

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated December 3, 2019 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Advanced Imaging Strategies, Inc., a California corporation ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide service and maintenance required to support and sustain copiers/multi-function office machines and desktop printers.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

#### 1. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for provision of service and maintenance required to support and sustain copiers/multi-function office machines and desktop printers, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Jason Harrow, Business Technology Consultant (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

Approved for Use 4/12/19

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. **Term of Agreement.** The term of this Agreement shall be from the Effective Date and shall remain in effect for five (5) years, unless sooner terminated as provided in Section 12 of this Agreement or extended.

### 3. **Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit C**. In no event shall Consultant be paid more than the rates established in Exhibit C (the "Maximum Compensation") for such Services.

B. Expenses. City shall only reimburse Consultant for those actual and necessary expenses expressly set forth in **Exhibit C**.

C. Unauthorized Services and Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit C**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

### 4. **Method of Payment.**

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the

amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

**5. Independent contractor.** Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

**6. Information and Documents.**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with

City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

**8. Indemnification, Hold Harmless, and Duty to Defend.**

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate

to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City.

Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Broader Coverage/Higher Limits. If Consultant maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

#### **10. Mutual Cooperation.**

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

**11. Records and Inspections.** Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

#### **12. Termination of Agreement.**

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement

at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

**13. Force Majeure.** Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

**14. Default.**

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

If to Consultant:

Attn: Information Technology  
c/o Leilani Emnace, IS Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5571  
Email: lemance@citymb.info

Advanced Imaging Strategies, Inc.  
Attn.: Jason Harrow  
371 Corporate Terrace Circle Suite 101,  
Corona, CA 92879  
Telephone: (855) 448-4247 x 507  
Email: jharrow@ais-now.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5061  
Email: qbarrow@rwglaw.com

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be

construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

**23. Exhibits.** Exhibits A, B, and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written

understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Business Days.** “Business days” means days Manhattan Beach City Hall is open for business.

**29. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

**30. Attorneys’ Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys’ fees, experts’ fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

**31. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**32. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,  
a California municipal corporation

Consultant:

Advanced Imaging Strategies, Inc.,  
a California corporation

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

Name: Bruce Moe  
Title: City Manager

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

Name: Gary Harouff  
Title: President

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

Name: David Riener  
Title: Vice President

ATTEST:

**PROOF OF AUTHORITY TO BIND CONTRACTING  
PARTY REQUIRED**

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

Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:

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

Name: Quinn M. Barrow  
Title: City Attorney

APPROVED AS TO FISCAL CONTENT:

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

Name: Steve S. Charelian  
Title: Finance Director

## **EXHIBIT A SCOPE OF SERVICES**

AIS will provide the City of Manhattan Beach with service and maintenance required to support and sustain copiers/multifunctional devices (MFD) and desktop printers.

AIS will provide the City of Manhattan Beach on a quarterly or as-needed basis business reviews where previous usage/billing can be utilized to adjust future base billing volumes up or down as needed, as well as analyzing equipment overutilization and/or underutilization. Adjustment of the billing volumes up or down will not impact any per-page rate.

AIS and its employees shall conform to all City of Manhattan Beach policies, rules and regulations while performing work in City facilities. The City of Manhattan Beach shall be empowered to immediately stop work for violation of City policies, rules or regulations or for unsafe work practices.

### **Technical Expertise – Just a phone call away**

The City of Manhattan Beach will have a single point of contact for user requests, problems or issues including issue/problem escalations. All inquiries are handled by a skilled engineer dedicated to resolving issues quickly with no restrictions on contact frequency. The City of Manhattan Beach simply contacts the Service Solutions Center by one of three convenient methods:

- Toll free                      (855) 448-4247
- Email                         [dispatcher@ais-now.com](mailto:dispatcher@ais-now.com)
- Or by visiting            <http://www.ais-now.com/customer-login/>

### **1. DEFINITIONS**

- **Deployment and firmware upgrades** – AIS shall be responsible for device configuration on the City of Manhattan Beach's network at time of a new deployment, existing machine's redeployment, and devices' firmware upgrades that may cause settings to be lost.
- **Preventative Maintenance** – Preventative Maintenance shall be performed as needed but at least once a year to ensure optimal operation of equipment. This includes component replacement, adjustments and cleaning. End-users are responsible replacing depleted toner cartridges, replacing waste toner receptacles, replacing staple cartridges, re-filling paper trays and clearing miss-feeds as guided by the display and cleaning the platen and scanner glass. This is defined in the equipment's user guide and is not covered under this Scope of Work.
- **Uptime** – Uptime will be calculated based on a 10 and a half hour day (7:00 a.m. to 5:30 p.m. Pacific Standard Time), five days/week, excluding City of Manhattan Beach holidays. For the purposes of calculating uptime, a baseline of 210 business hours per month will be utilized in the 95% calculation.

