT-OWNER agrees that it shall use the Project Services subject to the same usage and confidentiality restrictions as set forth in the applicable license agreement.

Each of the Parties hereby warrants that it shall perform its responsibilities under this PSA in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, trade secret, copyright or other proprietary right of any Third Party, or a violation of the other Party's software license agreements or intellectual property rights disclosed to or known by such Party. PROJECT-OWNER acknowledges that it may not duplicate or copy, for any purpose, TOSHIBA provided software as a service (SaaS) which is a proprietary hosted and web-based management tool designed specifically to exchange information for the delivery of content to media players. The Software is licensed, not sold. PROJECT-OWNER has no title to the intellectual property in the SaaS and title and full ownership rights to the software will remain the exclusive property of licensor, and PROJECT-OWNER will not acquire any rights to the software, except as expressly set forth in this PSA.

TOSHIBA retains all rights to the Project Services delivered hereunder and the PROJECT-OWNER acknowledges and agrees that it obtains no rights to such Project Services as a "work made for hire" under the copyright laws of the United States, other than the right to use the Project Services as provided herein and in any applicable license agreement. Furthermore, TOSHIBA retains title to any tools used in connection with providing the Project Services (the "engagement"), as well as all ideas, concepts, know-how, methods and techniques developed or conceived by TOSHIBA prior to or outside the scope of the engagement, including all modifications and derivative works thereof ("TOSHIBA Intellectual Property"). Subject to the terms of any applicable license agreement, TOSHIBA grants PROJECT-OWNER a non-exclusive, royalty-free license to use such TOSHIBA Intellectual Property to the extent embodied within any Project Services delivered to PROJECT-OWNER hereunder.

TOSHIBA and PROJECT-OWNER agree to keep confidential and not disclose to any third party any and all proprietary information of the other party that is appropriately marked as "Confidential" or "Proprietary" or by its nature constitutes confidential information. Either party, however, may make such a disclosure to its contractors who are working at such party's direction and who have signed an appropriate non-disclosure agreement. For the purposes of this PSA, the TOSHIBA Intellectual Property shall be deemed to have been marked as "Confidential" or "Proprietary." The PROJECT-OWNER shall observe all relevant import and export laws and regulations, including but not limited to the regulations of the Office of Export Administration of the US Department of Commerce.

The fee for the Project Services will be set forth in the SOW. Any invoice which is unpaid by PROJECT-OWNER when due shall be subject to an interest charge equal to the lower of 1% per month or the highest applicable legal rate. PROJECT-OWNER shall pay any and all taxes resulting from the SOW.

TOSHIBA warrants that it possesses the appropriate experience and skill to perform the Project Services. NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY TOSHIBA. EXCEPT FOR DAMAGES RELATING TO THE UNAUTHORIZED USE OR DISCLOSURE BY PROJECT-OWNER OF TOSHIBA INTELLECTUAL PROPERTY, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. THE TOTAL LIABILITY OF TOSHIBA SHALL BE LIMITED TO THE AMOUNTS PAID TO TOSHIBA UNDER THE APPLICABLE SOW. To permit the services to be performed in accordance with the SOW, PROJECT-OWNER shall timely perform all of its obligations set forth herein and in the SOW, including, but not limited to, providing TOSHIBA with reasonable access to all hardware, software, PROJECT-OWNER employees and facilities, and making reasonable efforts to facilitate completion of the SOW.

The laws of the state where the Project Services are provided shall determine the validity, enforceability and interpretation of this PSA. Prior to filing any lawsuit, the parties shall act in good faith to attempt to resolve any dispute. The parties hereto waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of, related to, or connected with this PSA or the relationship established by this PSA.

Either party may terminate this PSA or any SOW with or without cause upon thirty (30) days prior written notice to the other. In the event of a breach of a material provision of this PSA or any SOW hereunder (including the non-payment of a valid invoice when due) which is not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party may terminate this PSA or the applicable SOW immediately. Upon any termination of an SOW, PROJECT-OWNER agrees to pay TOSHIBA for all Project Services performed and expenses reasonably incurred by TOSHIBA hereunder through date of termination and TOSHIBA agrees to provide PROJECT-OWNER with any existing Project Services for which PROJECT-OWNER has paid as of such termination date. In the event of a termination by TOSHIBA resulting from PROJECT-OWNER's breach, the fees due for the services rendered prior to the date of termination shall be payable in accordance with the Master Agreement terms and conditions.

TOSHIBA shall commence work following full execution of this PSA and the applicable SOW. TOSHIBA shall perform the Project Services as an independent contractor and neither TOSHIBA nor its employees shall be deemed to be employees of the PROJECT-OWNER.

While TOSHIBA is performing the Project Services and for a period of one (1) year thereafter, PROJECT-OWNER shall not hire from TOSHIBA, either as an employee or as a contractor, any of the personnel assigned to perform Project Services under an SOW on behalf of TOSHIBA.

**On behalf of TOSHIBA**

**On behalf of PROJECT-OWNER**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# TOSHIBA

Leading Innovation >>>

STATEMENT OF WORK ("SOW")  
for  
**Project-Owner  
PaperCutMF  
Implementation**

<b>Authorized by Project-Owner on</b>	<b>PCUT_CustName_MMddYYYY</b>
_____	<b>Project Reference Name</b>
<b>SOW Creation Date</b>	_____
_____	<b>Acceptance Date</b>
<b>Project-Owner Acceptance</b>	_____
_____	<b>TOSHIBA Acceptance</b>
_____	_____

For the purposes of clarification, in the Professional Services Terms and Conditions (PSA), the "Client" or "Customer" is known as and referred to as the "PROJECT-OWNER", and "Toshiba America Business Solutions" is known as and referred to as "TABS."

This Statement of Work ("SOW") for Project-Owner outlines the services and deliverables for the planned Software Implementation project. This SOW is intended to specify the work to be completed during each phase of the project and to detail the obligations of TABS and Project-Owner. This SOW is subject and subordinate to the Professional Services Terms and Conditions ("Agreement"). To the extent terms and conditions of the Agreement and SOW conflict, the Agreement prevails.



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**PROPEITARY & CONFIDENTIAL**

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The enclosed materials are proprietary to TABS, and TABS reserves the right, title, and interest in and to such materials. The terms, condition, and information set forth herein are confidential to TABS and may not be disclosed in any manner to any person other than the addressee, together with its officers, employees, and agents who are directly responsible for evaluating the contents of these materials for the limited purpose intended. These materials may not be used in any manner other than for such limited purpose. Any unauthorized disclosure, use, reproduction, or transmission is expressly prohibited without the prior written consent of TABS.

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## 1. Introduction

TABS has prepared the following SOW to detail services for the Software Implementation Project for Project-Owner. TABS has outlined the project scope and costs for the project. The service costs outlined in this document are based on Master Agreement pricing as well as TABS's experience and preliminary information received from Project-Owner.

The information in this SOW supersedes all previous estimates or verbal discussions on the project. This document is intended for Project-Owner and TABS only and cannot be distributed to persons or third parties not directly involved with this project without express written consent of both Project-Owner and TABS.

## 2. Project Objective

TABS will provide design, implementation and training services specific to the implementation of Software. This SOW will clearly identify project scope and the responsibilities assigned to both TABS and Project-Owner personnel.

## 3. Location

The following location(s) is (are) included in the scope of this project.

Address Line-1

Address Line-2

City, State, ZIP

## 4. Project Scope

TABS has identified the need to deploy Software and provide Professional Services for the implementation. TABS will provide the following services to Project-Owner:

### 4.1. In-Scope Functionality

- Consult with Project-Owner personnel to implement Software
- Educate the Project-Owner IT personnel on the features of Software
- Deploy and integrate Software
  - Assist Project-Owner IT personnel in the installation and configuration of Software
- Training of end user to use the Software
- Printing from AS400 to the Toshiba printers at three sites
- Provide workload balancing at each site
- Provide short term print redundancy at each site
- Provide recommendations for Primary system failover/redundancy

The project will be deployed in 4 phases.

Phase-1: Pilot Phase-1 (Setup 1 print server and test AS400 to Windows print queue at Alpharetta GA facility)

Phase-2: Pilot phase 2 (PaperCut Solution deployment and testing at Alpharetta GA facility)

Phase-3: Pilot phase 3 (PaperCut Solution deployment and testing at Duluth GA facility)

Phase-4: Pilot phase 4 (PaperCut Solution deployment and testing at Bolingbrook IL facility)

### 4.2. Out of Scope Functionality:

- Integration with 3rd party mainframe based applications
- Any activity not defined in the In-Scope functionality
- MFD devices other than those listed in the configuration diagram
- Non Toshiba copy and print devices are not included
- iOS, Web, and Mobile print are not included

## 5. Project Deliverable(s)

**Deliverable(s):**

TABS will provide the following:

- 1) Solution Design

- 2) Proof of Concept Deployment
- 3) Software Deployment and Configuration
- 4) Documentation:
  - Project Plan
  - This Statement of Work (SOW)
  - Acceptance Documents (project signoff)
  - Software documentation is provided with the TABS Software:
    - User Manual
    - Installation & Administration Manual
  - Configuration Documentation
  - User Acceptance Testing Recommendations
  - Administrative Training Material

**NOTE:** It is the responsibility of the Project-Owner to meet the minimum installation prerequisites provided to them prior to the installation of the software.