- **Available Work Hours** -- Availability Hours shall mean the number of Business Hours per calendar month that the equipment is on-site, operating according to specifications, and fully available for use by the customer. Business Hours include the time between 7:00 a.m. and 5:30 p.m. Pacific Standard Time excluding City of Manhattan Beach holidays.
- **Downtime** – Downtime shall mean the number of business hours in any calendar month during which an item of equipment, maintained hereunder, is inoperative during the month and such inoperability is not due to misuse, fire, or using the equipment in a manner other than its intended uses. Downtime is calculated from the point in time when AIS receives the service request for equipment that cannot perform its functions until such time as the equipment is operating per AIS specifications. Downtime includes machine-repair time and response time when the equipment is inoperative. Downtime excludes preventive maintenance, equipment move time, time consumed in producing usable copies, a major feature is not usable (i.e. document feeder, auto duplex, finisher, etc.), maintenance service. The City of Manhattan Beach is the sole judge of what is considered downtime.
- **Network compatible** – Network compatibility refers to the ability of the installed MFP to be connected to the customer's network and have full functionality as specified by the manufacturer (i.e., printing, scanning, etc.).
- **Factory/Manufacturer Specifications** – Factory/Manufacturer specifications by the model are detailed on [www.usa.kyoceradocumentsolutions.com](http://www.usa.kyoceradocumentsolutions.com).
- **In-Scope** – Machines being utilized within factory/manufacturer specifications (e.g., a machine that has factory specifications of 50k copies per month is being used within that parameter, approved media only is being used by each department, proper environment has been provided for the MFP to function at manufacturers specifications, etc.).
- **Software tickets** – Service calls related to any device workflow software utilized by the City of Manhattan Beach.
- **Device related calls** – Service calls related to the functionality of the MFP.
- **MFP** – Multi Functional Printer (i.e., print, scan, fax, etc...).
- **First Level Support** – Support provided by factory trained AIS field service technicians.
- **Second Level Support** – Inclusion of AIS Systems Solutions and Development Division (SSD) personnel for issues that field service technicians cannot diagnose.
- **Third Level Support** – Inclusion of AIS systems engineer for issues that SSD personnel are unable to resolve.
- **Network Attached Devices** – Equipment which is linked to the City of Manhattan Beach network primarily for scan-print functions.
- **Non-Network Attached Devices** – Stand-alone equipment which is not linked to the City of Manhattan Beach network.
- **Proactive Calls** – Service calls made by the Device notifying AIS of an impending failure or need for consumable supplies.

- **Reactive Calls** – Service calls made by the City of Manhattan Beach end-user reporting an equipment failure directly to the AIS Help Desk.

## **2. TERMS, PRICING, MEASUREMENT, AND PENALTIES**

### **Service and Maintenance Pricing**

AIS shall provide all required toner cartridges and waste toner bottles, including free shipping/delivery, parts and on-site labor for all devices under contract, for Kyocera devices.

### **Installation and Training**

AIS will notify at least two (2) weeks in advance the appropriate City of Manhattan Beach contact that is taking delivery of the MFD prior to delivery and to schedule the best available date for installation. Installation services shall include delivery, setup, and integration of the devices with the City of Manhattan Beach's LAN, including the City's hardware and software infrastructure. Installation services shall also include any and all equipment, materials, and supplies necessary to provide the services including all labor, materials, delivery, tax, assembly, and installation, as applicable. As part of the professional services engagement, AIS must document (via Visio diagram and/or technology transfer means) industry best practices for required hardware components and connectivity to the City of Manhattan Beach's computing environment. AIS also needs to provide any necessary server hardware based on the City of Manhattan Beach's hardware specification (i.e. 2 GB of memory or better) and ensure solutions are consistent with the City's existing computing infrastructure.