**(See the System Requirements document in the 'Referenced Documents' section)**

## 6. Services

TABS will provide the following services:

- Project Management of this implementation
- Technical Assistance during this installation
- Installation
  - Server Software Installation
  - Install PaperCutMF on one (1) server that meets the specifications referenced in the (PaperCut System Requirements.PDF) document listed in the 'Referenced Documents' section
  - Software Configuration
    - Active Directory Configuration
      - Configure user name authentication
      - Configure PIN code authentication
      - Configure HID card self-registration
    - Print Queue Configuration
      - Configure up to xx print queues on the PaperCut server
        - Configure each print queue for hold and release
      - Configure two virtual print queues on the PaperCut server
        - Configure the two virtual queues as "find me" queues
    - Device Configuration
      - Configure up to xx devices in PaperCut
        - Configure release from Virtual queues
        - Configure for copy tracking
        - Configure for scan tracking
    - Job purge configuration
      - Configure unreleased print jobs to be purged from the print queue.
    - Reporting
- MFD Configuration
  - Card Reader Installation
    - Configure card reader for current Client magnetic HID proximity cards
  - Embedded PaperCut Installation
  - MFD LDAP/Active Directory Configuration
  - Service mode configuration
  - Scan to email configuration
  - Testing
    - Card Authentication
    - Copy Tracking
    - Print Tracking
    - Print Release
    - Find Me Release

- Web print job submission
- Reporting
- Training
  - End User training will cover the following areas
    - Logging in to PaperCut from user workstation
    - HID card self-registration
      - Toshiba embedded MFP navigation
      - Access follow me print queue
      - Release print jobs
      - Delete print jobs
      - Toshiba MFP control panel navigation
  - Administrative (Administrative training will be conducted during the installation activities. Client staff will be working alongside the Toshiba Solutions Analyst)
    - Installation of software
    - Configuration of software
    - Report generation
    - Administrative access control
    - Remote Administrator Access
    - Central Dashboard access
      - Remote Dashboard access

**\*Note: Please reference the Project Plan for a complete list of Services provided.**

## 7. Professional Services Fees

This is a fixed fee engagement. The Professional Services for this project are included in the terms of the lease agreement signed by Project-Owner. Any changes to this SOW will require a Change Order executed and agreed upon by both parties. TABS cannot perform work outside of the scope of this SOW without an authorized Change Order signed by Project-Owner.

### Professional Service Fees \$XXXXXX.XX

This document is valid for a period of 30 days from the cover date; after this date it may be revised upon consent by TABS. Expenses associated with travel, overnight stays, etc., for the duration of this project are included in the estimate of this project.

This is a time and materials engagement. The Professional Services fees for this project are inclusive up to XX hours. The hours are an estimate based upon our current understanding of the project. Any changes to this Statement of Work will require a Change Order executed and agreed upon by both parties. TABS cannot perform work outside of the scope of this SOW without an authorized Change Order signed by Project-Owner.

### Professional Service Fees \$XXXXXX.XX

This document is valid for a period of 30 days from the cover date; after this date it may be revised. Expenses associated with travel, overnight stays, etc., for the hours estimated in this SOW are included in the estimate of this project.

**\*Note: Please reference quote XXXXXXXX for itemized pricing details.**

## 8. Acceptance Milestones

TABS has created the following testing and acceptance milestones to enable successful completion of the project to the satisfaction of both TABS and Project-Owner. These milestones are used to demonstrate the successful execution of the required services for Project-Owner and this project.

During this project, TABS may request that you initial and date each milestone to signify acceptance. If additional milestones other than listed below are required, TABS reserves the right to document and incorporate a Change Order to this SOW.

## Acceptance Milestones

Milestone	Date
1. Initiation and planning complete	
2. Proof Of Concept (POC) complete	
3. Execution complete	

## 9. Completion Criteria

When the services detailed in this SOW and associated Project Plan have been completed and demonstrated, the project will be considered complete and TABS will request Project-Owner signoff of the 'PaperCut Solutions Delivery and Acceptance' document.

(See the PaperCut Solution Delivery and Acceptance document in the 'Referenced Documents' section)

## 10. Change Management

Circumstances encountered during the performance of these services that warrant additional time or expense could result in the inability to deliver the services detailed within this SOW. Changes to the scope, assumptions, personnel, environment, dependencies, timeline, or Deliverables will be communicated in writing and agreed to by both TABS and Project-Owner via TABS's Project Management personnel. See Change Order ("CO") document in the 'Referenced Documents' section.

The work required to address these changes will be scoped and presented to Project-Owner as a CO with any additional time, materials or cost. The following list provides a detailed process to follow if changes to the scope of this SOW are required.

- A CO will be the vehicle for communicating change and will be prepared by the TABS lead Solutions Analyst assigned to this project. The CO must describe the change, the reason for the change, and the effect the change will have on the project
- Both Project Managers will review the proposed change and approve. The review will determine the effect the CO will have on price, schedule, and other terms and conditions of this SOW
- A written CO must be signed by both parties to authorize the implementation of any changes

## 11. Support

TABS will provide implementation support for this project through to its completion. This includes but is not limited to ensuring installed applications are performing to manufactures specifications.

Upon completion of the project, Project-Owner will have access to TOSHIBA Support Engineers for technical issues. See the 'Support Escalation Process' document in the (Referenced Documents) section for additional information.

## 12. SOW – Assumptions

The following are the general assumptions on which this SOW and Professional Services Fee are based. If any of these assumptions either change or are incorrect a CO may be required, which may result in additional Professional Services fees. Please review this section to make sure these assumptions are correct.

- Project-Owner is responsible for ensuring that all applications and data are successfully backed up prior to TABS beginning work. TABS is not responsible for any lost information
- Project-Owner is responsible for providing original manufacturer documentation for all existing hardware and software
- Building environmental conditions that are within equipment specifications for airflow, temperature, humidity, and electrical quality
- Access to equipment and facilities will be unimpeded. If access delays occur, work may be considered out of scope and may be required to be done outside of business hours at an overtime premium, per the pricing in the Master Agreement. Normal hours are Monday through Friday 8 a.m. to 5 p.m. local time, excluding holidays
- Cabling and WAN Data Communication Lines are properly installed and tested. TABS is not responsible for any improper cabling or issues involving telecommunications lines. All troubleshooting and corrective action will be billed outside of this SOW on a time and materials basis, and in accordance with the pricing in the Master Agreement
- TABS is not responsible for any conflicts with existing hardware or software that is no longer supported by the manufacturer

- TABS is only responsible for integration tasks outlined in this proposed SOW. Any work outside of this SOW will be handled through a separate PO, which may require additional billable time and materials. Project-Owner will be informed before any out of scope work is performed
- Backup equipment and media provided by Project-Owner
- UPS equipment and media provided by Project-Owner
- Project-Owner will provide technical and application support for configuration and testing of Project-Owner specific information. TABS does not warrant Project-Owner applications
- Project-Owner will provide systems personnel for the project familiar with all aspects of Project-Owner's enterprise configuration – security, remote access, domain structure, WAN/LAN connectivity, applications used for this particular project – to work in conjunction with the TABS team on this implementation. Additionally, a desktop technician may be required to perform Project-Owner -side duties
- Project-Owner will communicate the project to appropriate users
- Project-Owner will make available all the appropriate resources, systems, network access, reports and any/all other data elements required for TABS to complete the deliverables and other research necessary to complete this project as contained herein
- TABS will have access to Project-Owner facilities and technical resources for the completion of this project and may conduct a substantial portion of the study offsite at its own facilities
- Deliverables and related activities have been explicitly defined herein, and anything not specifically included, but desired to be completed is to be addressed through the change management process
- Project-Owner is responsible for appropriately scaled servers as provided in the specifications from TABS
- All systems will be installed in US English (other localized language configurations can be provided at an incremental cost and with a potential impact to delivery times)
- Project-Owner will provide a dedicated project manager to provide management, reporting, day to day project tracking, move/add/change requirements, and cross coordination of requirements

### **13. Project-Owner Responsibilities**

The following are the Software specific activities that are defined as the responsibility of Project-Owner. If any of these responsibilities either change or are incorrect a CO may be required, which may result in additional Professional Services fees. Please review this section to make sure these responsibilities are correct.

- Suitable hardware to host the Software application components – See – 'PaperCut System Requirements' document listed in the 'Referenced Documents' section
- Suitable Operating Systems software and licenses for the above hardware – See – 'PaperCut System Requirements' document listed in the 'Referenced Documents' section
- Hardware and software maintenance for all servers – See – 'PaperCut System Requirements' document listed in the 'Referenced Documents' section
- Network configuration information to assist in solution design
- Deploy Software with the assistance of Project-Owner IT Personnel to Project-Owner desktops (if required)
- Network connectivity between all solution components
- Daily backups for all data related to TABS Systems Software system
- Inclusion of Software servers in routine maintenance activities (anti-virus, backup, etc.)
- Identify a Project Sponsor with sign-off authority and ability to facilitate Project-Owner stakeholder participation
- Provide the resources to complete Project-Owner responsibilities defined in the Deliverables section of this SOW
- Provide access to key personnel and information needed to complete the project
- Provide access to technology resources with an understanding of the hardware and software environments contemplated in this project
- Provide the appropriate physical and network access to onsite resources, including IT areas
- Provide a workspace for TABS staff to use onsite
- Report on any Project-Owner technical or resource issues that would delay, hinder or adversely affect the deployment of the solution or its performance in the Project-Owner environment
- Routine system administration of the Software solution:
  - System Maintenance Tasks
  - Resolution of Software system alerts as listed in the solution application
  - Daily monitoring of Server Health
  - Backup of all Software data and system settings
- Distribution of Software upgrades to Project-Owner PC's as needed

## 14. TABS Responsibilities

The following are the Software specific activities that are defined as the responsibility of TABS. If any of these responsibilities either change or are incorrect a CO may be required, which may result in additional Professional Services fees. Please review this section to make sure these responsibilities are correct.

- Software license key
- Technical specification for implementation
- Software revisions, updates, and patches during the term of the agreement
- Installation of the Software components
- Solution training
- Email and phone support for the duration of the contract
- Technical Services included in the Annual Support & Maintenance Agreement
- Software updates and patches are included in the Annual Maintenance and Support Agreement
- Installation and deployment of software updates is the responsibility of Project-Owner
- Support for the download of software updates is included in the Annual Maintenance and Support Agreement
- Services associated with the installation and deployment of updates, patches, bug fixes and updates to any component of this SOW are outside of this agreement and will require a separate project plan and SOW

## 15. MISCELLANEOUS

- TABS is only responsible for integration tasks outlined in this proposed SOW. Any work outside of this SOW will be handled through a Change Order Request Process, which may require additional billable time and materials. Project-Owner will be informed before any out of scope work is performed, and the Project-Owner shall issue a separate PO for such tasks
- TABS and Project-Owner will be and act as an independent contractors and not as agents or partners of, or joint ventures with, the other Party for any purpose related to this Agreement or the transactions contemplated by this Agreement, and neither Party by virtue of this Agreement will have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other Party
- NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXPECTANCY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUE OF ANY KIND OR INCREASED COST OF OPERATIONS, THE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT DAMAGES WERE FORSEEABLE. EITHER PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY, EXCLUDING A PARTY'S INDEMNITY OBLIGATIONS RELATED TO THIRD PARTY CLAIMS, INTELLECTUAL PROPERTY, PRODUCT LIABILITY AND PROJECT-OWNER'S OBLIGATION TO PAY ALL FEES INCURRED UNDER THIS AGREEMENT SHALL BE LIMITED TO PROVED DIRECT DAMAGES NOT TO EXCEED TWELVE (12) MONTHS BILLING IN THE AGGREGATE
- Project-Owner agrees that all inventions, improvements, discoveries, or developments, including but not limited to all deliverables, specifications, designs, documentation, and other materials developed or authored by TABS, that TABS may make or conceive, either solely or jointly with others, whether arising from TABS's own efforts or suggestions received from any other source, and arising out of the Services provided under this Agreement, are the sole property of TABS. To the extent that Project-Owner would have a claim to any such rights, Project-Owner hereby irrevocably grants, conveys, and assigns to TABS all such rights therein, including but not limited to all patents, copyrights, trade secrets, and all other proprietary rights
- Project-Owner shall indemnify, defend and hold harmless TABS for: (i) any damage or injury caused by or arising from the acts or omissions or misconduct of Project-Owner, its employees or agents, in the performance of or relating to the Work for which TABS was retained by Project-Owner unless such act or omission was caused by TABS's gross negligence or willful misconduct; (ii) any breach by Project-Owner of the SOW or this Agreement hereto, and (iii) any claim of infringement of any patent, trademark, copyright, trade secret or other intellectual property right by any third party against the Project-Owner related to or arising out of the Work provided by TABS
- Neither party shall be responsible for circumstances beyond its reasonable control that make its performance impossible or delays its performance under this SOW. To the extent that a party is delayed by such causes, the time to perform will be extended, except with respect to the obligation to pay money to the other party, which period shall not be extended
- Neither party shall infringe, or constitute an infringement or misappropriation of any Third Party software license agreements or intellectual property rights

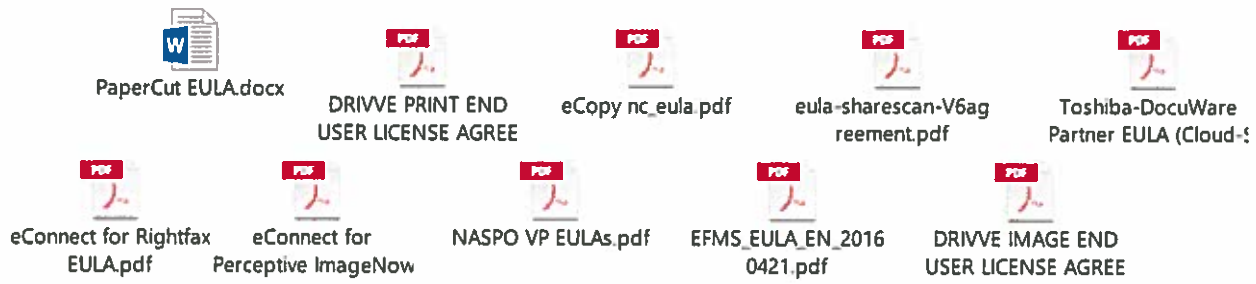
- Neither party may assign any of its rights or delegate any of its obligations under this Agreement whether by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Any purported assignment in violation of this Section will be void and of no effect
- The laws of the state of California shall determine the validity, enforceability and interpretation of this SOW. Any controversy arising hereunder, that the parties cannot resolve by negotiation with one another, shall be heard in a court in Orange County, CA
- If either party defaults in performance of any of its material obligations under this SOW or any Schedule, and: (i) such party fails to substantially cure such default within thirty (30) days after receipt of written notice of such then the party not in default shall have the right to terminate this SOW. Termination of this SOW shall not affect any outstanding payment or reimbursement obligation incurred for services provided prior to default and accepted
- Payment terms are Net 30 days. All amounts more than 45 days past due shall be subject to a one percent (1%) monthly late fee or the highest amount allowed by law

- **1.1.1 Referenced Documents**

Document Title	Document Description
BRD_PCUT_Customer Name_mmDDyyyy	Describes the detailed customer business requirements and current state of workflow processes
FDD_PCUT_Customer Name_mmDDyyyy	Describes the detailed Functional Design and expected user state of workflow processes.
quote XXXXXXXX	Pricing details of provided solution.
PaperCut System Requirements	Provides a set of minimum hardware/software requirements for the PaperCut solution.
Change Order Form	Document used when the original agreed upon project scope modification is requested by Project-Owner.
PaperCut Solution delivery and Acceptance	Document signed by the customer acknowledging that the solution functionality, as agreed upon, is accepted.
Project_Plan_PCUT_Customer Name	The formal, approved document used to guide both <b>project</b> execution and <b>project</b> control
Support Escalation Process	Document detailing customer support escalation process for the implemented solution, including telephone numbers and contact information whenever applicable.



## ATTACHMENT I, TOSHIBA EULA's



# ATTACHMENT J, TOSHIBA EQUIPMENT MOVE REQUEST

## NASPO VALUEPOINT CUSTOMER REQUEST FOR ASSET RELOCATION/RETURN

DATE OF REQUEST:

**CUSTOMER INFORMATION**

Purchase Order Number (if required)	Date of Installation	Contract Number	Member #
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Request for:

**Relocation** - One (1) free relocation move per asset per year; however, all moves within the same building shall be free of charge. If move requires trained personnel, move must be supervised. Note for the 2<sup>nd</sup> move, the installation, de-installation, and other additional fees may apply to the total cost of the equipment move. Dealer will provide a quote to member and will bill direct at the agreed upon rate.