AIS will provide and/or schedule training for the appropriate City of Manhattan Beach personnel during the installation process or within 48 hours of the MFD installation and after the systems have been initiated, tested, and proven fully operational. Such training shall be of sufficient depth and scope to allow a complete understanding of the proper operation and use of the machines. AIS shall conduct all training sessions onsite at the City of Manhattan Beach's premises with its own personnel or with outside factory-authorized sources; however, in each case, the trainer must possess sufficient skill and knowledge to achieve the desired level of training in a timely and competent manner. AIS shall also provide all necessary training materials. The City may request repeated training sessions after device implementation if needed. AIS will offer ongoing extensive training with no maximum training sessions on an as-needed basis through the term of the lease or contract for the MFD units placed on this contract at no charge. AIS shall provide periodic training (not less than two classes/one training per day) per calendar month to accommodate the new City of Manhattan Beach users as well as to provide refresher training for general users.

### **Support Hours and Service Levels**

AIS will provide Technical and Service support from 7:00 AM to 5:30 PM PST, Monday through Friday for all City of Manhattan Beach departments/buildings with the exception of the City of Manhattan Beach Police Department. The City of Manhattan Beach Police

Department may place service calls 24 hours a day, seven (7) days a week. If the Police Department places a service call for Technical and Service support during non-business hours (after-hours, weekends, holidays), AIS shall provide it the next business day. If the Police Department determines a device needs to be serviced during non-business hours, AIS shall make that service available.

#### Police Department After-hours Support Cost

- \$250/hour
- Two (2) hours minimum
- 30 minutes billing increments afterward
- Billing starts after the service request for onsite after-hours support is placed

AIS shall track all calls and work orders, subject to audit by the City of Manhattan Beach's staff. The City of Manhattan Beach requires per-issue response time to be one (1) hour and maintenance/repair call to be performed within four (4) business hours from the time that the Service Call was made.

The maximum allowable downtime for any one piece of equipment is forty-eight (48) consecutive hours / two (2) business days. A "loaner" machine must be placed in the building for any equipment that cannot be repaired and restored to normal operating service within two (2) business days. AIS assumes all responsibility for hardware performance due to service parts and components and for disposal of and recycling of all service parts. AIS will supply the City of Manhattan Beach with a call completion notification in electronic format. Excluded from the requirements are delays resulting from acts of nature, accidents, or extreme weather conditions.

#### **Penalty for Non-Compliance**

AIS guarantees an annual 95% average uptime for all City of Manhattan Beach devices. If uptime falls below the above-stated levels for a given quarter; then the City of Manhattan Beach will notify AIS and provide a thirty-day (30-day) cure period (time required to repair problematic machine). If AIS has failed to meet the above commitments by the end of the cure period; then the City of Manhattan Beach will have the option to terminate the lease contract and/or be eligible for a credit equal to 2% of the affected unit maintenance invoice for every 1% below the guaranteed uptime percentages. This credit shall in no case exceed 10% of the maintenance invoice for the stated period. For example; if the uptime for the City of Manhattan Beach Purchasing Department for a given quarter is 92% and AIS is not able to cure; then the City of Manhattan Beach may request a credit of 3% of the maintenance invoicing for that quarter for the affected unit.

### **3. EQUIPMENT GUARANTEES, PREVENTATIVE MAINTENANCE, AND SUPPORT LEVELS**

#### **Equipment Guarantee: "It Works or It Walks"**

AIS guarantees the AIS MFP will (1) meet factory specifications, and (2) be compatible with the City network, or AIS will replace it with an equivalent model. If a particular model becomes problematic and AIS's service manager determines that it is not in the interest of both parties to replace the unit with an identical model again, AIS can choose to replace the unit with a different model of similar specifications after City's approval. First two years: replacement will be a brand new MFP. After two years: replacement may be new based on availability or refurbished if a new unit is not available.

### **Repeat Equipment Failure**

The City of Manhattan Beach requires a minimum UPTIME GUARANTEE on the machines included in the contract of at least 95% each month. If an individual piece of Equipment provided by AIS fails for a fault requiring dispatch more than three times in a ninety-day (90-day) period, then AIS will replace such individual piece of Equipment within forty-eight (48) hours at no additional cost to the City of Manhattan Beach, with the same or a similar model of Equipment of equal or greater capabilities upon City's approval.