**Return** of Leased Asset (no cost)

Please allow 15-30 days for return processing

**BILL TO INFORMATION**

Customer Name	
Street	
City	State <input type="text"/> Zip Code <input type="text"/>
Contact Name	Contact Title
Telephone Number	Fax Number

**CURRENT EQUIPMENT LOCATION**

**NEW EQUIPMENT LOCATION**

Customer Name	Department	Floor Room Suite	Customer Name	Department	Floor Room Suite
Street			Street		
City	State	Zip Code	City	State	Zip Code
Contact Name	Contact Title		Contact Name	Contact Title	
Telephone Number	Fax Number		Telephone Number	Fax Number	
Model Number	Serial Number		Model Number	Serial Number	
Meter Read	Pickup Date		Meter Read	Delivery Date	
Name <input type="text"/>		Title <input type="text"/>	Date: <input type="text"/>		
Signature: <input type="text"/>					
Special Instructions Removal Instructions <input type="text"/>					

Customer must sign this form indicating consent to move or remove equipment. Send this form to Operations via  
**REQUESTOR AUTHORIZATION**  
 FAX or EMAIL:

Operations Fax: 800 999 0057  
 Operations Email: [naspo.orders@tabs.toshiba.com](mailto:naspo.orders@tabs.toshiba.com)



**CITY OF MIAMI SPRINGS PLANNING DEPARTMENT**  
**CITY COUNCIL STAFF REPORT**

*201 Westward Drive  
Miami Springs, FL 33166  
Phone:(305) 805-5030  
Fax:(305) 805-5036*

**TO:** Mayor & City Council

**FROM:** Christopher Heid, City Planner

**DATE:** October 10, 2022

**SUBJECT:** Amendment to the Future Land Use Map (FLUM) from Public Facilities to Single Family Residential

**CASE:** 02-C-22

**APPLICANT:** Enclave at Miami Springs, LLC

**ADDRESS:** 1101 Wren Avenue

**ZONING DISTRICT:** R-1C Single Family Residential

**FUTURE LAND USE MAP (FLUM) CATEGORY:** Public Facilities

**THE PROPERTY:** The property is generally rectangular in shape, spanning a full block bounded by Wren Avenue on the south, Hammond Drive (east) and Hammond Drive (west) and Oriole Avenue on the north. The property contains 39,736 square feet or 0.91 Acres.

**THE REQUEST:** The applicant is seeking an amendment to the Future Land Use Map (FLUM) of the Comprehensive Plan from Public Facilities to Single Family Residential for a 39,736 square (0.91 Acre) property at 1101 Wren Avenue.

**ANALYSIS:** Currently, the Future Land Use Map category of Public Facilities and the zoning of R-1C Single Family Residential are inconsistent. Development of this parcel for any use is therefore not possible.

According to Policy 1.1.8 of the City's Comprehensive Plan, the Single Family Residential Category "allows single family detached homes on lots of at least 7,500 square feet of net area. . . [and] development shall not exceed 5 dwelling units per acre, including rights-of-way."

The proposed FLUM Amendment advances the following goals, objectives, and policies of the City's Comprehensive Plan.

**Future Land Use Element Objective 1.3:** In general, encourage the elimination or reduction of uses which are inconsistent with the community's character and future land uses. This objective shall be measured by implementation of its supporting policies

The proposed FLUM Amendment will advance Objective 1.3 because it will eliminate a use that, while historically used for a community organization, is inconsistent with the character of the neighborhood.

**Future Land Use Element Objective 1.7:** Discourage the proliferation of urban sprawl. This objective shall be measured by implementation of its supporting policy.

Miami Springs has been a single-family refuge in Miami-Dade County. At a time when the inventory of single-family homes is decreasing throughout the County, the development of four (4) new single-family homes helps discourage of urban sprawl by creating new inventory within the urban development boundary.

**Future Land Use Element Objective 1.10:** Decisions regarding the location, extent and intensity of future land use will be based upon the physical and financial feasibility of providing all urbanized areas with services at levels of service (LOS) which meet or exceed the minimum standards adopted in the Capital Improvements Element.

The level of service for infrastructure in the City will not be impacted by the addition of four (4) single-family homes. Conversely, the Public Building category permits uses of greater intensity that could have a negative impact on water, sewer, and road infrastructure.

**Future Land Use Element Policy 1.10.3:** Miami Springs shall continue and, where possible, improve efforts to coordinate projects to construct or repair infrastructure such as roadways and utilities in order to minimize the disruption and inconvenience caused by such construction activities.

The proposed FLUM Amendment is consistent with Policy 1.10.3 as it will allow the property to be developed with new single family homes, with supporting infrastructure such as alleys (east to west). Alleys are not currently possible because of the interference with the current use. A new alley will allow garbage collection to proceed directly east or west through the property, instead of having to drive around the block each time, saving time and fuel. Additionally, access to the Property during construction could be accomplished via the new alley. Lastly, the four intersections at the corners of Hammond and Wren and Oriole will be improved with accessibility enhancements.

**Future Land Use Element Objective 1.12:** Assure compatibility of adjacent land uses and developments through plan adoption and implementation procedures.

As previously discussed, this objective is accomplished because the proposed new single-family use is compatible and consistent with the abutting and adjacent single-family land uses. Moreover, approval of the proposed FLUM Amendment would align the land use and zoning of the Property, eliminating a conflict and advancing appropriate land use policies and practices.

**Housing Element Goal 1:** Ensure the availability of affordable sound and diversified housing stock in Miami Springs.

The contemplated project associated with the FLUM Amendment calls for four (4) new, high-end single-family homes. The homes are planned to have at least four (4) bedrooms adding to the housing stock of larger homes in Miami Springs, which has historically lacked homes with more than three (3) bedrooms.

The Site Plan provides for single-family homes within the density permitted in the Comprehensive Plan. The site area for each lot is nearly 9,000 sq. ft., which exceeds the requirements of both the Comprehensive Plan and the City Code. The Site Plan meets all height, lot coverage, and setback requirements in Section 150-043 of the City Code.



40 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL**  
41 **OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:<sup>1</sup>**

42 **Section 1. Recitals.** That the above recitals are confirmed, adopted, and  
43 incorporated herein and made a part hereof by reference.

44 **Section 2. Approval of Small Scale Comprehensive Plan Future Land Use**  
45 **Map (FLUM) Amendment.** Pursuant to Section 163.3187, Florida Statutes, the City  
46 Council hereby approves a small scale Comprehensive Plan amendment of the City's  
47 Future Land Use Map (FLUM) from "Public Facility" to "Single Family Residential" for the  
48 for a 37,751 square foot (± 0.86 acre) parcel of property generally located at 1101 Wren  
49 Avenue (the "Property"), as legally described in **Exhibit "A"** attached hereto and  
50 incorporated herein.

51 **Section 3. Authorization.** That the City Manager, by and through the Director  
52 of Zoning and Planning, is authorized to make the necessary changes the City's  
53 Comprehensive Plan Future Land Use Map (FLUM) to reflect the FLUM Amendment  
54 approved by this Ordinance.

55 **Section 4. Conflicts.** All Sections or parts of Sections of the Code of  
56 Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of  
57 Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

58 **Section 5. Severability.** That the provisions of this Ordinance are declared to  
59 be severable and if any section, sentence, clause or phrase of this Ordinance shall for  
60 any reason be held to be invalid or unconstitutional, such decision shall not affect the  
61 validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but  
62 they shall remain in effect, it being the legislative intent that this Ordinance shall stand  
63 notwithstanding the invalidity of any part.

64 **Section 6. Effective Date.** That this Ordinance shall become effective  
65 immediately upon adoption on second reading, except that, pursuant to Section  
66 163.3187(5)(c), Florida Statutes, the FLUM Amendment adopted by this Ordinance shall  
67 not become effective until 31 days adoption. If timely challenged, the FLUM Amendment  
68 adopted by this Ordinance may not become effective until the state land planning agency  
69 or the Administration Commission, respectively, issues a final order determining that the  
70 adopted small scale development amendment is in compliance with Section 163.3184,  
71 Florida Statutes.

72 **PASSED ON FIRST READING** on the \_\_ day of \_\_\_\_\_, 2022,, on a motion made  
73 by \_\_\_\_\_ and seconded by \_\_\_\_\_.

---

<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~double strikethrough~~ and double underline.

74 **PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2022,  
75 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_. Upon being put to a  
76 roll call vote, the vote was as follows:

77 Vice Mayor Dr. Walter Fajet \_\_\_\_\_  
78 Councilman Bob Best \_\_\_\_\_  
79 Councilwoman Jacky Bravo \_\_\_\_\_  
80 Councilman Dr. Victor Vazquez \_\_\_\_\_  
81 Mayor Maria Puente Mitchell \_\_\_\_\_  
82  
83

84 \_\_\_\_\_  
85 MARIA PUENTE MITCHELL  
86 MAYOR

87 ATTEST:

88  
89  
90 \_\_\_\_\_  
91 ERIKA GONZALEZ, MMC  
92 CITY CLERK

93  
94 APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
95 FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

96  
97  
98 \_\_\_\_\_  
99 WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
100 CITY ATTORNEY



**Exhibit "A"**

**Legal Description and  
Property Appraiser Information**

Address: 1101 Wren Avenue, Miami Spring, FL 33166

Lot Size: 39,751 sq. ft.