### **Proactive Preventative Maintenance**

As a standard feature of all AIS Service Maintenance programs, AIS will proactively provide all preventative maintenance for your installed base of AIS machines at no additional charge. During each service call, the technician will evaluate the usage of the unit against prescribed preventative maintenance requirements and perform any scheduled maintenance. AIS will also:

- Continually monitor the usage history of each unit in your fleet to identify upcoming preventative maintenance schedules;
- Provide monthly electronically generated status reports communicating equipment issues to the City of Manhattan Beach Information Technology Department;
- Maintain service records to report individual device performance and provide to the City upon request;
- Provide the City of Manhattan Beach with access to electronic monthly usage reports per device;
- Provide the ability to allocate cost by job, user, department or building level; and
- Offer fleet optimization as requested by the City of Manhattan Beach.

In addition, AIS products include a self-diagnostic feature that will display a service call on the unit's LCD screen to notify users of the need for preventative maintenance. The users can then utilize this code to place a service call, which will be dispatched to perform all required maintenance, ensuring the increased reliability of your AIS fleet throughout its lifecycle.

### **First Level Support**

All first-level technical support for our hardware and network printing functions will be provided by AIS factory trained and authorized AIS service technicians. AIS technicians

will be available to provide on-site support to troubleshoot hardware, software, and network issues, regarding AIS products. Each technician must be fully trained in all aspects of the AIS products they service, and many have additional network certifications to provide complete support. In addition, all certified technicians maintain direct access to AIS's Technical Support Team to assist in troubleshooting and problem resolution for the AIS product. If an AIS technician leaves a machine in a non-operational condition, they will immediately inform their direct Manager. The AIS Manager shall contact the City of Manhattan Beach end-user(s) by phone to determine if a loaner unit is required. Technicians keep end-user(s) updated of the plan and timing to get the unit functional before they leave the location. End-users are to be updated daily as to the status of any repairs.

### **Second Level Support**

The AIS Systems Solutions and Development Division (SSD) will provide second level support via direct communication with authorized technicians. The primary objective of the SSD is to provide technical and integration-support services to AIS branches to support the technical needs of the AIS customer base. Technicians shall escalate immediately to an SSD specialist if they are stuck and need assistance due to the complexity of the trouble with the machine

Upon receipt of an inquiry from AIS technician, the SSD evaluates the data it receives to determine trends regarding service-ability, reliability, operational, and safety areas. The data used comes from problems reported via the hotline, less urgent voice mail, Internet, and written communications from field personnel, field surveys, spare parts usage, and reports of on-site visits by AIS's personnel. If a trend is observed, the matter is referred to the appropriate departments for manufacturing changes, field modification programs, and technical bulletins. Useful serviceability and reliability information collected from the above sources is immediately available to all authorized branch service technicians, ensuring they have ready access to all current data to assist in supporting the technical functionality of all equipment installed throughout our clients' sites.

### **Third Level Support**

If the SSD is unable to resolve the issue in conjunction with the local systems engineer, the open issue will escalate to Manufacturer Supported Engineering for third-level review. AIS is chartered to provide a full spectrum of services to Kyocera customers in North America. All data relating to the issue is escalated to the applicable AIS engineer. Our engineers will respond on-site upon review of the issue with the required knowledge and expertise. AIS works with the SSD and on-site customer service personnel to isolate customer needs, root cause and implement the required solution set.

## **4. DATA COLLECTION, METERS, MAINTENANCE, AND INVOICING/REPORTING**

### **Data Collection Agent**

AIS utilizes both Print Fleet (DCA) and Kyocera Fleet Services (KFS) remote monitoring systems, which are rules-based management systems.

**DCA Overview:**

- Automates the process of toner replenishment based on pre-determined supply levels
- Provides an automatic collection of meter reading to assure accurate billing
- Provides AIS service team with real-time information to support fast repair resolutions
- Allows our remote-tech team to diagnose issues and often complete repairs before a technician arrives on-site
- Provides real-time information to your IT staff to view the status of all devices from your desktop.

**KFS Overview:** Provides proactive remote monitoring of Network devices and most Local devices. This service is performed through the SNMP protocol that reads information from each device's Machine Information Base (MIB). The information collected (Consumables Levels, Meters and Service Alerts) is then transmitted one-way to our central server through HTTPS. For the capture of local devices, a local agent will need to be installed (through active directory) to the user's desktop.

**Examples:**

- Automatic fall-over if a network device is down
- Least Cost Routing based upon rules (i.e. jobs over 10,000 pages) go the reprographics center
- Document Audit Trails for Security
- Application related business rules (i.e. no color printing from e-mail)
- Full reporting on user usage information (Color, Mono, Devices used, etc.)

**Automated meter exports**

Each device has various internal meters it uses to keep track of usage statistics (such as the number of pages printed). AIS MDS Management System automatically reads the meters from the devices and can be configured to export the information to any of several popular Enterprise Resource Planning (ERP) systems – Digital Gateway's e-automate, ECI's: OMD, La Crosse, and Evatic.

**Service alerts and maintenance flags**

When a printing device encounters a problem, it typically sends a message to the network. It could be something as simple as an Out of Paper notification or something more serious requiring the attention of a service technician. AIS MDS Management System Enterprise is able to detect these messages (including vendor-specific error codes) and alert the City of Manhattan Beach when they occur. The City of Manhattan Beach can define a custom email response to each alert (such as choosing a different recipient and subject line), and the City can manage and sort your active alerts from a single screen. The City of

Manhattan Beach can also set maintenance flags to notify the City when it is time for scheduled maintenance on a device.

**Digital Solution Center**

AIS's Digital Solution Center (DSC) is a single point of contact, staffed by system engineers to help the City of Manhattan Beach achieve maximum productivity from your networked multifunctional peripherals and applications.

**Invoicing/Reporting of device usage:**

AIS will submit monthly invoices to the City of Manhattan Beach for Maintenance Services for MFDs. The invoices will reflect the following information:

- The City of Manhattan Beach Purchase Order;
- Device facility building address, city, and state; department/division contact;
- The AIS MFD model number;
- The AIS MFD serial number;
- Customizable breakdown of costs; including the usage (imprint copies);
- The total cost of the monthly service fee for each MFD; and
- Additional information that the City of Manhattan Beach may require.