Legal Description: Tract A, of Second Addition to Spring View, according to the Plat thereof, as recorded in Plat Book 51, at Page 100, of the Public Records of Miami-Dade County



200 S. Biscayne Boulevard  
Suite 300, Miami, FL 33131

[www.brzoninglaw.com](http://www.brzoninglaw.com)

305.377.6227 office

305.377.6222 fax

[mtapanes@brzoninglaw.com](mailto:mtapanes@brzoninglaw.com)

## **VIA HAND DELIVERY**

September 8, 2022

Mr. Chris Heid  
City Planner  
City of Miami Springs  
501 Palm Avenue, 2nd Floor  
Hialeah, FL 33010

Re: Resubmittal of Letter of Intent: Request for Approval of Future  
Land Use Map Amendment and Replat  
1101 Wren Avenue (05-3024-017-0010)

Dear Mr. Heid:

On behalf of Enclave at Miami Springs, LLC (the "Owner"), please allow this to serve as our resubmitted letter of intent for the attached Applications for Future Land Use Map Amendment and Replat (the "Applications") for the property located at 1101 Wren Avenue (the "Property") in the City of Miami Springs (the "City"). The purpose of the Applications is to align the land use designation and the zoning category for the Property and permit the subdivision of the property into four lots for the construction of four single-family homes, in keeping with the character of the neighborhood. We recognized that the City is currently midway through the approval of its Evaluation and Appraisal Report, but we nevertheless request that you accept and begin review of our applications during the pendency of the EAR approval.

Background. The Property is a modest lot with an area of 39,751 square feet, located on Hammond Drive between Wren and Oriole Avenues. See Exhibit "A" for the Property's Legal Description and the Property Appraiser's Summary for more information on the Property. Below, in Figure 1, you will find an aerial image of the Property. The Property was platted in 1951 as Tract A of the Second Addition to the Spring View Subdivision as the only non-single-family parcel in the subdivision. The surrounding properties remain single family lots. A survey of the Property is attached hereto as Exhibit "B" for your reference.



Figure 1. Aerial.

Requests. The Owner desires to improve the Property with four (4) high-end single-family homes. To do so, the Owner hereby petitions the City of Miami Springs for hearings before the City Council, and as applicable, the Planning and Zoning Board:

- (1) Approval of the change in the Property's Land Use designation from Public Building to Single Family Residential; and
- (2) Approval of the replat, subdividing the Property into (4) lots.

The amendment to the City's Future Land Use Map and the replat require public hearings.

Future Land Use Map Amendment. The Property on the City's Future Land Use Map is designated as "Public Building," but it is zoned residential as R-1C, *causing an inconsistency between Land Use and the Zoning*. Excerpts of the City's Future Land Use Map and Zoning Map are provided below in Figures 2 and 3 for reference. It should be noted that the Public Building Use designation only permits governmental and healthcare facilities, as well as public parks and utilities. Conversely, the R-1C zoning district only permits single-family homes. Despite this circumstance, the property has been the home of the Optimist Club Clubhouse, as is commonly known, and used for a variety of civic and assembly uses, including as an assembly hall for rent. The Property was sold last year. *This land use and zoning conflict currently makes any development on the property impossible.*

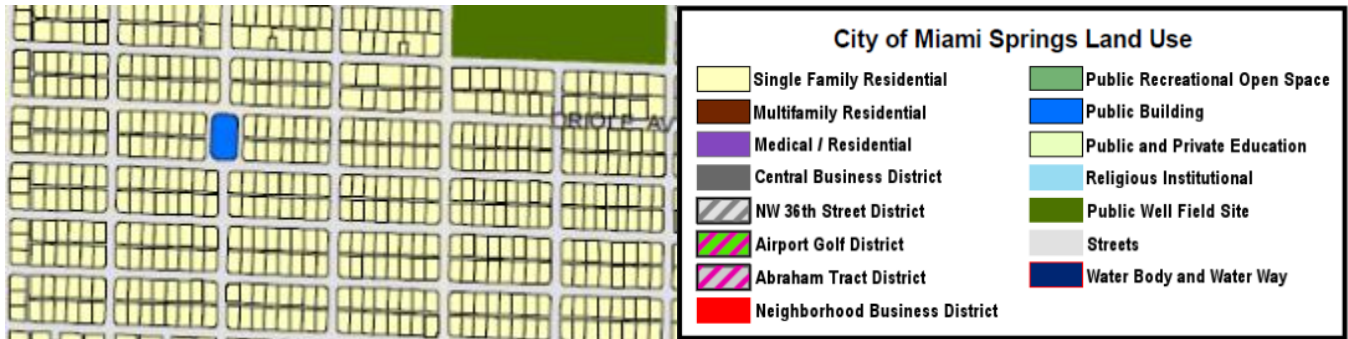


Figure 2 - Future Land Use Map Excerpt

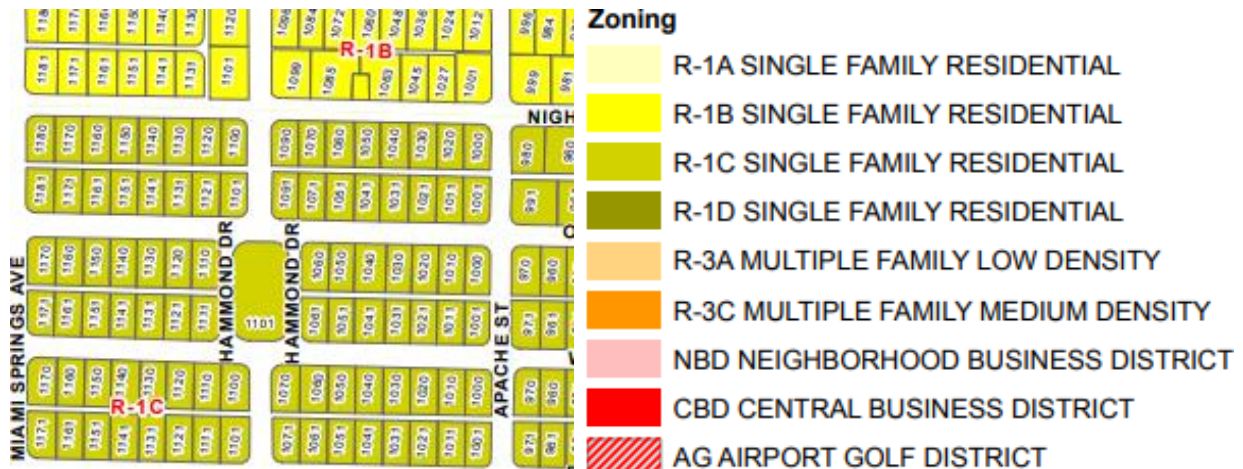


Figure 3 - Zoning Map Excerpt

To address the inconsistency between the land use designation and zoning category for the Property, the Owner is seeking an amendment to the City's Future Land Use Map ("FLUM Amendment") from Public Building to Single Family Residential, making the Property consistent with all of the surrounding properties. According to Policy 1.1.8 of the City's Comprehensive Plan, the Single Family Residential Category "allows single family detached homes on lots of at least 7,500 square feet of net area. . . [and] development shall not exceed 5 dwelling units per acre, including rights-of-way." The Single Family Category could be implanted by several zoning districts, including, but not limited to, the Property's current R-1C zoning. The proposed four (4) single-family homes would be permitted through this Single Family Residential land use category and the R-1C zoning.

The FLUM Amendment proposes a use that is consistent with the single-family character of the surrounding properties and all of the City's "Bird Section." What is more, the FLUM Amendments eliminates a use which, despite being historically permitted, is inconsistent

with the neighborhood. Additionally, the proposed FLUM Amendment advances the following goals, objectives, and policies of the City's Comprehensive Plan:

- **Future Land Use Element Objective 1.3:** In general, encourage the elimination or reduction of uses which are inconsistent with the community's character and future land uses. This objective shall be measured by implementation of its supporting policies

The change proposed by the FLUM Application will advance Objective 1.3 because it will eliminate a use that, while historically used for a community organization, is inconsistent with the character of the neighborhood. Possible redevelopment of the Property with other uses permitted in the Public Building category would increase the inconsistency. The development of four (4) single family homes is consistent with the character of the neighborhood.

- **Future Land Use Element Objective 1.7:** Discourage the proliferation of urban sprawl. This objective shall be measured by implementation of its supporting policy.

Miami Springs has been a single-family refuge in Miami-Dade County. At a time when the inventory of single-family homes is decreasing throughout the County, the development of four (4) new single-family homes helps discourage of urban sprawl by creating new inventory within the urban development boundary.

- **Future Land Use Element Objective 1.10:** Decisions regarding the location, extent and intensity of future land use will be based upon the physical and financial feasibility of providing all urbanized areas with services at levels of service (LOS) which meet or exceed the minimum standards adopted in the Capital Improvements Element.

The level of service for infrastructure in the City will not be impacted by the addition of four (4) single-family homes. Conversely, the Public Building category permits uses of greater intensity that could have a negative impact on water, sewer, and road infrastructure.

- **Future Land Use Element Policy 1.10.3:** Miami Springs shall continue and, where possible, improve efforts to coordinate projects to construct or repair infrastructure

such as roadways and utilities in order to minimize the disruption and inconvenience caused by such construction activities.

The site plan for the proposed home furthers this policy because a new alley running the width of the property from east to west is planned to be constructed with the new homes, connecting existing alleys on either side of the Property. This new alley connection has not been possible because of the interference with the current use. The new alley would allow garbage collection to proceed directly east or west through the property, instead of having to drive around the block each time, saving time and fuel. Additionally, access to the Property during construction could be accomplished the new alley. Lastly, the four intersections at the corners of Hammond and Wren and Oriole will be improved with accessibility enhancements.