## EXHIBIT B

### Schedule of Equipment

CUSTOMER NAME: **City of Manhattan Beach**

| Non Reporting            |        |                          |                  |          |          |                                                 |           |             |
|--------------------------|--------|--------------------------|------------------|----------|----------|-------------------------------------------------|-----------|-------------|
| Exception Device         | Device | Device Name              | Model #          | Serial # | Location | IP Address                                      | B/W Meter | Color Meter |
| <input type="checkbox"/> | 1      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Community Development / Copier Room 2nd Floor   | 0         | 0           |
| <input type="checkbox"/> | 2      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Community Development / Front Counter 2nd Floor | 0         | 0           |
| <input type="checkbox"/> | 3      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Finance / Administration 2nd Floor              | 0         | 0           |
| <input type="checkbox"/> | 4      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Fire Station 1 / Administration 1st Floor       | 0         | 0           |
| <input type="checkbox"/> | 5      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Management Services 2nd Floor                   | 0         | 0           |
| <input type="checkbox"/> | 6      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Information Technology / IT Office 1st Floor    | 0         | 0           |
| <input type="checkbox"/> | 7      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Human Resources 1st Floor                       | 0         | 0           |
| <input type="checkbox"/> | 8      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Parks and Recreation                            | 0         | 0           |
| <input type="checkbox"/> | 9      | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Parks and Recreation / Joslyn Center OAP Office | 0         | 0           |
| <input type="checkbox"/> | 10     | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Police / Records 2nd Floor                      | 0         | 0           |
| <input type="checkbox"/> | 11     | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Police / Administration 2nd Floor               | 0         | 0           |
| <input type="checkbox"/> | 12     | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Police / Detectives 1st Floor                   | 0         | 0           |
| <input type="checkbox"/> | 13     | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Police / Front Desk 2nd Floor                   | 0         | 0           |
| <input type="checkbox"/> | 14     | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Public Works / Administration Bldg A            | 0         | 0           |
| <input type="checkbox"/> | 15     | <input type="checkbox"/> | Kyocera TASKalfa | 8353ci   |          | Public Works / Engineering Bldg C               | 0         | 0           |
| <input type="checkbox"/> | 16     | <input type="checkbox"/> | Kyocera TASKalfa | 406ci    |          | Fire Station 2 Office                           | 0         | 0           |
| <input type="checkbox"/> | 17     | <input type="checkbox"/> | Kyocera TASKalfa | 406ci    |          | Fire Station 1 Suppression                      | 0         | 0           |
| <input type="checkbox"/> | 18     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | Manhattan Beach Art Center Open Office Space    | 0         | 0           |
| <input type="checkbox"/> | 19     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | Manhattan Heights Office                        | 0         | 0           |
| <input type="checkbox"/> | 20     | <input type="checkbox"/> | Kyocera TASKalfa | 3253ci   |          | Public Works Utilities Lunch Area               | 0         | 0           |
| <input type="checkbox"/> | 21     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | Finance Revenue Services                        | 0         | 0           |
| <input type="checkbox"/> | 22     | <input type="checkbox"/> | Kyocera TASKalfa | 3253ci   |          | Parking and Animal Control Services             | 0         | 0           |
| <input type="checkbox"/> | 23     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | General Services Fax                            | 0         | 0           |
| <input type="checkbox"/> | 24     | <input type="checkbox"/> | Kyocera TASKalfa | 406ci    |          | Dial-A-Ride                                     | 0         | 0           |
| <input type="checkbox"/> | 25     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | Neighbourhood Watch                             | 0         | 0           |
| <input type="checkbox"/> | 26     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | Jail                                            | 0         | 0           |
| <input type="checkbox"/> | 27     | <input type="checkbox"/> | Kyocera TASKalfa | 6053ci   |          | PD Human Resources                              | 0         | 0           |
| <input type="checkbox"/> | 28     | <input type="checkbox"/> |                  |          |          |                                                 |           |             |
| <input type="checkbox"/> | 29     | <input type="checkbox"/> |                  |          |          |                                                 |           |             |
| <input type="checkbox"/> | 30     | <input type="checkbox"/> |                  |          |          |                                                 |           |             |

**Exception Device** is defined as a device that can be supplied but cannot be covered entirely under the Service Contract for parts and repairs. AIS will monitor the exception device(s) but when service is required this device may need to be replaced with a device that can be serviced by AIS at AIS's discretion. The replacement will be with a comparable model that is also acceptable to the customer at no additional charge to the customer.

**Non Reporting Device** is defined as a device that does not automatically provide meter readings, supply levels, and service alerts. It is the customer's responsibility to alert AIS for meters, supplies, and service.

## MAINTENANCE AND APPROVED FEE SCHEDULE

[illegible]

# AGREEMENT



AGREEMENT NO.:

## CUSTOMER ("YOU" OR "YOUR")

FULL LEGAL NAME: City of Manhattan Beach

ADDRESS: 1400 Highland Avenue Manhattan Beach, CA 90266

## EQUIPMENT AND PAYMENT TERMS

TYPE, MAKE, MODEL NUMBER, SERIAL NUMBER, AND INCLUDED ACCESSORIES

☒ SEE ATTACHED SCHEDULE

EQUIPMENT LOCATION: As Stated Above

(\*PLUS TAX)

TERM IN MONTHS: 60

MONTHLY PAYMENT AMOUNT\*: \$ 7,149.50

PURCHASE OPTION\*: Fair Market Value

SECURITY DEPOSIT: 0

## CONTRACT

This agreement can be terminated by the City in the event of a material breach by AIS that is not cured within 30 days. PLEASE READ CAREFULLY BEFORE SIGNING. YOU AGREE THAT The agreement shall be governed by the laws of the State of California, and any dispute concerning the agreement will be adjudicated in the federal or state courts located in County of Los Angeles, State of California. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN SUCH COURTS AND WAIVE TRANSFER OF VENUE.

## CUSTOMER'S AUTHORIZED SIGNATURE

BY SIGNING THIS PAGE, YOU REPRESENT TO US THAT YOU HAVE RECEIVED AND READ THE ADDITIONAL TERMS AND CONDITIONS APPEARING ON THE SECOND PAGE OF THIS TWO-PAGE AGREEMENT. THIS AGREEMENT IS BINDING UPON OUR ACCEPTANCE HEREOF.