- **Future Land Use Element Objective 1.12:** Assure compatibility of adjacent land uses and developments through plan adoption and implementation procedures.

As previously discussed, this objective is accomplished because the proposed new single-family use is compatible and consistent with the abutting and adjacent single-family land uses. Moreover, approval of the proposed FLUM Amendment would align the land use and zoning of the Property, eliminating a conflict and advancing appropriate land use policies and practices.

- **Housing Element Goal 1:** Ensure the availability of affordable sound and diversified housing stock in Miami Springs.

The contemplated project associated with the FLUM Amendment calls for four (4) new, high-end single-family homes. The homes are planned to have at least four (4) bedrooms adding to the housing stock of larger homes in Miami Springs, which has historically lacked homes with more than three (3) bedrooms.

Approval of Application to Replat. Pursuant to Section 150-019 of the City Code, the Owner is submitting an application to replat the Property to accomplish its subdivision in four lots. For your review, attached as Exhibit "C", you will find the proposed tentative plat (the "T-Plat"). As stated above, the resulting lots will be legally sized. The replat of the Property will also serve to dedicate the alley to the City. The replat satisfies the requirements of Sections 150-019 and 150-020. Prior to approval of the tentative plat by the City Council, an opinion of title for the Property will be furnished, which will be updated prior to approval of the final plat.

Attached, for your review, and the consideration of the Zoning and Planning Board and the City Council.

Conclusion. The proposed four single family homes constitute a modest development designed with the character of Miami Springs in mind. On behalf of the Owner, we respectfully request your favorable consideration for our applications for Future Land Use Map Amendment, and Replat review. It is understood that this letter and the corresponding petitions will become part of the permanent records of the City. The statements contained and in the corresponding petition are true and correct to the best of my knowledge. We look forward to presenting the Future Land Use Map Amendment and Replat Applications to the Planning and Zoning Board, as well as to the City Council, with the City administration's favorable recommendation. One final note, as per your direction, the request for site plan review has been removed, and the zoning review will occur during construction permitting. Thank you for your attention to this matter. Should you have any questions, please call me at your convenience.

Very truly yours,



Melissa Tapanes Llahues

Enclosures

**Exhibit "A"**

**Legal Description and  
Property Appraiser Information**

Address: 1101 Wren Avenue, Miami Spring, FL 33166

Lot Size: 39,751 sq. ft.

Legal Description: Tract A, of Second Addition to Spring View, according to the Plat thereof, as recorded in Plat Book 51, at Page 100, of the Public Records of Miami-Dade County





# OFFICE OF THE PROPERTY APPRAISER

## Summary Report

Generated On : 6/3/2022

Property Information	
Folio:	05-3024-017-0010
Property Address:	1101 WREN AVE Miami Springs, FL 33166-3856
Owner	ENCLAVE AT MIAMI SPRINGS LLC
Mailing Address	665 SW 8 ST MIAMI, FL 33130 USA
PA Primary Zone	0400 SGL FAMILY - 901-1200 SQF
Primary Land Use	7742 BENEVOLENT - EXEMPT : CLUB OR HALL - PRIVATE
Beds / Baths / Half	0 / 0 / 0
Floors	1
Living Units	0
Actual Area	Sq.Ft
Living Area	Sq.Ft
Adjusted Area	5,500 Sq.Ft
Lot Size	39,751 Sq.Ft
Year Built	Multiple (See Building Info.)



Assessment Information			
Year	2021	2020	2019
Land Value	\$337,884	\$280,245	\$280,245
Building Value	\$203,914	\$205,478	\$199,568
XF Value	\$22,308	\$22,308	\$22,308
Market Value	\$564,106	\$508,031	\$502,121
Assessed Value	\$558,834	\$508,031	\$502,121

Benefits Information				
Benefit	Type	2021	2020	2019
Non-Homestead Cap	Assessment Reduction	\$5,272		
Labor Unions	Exemption		\$508,031	\$502,121

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description
24 53 40 0.91 AC M/L SPRING VIEW 2ND ADDN PB 51-100 TRACT A LOT SIZE 39751 SQUARE FEET

Taxable Value Information			
	2021	2020	2019
<b>County</b>			
Exemption Value	\$0	\$508,031	\$502,121
Taxable Value	\$558,834	\$0	\$0
<b>School Board</b>			
Exemption Value	\$0	\$508,031	\$502,121
Taxable Value	\$564,106	\$0	\$0
<b>City</b>			
Exemption Value	\$0	\$508,031	\$502,121
Taxable Value	\$558,834	\$0	\$0
<b>Regional</b>			
Exemption Value	\$0	\$508,031	\$502,121
Taxable Value	\$558,834	\$0	\$0

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
06/23/2021	\$950,000	32601-3188	Qual by verifiable & documented evidence
05/08/2019	\$0	31436-4824	Federal, state or local government agency

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:



## Application - Enclave at Miami Springs - FLUM amendment Signed.pdf

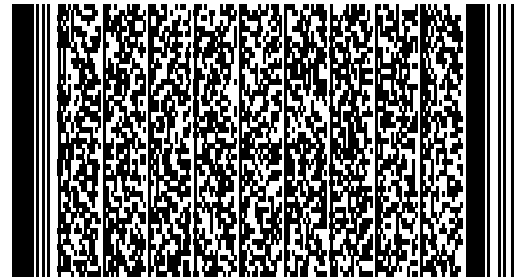
DocVerify ID: A6EB1C2D-FA64-4D14-ACD9-693A2FE2FCCB  
Created: June 02, 2022 13:59:19 -8:00  
Pages: 3  
Electronic Notary: Yes / State: FL

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Go to [www.docverify.com](http://www.docverify.com) at any time to verify or validate the authenticity and integrity of this or any other DocVerify VeriVaulted document.

### E-Signature Summary

**E-Signature Notary: Betty Llerena (BLI)**  
June 02, 2022 14:13:55 -8:00 [8584AA0F950A] [162.244.152.118]  
bllerena@brzoninglaw.com





**ZONING AND PLANNING BOARD  
CITY OF MIAMI SPRINGS, FLORIDA**

**APPLICATION FOR PUBLIC HEARING**

**How to apply for a public hearing:**

1. Please complete the application below in its entirety (please use binder clips to attach documents together; do not staple any documents together).
2. Attach drawings or pictures to support your request.
3. Attach five (5) copies of the application. (Do not include this instruction sheet).
4. Attach five (5) copies of the letter of request, stating the nature of the request and the reason(s) you feel it should be approved.
5. Attach five (5) copies of the property survey, drawn to-scale that is **less than one (1) year old**. The applicant is further required to submit a site plan of the property proposed for public hearing consideration which provides sufficient set back information and dimensions which will provide the Board with a better understanding of the public hearing request.
6. Attach five (5) copies of supporting plans at 11" x 17", and one copy at 24" x 36".
7. The City reserves the right to require any additional information or documentation that it determines to be relevant or material to the Board's consideration of the pending application prior to scheduling the application for the public hearing before the Board.
8. Complete the application form **in blue ink** and submit it with any attachments along with the required fee to the Planning Department, 201 Westward Drive, Miami Springs, FL. 33166, **no later than the first day of the month preceding the month of the meeting date of the Zoning and Planning Board.**
9. **The applicant(s) or a representative (with a letter of authorization) must be present at the meeting.**
10. The Zoning and Planning Board meets on the first Monday of each month, except July, when no meeting is held.
11. The applicant, as well as all surrounding neighbors will receive a courtesy notice from the Planning Department ten (10) days prior to the scheduled meeting date.
12. The Zoning and Planning consists of five (5) members and one (1) alternate. Three votes are needed in favor of the project in order for the public hearing to be approved. In the case that more than one Board member is absent, you may decide to table the public hearing request for the next scheduled meeting date when the absent Board members are present.
13. In the event the public hearing request is denied, the decisions of the Zoning and Planning Board may be appealed to the Board of Appeals pursuant to Code Section 150.113. Any person appealing any decision may need to ensure that a verbatim record is made of the proceedings, which record includes the testimony and evidence upon which the appeal is made. (F.S. 286.0105). A request, in letter form, must be made to the City Manager within ten (10) days starting with the day after the meeting date. All appeals must be accompanied by a payment of \$25.00, which will cover a second series of notices, postings, and various other preparations. The appeal will be heard on the last Wednesday of the month by the City Council sitting as the Board of Appeals, or at such other time as the City Council deems appropriate.

A6EB1C2D-FA64-4D14-ACD9-693A2FE2FCCB --- 2022/06/02 13:59:19 -8:00





<b>Official Use Only</b> Submittal Date: _____ Case No.: _____
--

**Building & Planning Department**  
 201 Westward Drive  
 Miami Springs, FL 33166  
 Phone: 305-805-5034 Fax: 305-805-5036  
[www.miamisprings-fl.gov](http://www.miamisprings-fl.gov)

## CITY OF MIAMI SPRINGS

## HEARING APPLICATION

APPLICANT INFORMATION	
APPLICANT NAME <b>Enclave at Miami Springs, LLC</b>	PROPERTY ADDRESS <b>1101 Wren Avenue, Miami Springs, FL 33166</b>
APPLICANT PHONE NUMBER (BEST NUMBER TO REACH YOU) <b>305-375-6227</b>	E-MAIL ADDRESS <b>MTapanes@BRzoninglaw.com</b>

Request that a determination be made by the Zoning and Planning Board of the City of Miami Springs, on the following project that was reviewed and discussed with the City Planner, in which the City Planner could not exercise discretion and which, in his opinion, might properly come before the Board, specifically:

1. Amendment to the Future Land Use Map from Public Building to Single Family Residential
2. Accompanied by administrative site plan approval.