X

CUSTOMER

SIGNATURE

PRINT NAME & TITLE

DATE

## GOVERNMENTAL CERTIFICATE

I, THE UNDERSIGNED, HEREBY CERTIFY THAT, AS OF THE DATE OF THE AGREEMENT, (A) THE INDIVIDUAL WHO EXECUTED THE AGREEMENT HAD FULL POWER AND AUTHORITY TO EXECUTE THE AGREEMENT AND (B) THE REPRESENTATIONS SET FORTH IN THE AGREEMENT IN THE PARAGRAPH TITLED "APPLICABLE TO GOVERNMENTAL ENTITIES ONLY" ARE TRUE AND ACCURATE IN ALL MATERIAL RESPECTS.

SIGNATURE:

X

NAME & TITLE

DATE:

Advanced Imaging Strategies, Inc.

OWNER

SIGNATURE

PRINT NAME & TITLE

DATE

371 Corporate Terrace Circle #101 Corona, CA 92879

*[Handwritten Signature]*

DAVID M. RIFENER  
10 of Sales

11/21/19

## ADDITIONAL TERMS AND CONDITIONS

**AGREEMENT.** You want us to now provide you the equipment and/or software referenced herein ("Equipment") and you agree to pay us the amounts payable under the terms of this agreement ("Agreement") each period by the due date. This Agreement will begin on the date the Equipment is delivered to you or any later date we designate.

**EQUIPMENT USE.** You will keep the Equipment in good working order, use it for business purposes only and not modify or move it from its initial location without our consent. You agree that you will not take the Equipment out of service and have a third party pay (or provide funds to pay) the amounts due hereunder. You will comply with all laws, ordinances, regulations, requirements and rules relating to the use and operation of the Equipment.

**SERVICES/SUPPLIES.** If we have entered into a separate arrangement with you for maintenance, service, supplies, etc. with respect to the Equipment, payments under this Agreement may include amounts owed under that arrangement, which amounts may be invoiced as one payment for your convenience. You agree that you will look solely to us for performance under any such arrangement and for the delivery of any applicable supplies.

**SOFTWARE/DATA.** Except as provided in this paragraph, references to "Equipment" include any software referenced above or installed on the Equipment. We do not own the software and cannot transfer any interest in it to you. We are not responsible for the software or the obligations of you or the licensor under any license agreement. You are solely responsible for protecting and removing any confidential data/images stored on the Equipment prior to its return for any reason.

**LIMITATION OF WARRANTIES.** EXCEPT TO THE EXTENT THAT WE HAVE PROVIDED YOU A WARRANTY IN WRITING, WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU CHOSE ANY/ALL THIRD-PARTY SERVICE PROVIDERS BASED ON YOUR JUDGMENT. YOU MAY CONTACT US OR THE MANUFACTURER FOR A STATEMENT OF THE WARRANTIES, IF ANY, THAT THE MANUFACTURER IS PROVIDING. WE ASSIGN TO YOU ANY WARRANTIES GIVEN TO US.

**ASSIGNMENT.** You may not sell, assign, or sublease the Equipment or this Agreement without our written consent. We may sell or assign this Agreement and our rights in the Equipment, in whole or in part, to a third party without notice to you. You agree that if we do so, our assignee will have our assigned rights under this Agreement but none of our obligations and will not be subject to any claim, defense, or set-off that may be assertable against us or anyone else.

**LOSS OR DAMAGE.** You are responsible for any damage to or loss of the Equipment. No such loss or damage will relieve you from your payment obligations hereunder. Except for claims, losses, or damages caused by our gross negligence or willful misconduct, you agree to indemnify us and our assignee, if applicable, against any claims, losses, or damages, including attorney fees, in any way relating to the Equipment or data stored on it. In no event will we be liable for any consequential or indirect damages.

**INSURANCE.** You agree to maintain commercial general liability insurance acceptable to us. You also agree to: 1) keep the Equipment fully insured against loss at its replacement cost, with us named as loss payee; and 2) provide proof of insurance satisfactory to us no later than 30 days following the commencement of this Agreement, and thereafter upon our written request. If you fail to maintain property loss insurance satisfactory to us and/or you fail to timely provide proof of such insurance, we have the option, but not the obligation, to secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we secure insurance on the Equipment, we will not name you as an insured party, your interests may not be fully protected, and you will reimburse us the premium which may be higher than the premium you would pay if you obtained insurance, and which may result in a profit to us through an investment in reinsurance. If you are current in all of your obligations under the Agreement at the time of loss, any insurance proceeds received will be applied, at our option, to repair or replace the Equipment, or to pay us the remaining payments due or to become due under this Agreement, plus our booked residual, both discounted at 3% per annum.