<b>PROPERTY INFORMATION: 1101 Wren Avenue, Miami Springs, FL 33166</b>					
LEGAL DESCRIPTION Tract A, of Second Addition to SPRING VIEW, according to the Plat thereof, as recorded in Plat Book 51, at Page 100 of the Public Records of Miami-Dade County, Florida	LOT SIZE AND ZONING DISTRICT <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">39,751 sq. ft</td> <td style="width: 50%; border-bottom: 1px solid black;">R-1C</td> </tr> <tr> <td style="text-align: center;">LOT SIZE</td> <td style="text-align: center;">ZONING DISTRICT</td> </tr> </table>	39,751 sq. ft	R-1C	LOT SIZE	ZONING DISTRICT
39,751 sq. ft	R-1C				
LOT SIZE	ZONING DISTRICT				
HAVE ANY PREVIOUS APPLICATIONS OR APPEALS BEEN FILED WITHIN THE LAST SIX (6) MONTHS IN CONNECTION WITH THESE PREMISES? YES _____ NO <input checked="" type="checkbox"/>					
IF YES, BRIEFLY STATE THE NATURE OF THE PREVIOUS APPLICATION: _____					
IF YOU ARE THE OWNER, HOW LONG HAVE YOU OWNED THE PROPERTY? June 23, 2021	WHAT IS THE APPROXIMATE MARKET VALUE INVOLVED IN THIS PROJECT? TBD				

Please see the attached letter of intent and related exhibits for background information pertaining to the request.

[This space left blank intentionally. Signatures to follow.]



DocuSigned by:  
*Alex Andreus*

Signature of Owner

Alex Andreus

Printed name of Owner

The contents of this petition are  
Sworn to and subscribed before  
me this 6/2/2022 day of \_\_\_\_\_,  
2022.

*Betty Llerena*  
Signed on 2022/06/02 14:13:55 -0000

PUBLIC - STATE OF FLORIDA

Betty Llerena

PRINT NAME OF NOTARY PUBLIC

STAMP SEAL

March 5, 2026

COMMISSION EXPIRES: \_\_\_\_\_

PERSONALLY KNOWN:  \_\_\_\_\_

PRODUCED IDENTIFICATION: \_\_\_\_\_



Signature of Co-Owner

Printed name of Co-Owner

The contents of this petition are  
Sworn to and subscribed before  
me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

SIGNATURE OF NOTARY PUBLIC - STATE OF FLORIDA

PRINT NAME OF NOTARY PUBLIC

STAMP SEAL

COMMISSION EXPIRES: \_\_\_\_\_

PERSONALLY KNOWN: \_\_\_\_\_

PRODUCED IDENTIFICATION: \_\_\_\_\_



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ORDINANCE NO. \_\_\_\_ - 2022

AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING SECTION 32-68, "MITIGATION OF FINES," OF THE CITY'S CODE OF ORDINANCES TO ESTABLISH PROCEDURES AND GUIDELINES FOR THE MITIGATION OF CODE ENFORCEMENT FINES, PENALTIES AND LIENS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Section 32-68 of the City of Miami Springs' (the "City") Code provides the Code Compliance Board or Special Magistrate with broad authority to negotiate and settle all code enforcement fines and liens; and

**WHEREAS**, the City wishes to streamline the process of mitigating code enforcement fines, penalties and liens and provide uniformity and guidelines with percentages to assist the City and the Board or Special Magistrate; and

**WHEREAS**, it is the goal of the City to incentivize property owners to timely come into compliance with the City Code and assure that the fines, penalties and liens are paid; and

**WHEREAS**, the City Council finds that diligent property owners should receive a benefit for being timely and efficient with correcting Code violations, and should understand the mitigation process and have an expectation to be treated fairly and uniformly; and

**WHEREAS**, the City Council finds that this Ordinance is in the best interests of City residents and property owners.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted and incorporated herein and made a part hereof by reference.

**Section 2. Amending Code.** That Section 32-68 in Article VIII, Chapter 32, of Title III of the City Code of Ordinances, entitled "Mitigation of fines" is hereby amended to read as follows:

**TITLE III – ADMINISTRATION**

**Chapter 32 – BOARDS, COMMISSIONS, COMMITTEES**

**ARTICLE VIII. – CODE COMPLIANCE BOARD**

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Sec. 32-68. - Mitigation of fines. Mitigation of Fines, Penalties and Liens.

~~(A) The violator, or the violator's successors or assigns who have an ownership interest in the property encumbered by a lien pursuant to this article may request a mitigation hearing to reduce the fines only after the violations encompassed within the code compliance case have been corrected. Upon receipt of a written request for a mitigation hearing, the clerk for the board shall set the matter for a hearing before the board.~~

~~(B) A mitigation hearing is not an appeal or a de novo review of the code compliance case. The formal quasi-judicial procedures shall not apply.~~

~~(C) At the mitigation hearing, the board may consider the following criteria:~~

- ~~(1) Good cause for a reduction of the fines.~~
- ~~(2) The cooperation of the violator, including whether the violator appeared before the board at the original hearing.~~
- ~~(3) The gravity of the violation.~~
- ~~(4) The actions taken by the violator to correct the violation.~~
- ~~(5) Whether there was an extraordinary hardship, which affected compliance.~~
- ~~(6) Whether the violator is a repeat violator.~~
- ~~(7) The total or estimated costs incurred by the City for the handling of the case.~~
- ~~(8) The amount of the proposed reduction.~~
- ~~(9) Any equitable considerations raised by the violator or the City relating to the amount of the reduction.~~
- ~~(10) The number of days that the violation existed.~~

~~(D) In no event shall the fines be reduced below the costs incurred by the City in its prosecution of the violations.~~

~~(E) The board has the discretion to grant or deny a request for mitigation.~~

(a) The terms "fine," "civil penalty" or "lien" are used interchangeably in this section and each term is synonymous with each other and shall encompass fines, civil penalties and liens.

(b) The board, special magistrate, and City Manager are authorized to negotiate, reduce and settle fines in accordance with the terms of this section.

(c) The violator, or the violator's successor or assign, who has an ownership interest in the property encumbered by a code enforcement fine (the "applicant"), may file a request for mitigation to reduce such fine with the City Manager or designee. After receipt of the request for mitigation, a compliance inspection shall be conducted and thereafter a hearing may be scheduled if the code compliance inspector finds that all violations were corrected but that the fines have not yet been paid and that there are no other outstanding code violations, whether on the property to which the lien attaches or on another property belonging to the applicant, or debts owed to the City for which the applicant is responsible.

95 (d) Upon receipt of a written request for mitigation of fines and the filing of an affidavit of  
96 partial compliance by the code compliance inspector which sets forth that all outstanding  
97 violations of the board or special magistrate's order have been corrected, except for  
98 payment of any outstanding fines, the City shall set the matter for a mitigation hearing  
99 before the board or special magistrate.

100  
101 (e) The City Manager, or designee, may, in his or her sole discretion, enter into a  
102 settlement agreement with the applicant to pay a fine that may be reduced pursuant to  
103 the guidelines in this section without the need for a hearing.

104  
105 (f) At the hearing, the fact-finding determination of the board or special magistrate shall  
106 be limited to evidence establishing:

- 107 (1) Good cause for a reduction of the fines;  
108 (2) The amount of the reduction; and  
109 (3) Any equitable considerations raised by the applicant or the City relating to good  
110 cause or the amount of the reduction.

111  
112 Said hearing shall not be an opportunity to appeal any finding of fact or conclusions of  
113 law set forth in any prior order of the board or special magistrate or any administrative  
114 determination of the City.

115  
116 (g) The board or special magistrate may reduce the fines based on a showing of good  
117 cause once the applicant has otherwise complied with an order of the board or special  
118 magistrate, but in no event shall the fines be reduced below the administrative costs  
119 incurred by the City nor shall any administrative costs previously awarded by the board  
120 or special magistrate, costs of repair, or assessment liens be waived or reduced.

121  
122 (h) In determining good cause, and the amount of the reduction, if any, the board or  
123 special magistrate shall consider:

- 124 (1) The gravity of the violation.  
125 (2) Any actions taken by the violator or applicant to correct the violation.  
126 (3) Any previous, or other outstanding violations, whether committed by the violator  
127 or applicant, or pertaining to the property to which the lien attaches, unless an  
128 order finding a violation is under appeal at the time of the determination.  
129 (4) Whether the violation is irreparable or irreversible in nature.  
130 (5) Whether the violator or applicant's failure to timely comply within the time  
131 provided by the code compliance inspector, board or the special magistrate is due  
132 to an inability to comply based on factors beyond the control of the violator or  
133 applicant.

134  
135 (i) Upon a finding of good cause, the board or special magistrate has the sole discretion  
136 to grant or deny the request for a mitigation of fines according to the following guidelines,  
137 provided the reduction is to an amount that is not less than the administrative costs  
138 incurred by the City:

- 139 (1) If compliance occurs within three months of the deadline for compliance  
140 provided for in the order of the board or special magistrate, a maximum reduction  
141 of 80 percent of the total fines;



142 (2) If compliance occurs more than three months but less than 12 months from the  
143 compliance deadline, a maximum reduction of 60 percent of the total fines;

144 (3) If compliance occurs from 12 months to 18 months of the compliance deadline,  
145 a maximum of 40 percent of the total fines; and

146 (4) If compliance occurs more than 18 months after the compliance deadline, a  
147 maximum of 25 percent of the total fines.

148  
149 (j) The board or special magistrate has the authority where there is a demonstrated  
150 showing of financial hardship or other good cause to reduce the fines below the reduction  
151 guidelines. The board or special magistrate shall exercise this authority with great caution  
152 and only in documented and exceptional circumstances. An applicant alleging financial  
153 hardship has the burden of presenting evidence of inability to pay the fines.

154  
155 (k) If fines are reduced, the order of the board or special magistrate shall provide that, if  
156 the applicant fails to pay the reduced fines by the date ordered by the board or special  
157 magistrate, then the original amount of the total fines shall be automatically reinstated.  
158 The board or special magistrate may impose conditions on the granting of a request for  
159 mitigation of the fines and may allow additional hearings upon request if necessary to  
160 establish compliance with said conditions before an order reducing the fines is entered.

161  
162 (l) The order reducing the fines shall not be recorded in the public records and the order  
163 shall so provide.

164  
165 (m) Upon receipt of timely payment in full of the mitigated amount of fines and the  
166 recording costs, the City shall record a satisfaction of lien in the public records, if  
167 applicable.

168  
169 (n) A mitigation of fines shall only be granted once as to any violation of an order of the  
170 board or special magistrate. No mitigation shall be granted:

171 (1) To reduce an initial civil penalty or an award of administrative costs;

172 (2) To reduce the fines for an uncorrectable violation;

173 (3) If the City Attorney has requested authorization to bring further enforcement  
174 action or commenced an action to obtain compliance with the order of the board  
175 or special magistrate, including, but not limited to, an action for injunctive relief,  
176 foreclosure, or money judgment; or

177 (4) If, for whatever reason, the fines have already been paid.

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180  
181 **Section 3. Codification.** That it is the intention of the City Council and it is  
182 hereby ordained that the provisions of this Ordinance shall become and be made a part  
183 of the City Code, that the sections of this Ordinance may be renumbered or relettered to  
184 accomplish such intentions, and that the word Ordinance shall be changed to Section or  
185 other appropriate word.



**RESOLUTION NO. 2023-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, PROVIDING FOR THE FIRST BUDGET AMENDMENT TO THE FISCAL YEAR 2022-2023 GENERAL FUND, SPECIAL REVENUE, AND CAPITAL PROJECTS FUND BUDGETS BY RE-APPROPRIATING RESERVED FUND BALANCES TO FUND OPEN ENCUMBRANCES THROUGH SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 26, 2022, the City of Miami Springs (the “City”) Council adopted Resolution No. 2022-4032 adopting the City’s fiscal year 2022-2023 Budget (the “Budget”); and

**WHEREAS**, it is a generally accepted accounting practice of municipal government to re-appropriate reserved equity accounts to fund open encumbrances from the prior fiscal year immediately after the beginning of the new fiscal year; and

**WHEREAS**, the City’s Finance Department has identified \$735,048 in valid outstanding encumbrances/purchase orders as of September 30, 2022, which represent financial obligations of the City as of the close of the fiscal year ending September 30, 2022; and

**WHEREAS**, the City Council has determined that it is appropriate to approve and authorize the re-appropriation of reserved equity accounts to the fiscal year 2022-2023 General Fund and Special Revenue and Capital Projects Fund in order to fund open encumbrances from the City’s prior fiscal year as provided in Exhibit “A” attached hereto and incorporated herein; and

**WHEREAS**, Section 166.241, Florida Statutes requires the governing body of a municipality to adopt a budget each fiscal year and authorizes the governing body of each municipality at any time within a fiscal year or within 60 days following the end of the fiscal year to amend a budget for that year.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. First Amendment to Fiscal Year 2022-2023 Budget.** That the City Council hereby authorizes and approves the amended budgetary appropriations as described in this Resolution and reflected on Exhibit "A" attached hereto and incorporated herein in order to provide for the re-appropriation of reserved fund balances for open purchase order obligations through September 30, 2022 in the amount of \$735,048.

**Section 3. Effective Date.** That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by \_\_\_\_\_ who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Vice Mayor Dr. Victor Vazquez	_____
Councilman Bob Best	_____
Councilman Dr. Walter Fajet	_____
Councilwoman Jacky Bravo	_____
Mayor Maria Puente Mitchell	_____

PASSED AND ADOPTED this 10<sup>th</sup> day of October, 2022.

ATTEST:

\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY

ATTORNEY

**EXHIBIT A**  
**FIRST AMENDMENT TO FISCAL YEAR 2022-2023 BUDGET**

**EXHIBIT "A"**

**City of Miami Springs  
FY 2022-23 Budget Amendment  
All Operating Funds**

<b>Fund/Classification</b>	<b>Adopted Budget</b>	<b>Amendment No. 1</b>	<b>Ref</b>	<b>Amended Budget</b>
<b>General Fund</b>				
<b>Revenues</b>				
Taxes	\$9,567,252			<b>\$9,567,252</b>
Excise Taxes	2,770,585			<b>2,770,585</b>
Licenses & Permits	200,000			<b>200,000</b>
Intergovernmental Revenues	2,226,388			<b>2,226,388</b>
Charges for Services	2,512,300			<b>2,512,300</b>
Fines & Forfeitures	1,372,526			<b>1,372,526</b>
Miscellaneous	371,802			<b>371,802</b>
Proceeds from debt	500,000			<b>500,000</b>
Transfers from other funds	408,210			<b>408,210</b>
Fund Balance	318,762	\$371,840	1	<b>690,602</b>
<b>Total General Fund</b>	<b>\$20,247,825</b>	<b>\$371,840</b>		<b>\$20,619,665</b>
<b>Expenditures</b>				
City Council	183,132	\$2,287	1	<b>185,419</b>
City Manager	429,952	\$710	1	<b>430,662</b>
City Clerk	345,606	\$3,509	1	<b>349,115</b>
City Attorney	236,722			<b>236,722</b>
Human Resources	330,171	\$104	1	<b>330,275</b>
Finance-Administration	491,672			<b>491,672</b>
Finance-Professional Services	273,756			<b>273,756</b>
Information Technology	417,383	\$6,182	1	<b>423,565</b>
Planning	90,957	\$2,867	1	<b>93,824</b>
Police	8,414,457	93,815	1	<b>8,508,272</b>
Code Enforcement	310,376			<b>310,376</b>
Public Works	2,252,473			<b>2,252,473</b>
Recreation & Culture	2,951,745	129,055	1	<b>3,080,800</b>
Golf Operations	2,043,290	133,312	1	<b>2,176,602</b>
Transfers to other funds	1,476,133			<b>1,476,133</b>
Budgeted Increase to reserves	0			<b>0</b>
<b>Total General Fund</b>	<b>20,247,825</b>	<b>371,840</b>		<b>20,619,665</b>
Sanitation Operations	2,608,062			<b>2,608,062</b>
Stormwater Operations	426,820			<b>426,820</b>
<b>Total Enterprise Funds</b>	<b>3,034,882</b>	<b>\$0</b>		<b>\$3,034,882</b>
<b>Special Revenue &amp; Capital Projects</b>				
Road & Transportation	632,579			<b>\$632,579</b>
Senior Center Operations	1,199,097			<b>1,199,097</b>
Capital Projects	0	288,613	1	<b>288,613</b>
Building Operations	1,135,228	71,475	1	<b>1,206,703</b>
Law Enforcement Trust	160,954	3,120	1	<b>164,074</b>
<b>Total Special Revenue &amp; Capital Projects Funds</b>	<b>3,127,858</b>	<b>\$363,208</b>		<b>\$3,491,066</b>
Debt Service	1,672,926	\$0		<b>\$1,672,926</b>
<b>Total Debt Service</b>	<b>1,672,926</b>			<b>\$1,672,926</b>
<b>GRAND TOTAL ALL FUNDS</b>	<b>\$28,083,491</b>	<b>\$735,048</b>		<b>\$28,818,539</b>

**Legend:**

1) \$735,048 in encumbrances rolled forward from prior fiscal year.

## **MIAMI SPRINGS CHARTER**

### SECTION 4.02 – Removal; vote of confidence

- (2) The City Council shall at the first regular meeting in October of each year, cause a vote of confidence to be taken as to the continued services of the City Manager.