The insurance policies required for AIS shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of AIS's insurance and shall not contribute with it. The commercial general liability policy required for AIS under this Section shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

any Workers' Compensation insurance policy required for AIS under this Section shall not prohibit AIS and AIS's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. AIS hereby waives all rights of subrogation against City

**TAXES.** We own the Equipment. You will pay when due, either directly or by reimbursing us, all taxes and fees relating to the Equipment and this Agreement. Sales or use tax due upfront will be payable over the term with a finance charge.

**END OF TERM.** The City of Manhattan Beach reserve the right to cancel this Agreement at any time without cancellation penalty if fifteen (15) days notice is provided. At the end of the term of this Agreement (or any renewal term) (the "End Date"), this Agreement will renew month to month unless a) you provide us written notice, at least fifteen (15) days prior to the End Date, of your intent to return the Equipment, and b) you timely return the Equipment to the location designated by us. If a Purchase Option is indicated above and you are not in default on the End Date, you may purchase the Equipment from us "AS IS" for the Purchase Option price.

**UCC.** If we assign rights in this Agreement for financing purposes, you agree that this Agreement, in the hands of our assignee, is, or shall be treated as, a "Finance Lease" as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). You agree to forgo the rights and remedies provided under sections 507-522 of Article 2A of the UCC.

**MISCELLANEOUS.** This Agreement is the entire agreement between you and us relating to our providing and your use of the Equipment and supersedes any prior representations or agreements, including any purchase orders. Amounts payable under this Agreement may include a profit to us. The parties agree that the original hereof for enforcement and perfection purposes, and the sole "record" constituting "chattel paper" under the UCC, is the paper copy hereof bearing (i) the original or a copy of either your manual signature or an electronically applied indication of your intent to enter into this Agreement, and (ii) our original manual signature. If a court finds any provision of this Agreement unenforceable, the remaining terms of this Agreement shall remain in effect. You authorize us to either insert or correct the Agreement number, serial numbers, model numbers, beginning date, and signature date. All other modifications to the Agreement must be in writing signed by each party.

## APPLICABLE TO GOVERNMENTAL ENTITIES ONLY

You hereby represent and warrant to us that as of the date of the Agreement: (a) the individual who executed the Agreement had full power and authority to execute the Agreement on your behalf; (b) all required procedures necessary to make the Agreement a legal and binding obligation against you have been followed; (c) the Equipment will be operated and controlled by you and will be used for essential government purposes for the entire term of the Agreement; (d) that all payments due and payable for the current fiscal year are within the current budget and are within an available, unexhausted, and unencumbered appropriation; (e) you intend to pay all amounts payable under the terms of the Agreement when due, if funds are legally available to do so; (f) your obligations to remit amounts under the Agreement constitute a current expense and not a debt under applicable state law; (g) no provision of the Agreement constitutes a pledge of your tax or general revenues; and (h) you will comply with any applicable information reporting requirements of the tax code, which may include 8038-G or 8038-GC Information Returns. If funds are not appropriated to pay amounts due under the Agreement for any future fiscal period, you shall have the right to return the Equipment and terminate the Agreement on the last day of the fiscal period for which funds were available, without penalty or additional expense to you (other than the expense of returning the Equipment to the location designated by us), provided that at least thirty (30) days prior to the start of the fiscal period for which funds were not appropriated, your Chief Executive Officer (or Legal Counsel) delivers to us a certificate (or opinion) certifying that (a) you are a state or a fully constituted political subdivision or agency of the state in which you are located; (b) funds have not been appropriated for the applicable fiscal period to pay amounts due under the Agreement; (c) such non-appropriation did not result from any act or failure to act by you; and (d) you have exhausted all funds legally available for the payment of amounts due under the Agreement. You agree that this paragraph shall only apply if, and to the extent that, state law precludes you from entering into the Agreement if the Agreement constitutes a multi-year unconditional payment obligation.