

FILED

FILED

C-02-0558

NOV 8 2002

NOV 8 2002

LANCASTER COUNTY CLERK

LANCASTER COUNTY CLERK

ORIGINAL TO: Contractor, City Purchasing, Co. Clerk, City Clerk

# MASTER RENTAL AGREEMENT

## COST-PER-COPY PHOTOCOPIER SERVICES FOR THE CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA

FOR THE PROVISIONS OF Spec. #02-146, Cost-per-copy Master Lease of Photocopiers

This Agreement is entered into by and between the City of Lincoln and Lancaster County, Nebraska, hereinafter referred to as "Owner" and Alternative Business Systems, L.L.C., 5005 Russell Circle, Lincoln, NE 68507, hereinafter referred to as "Contractor".

WHERE AS: It is understood and agreed by the signing of this contract by all parties that the "Owner/s" shall be Lancaster County and the City of Lincoln,

WHERE AS: Where ever in the contract documents, specification, insurance, bonds and terms and conditions or any other documents which are part of the contract, a singular entity is referenced (i.e., "the City", or "the County", etc.) it shall mean the "Owners" encompassing both entities, and

WHERE AS: This Agreement is entered into after a public letting for Request for Proposals (RFP) #02-146, opened August 21, 2002. The Contractor has submitted a proposal pursuant to the Owner's legal bidding requirements. The Owner has opened and examined all proposals and has determined that the Contractor's proposal was the most responsive, responsible offer for the services.

NOW THEREFORE: In consideration of the mutual covenants contained herein, the parties do agree as follows:

1. PROVISION OF EQUIPMENT. Contractor shall provide to the designated Owner Departments/Divisions, seven (7) different categories of photocopy machines see Owner Sealed Request for Proposal No. 02-146 (attached hereto marked as "Exhibit - A"), "Volume Bands for Copiers" in accordance with and Contractor's Proposal (attached hereto marked as Exhibit - B), associated exhibits A through C, and made a part hereof by reference. This Agreement, Exhibits, Addendums and Attachments shall comprise the Contract.
2. INSTALLATION. Contractor shall install the equipment at City of Lincoln and/or County of Lancaster, Nebraska's designated locations upon request and mutual agreement, throughout the four (4) year term of the agreement. All installations shall be at no cost to the Owner. All equipment and accessories shall be coterminous (have the same duration with the same conclusion date) with the Master Rental Agreement. The Purchasing Agent shall be responsible for authorizing in writing all requested installations. Authorized installations shall be made within two (2) weeks or less, from the date the contractor received the written request for equipment.

3. **TERM.** The term of this agreement shall commence on about **January 1, 2003** and continue for a period of **48 months (or through December 31, 2006)**; provided, however, the Owner may terminate this agreement upon providing to the Contractor written notification of termination specifying that funds will not be appropriated for continued installation of the equipment.
  - 3.1 Such notification must be sent to Contractor at least 30 days prior to the proposed date of termination.
  - 3.2 Upon expiration of the term of this agreement Contractor shall remove the equipment from Owner property, along with any of Contractor's supplies, at no cost to the Owner.
  - 3.3 Should the Owners initiate a new proposal process and the Contractor is not selected as the new provider, it is understood that the Contractor, at the Owner's request, shall work with the Owner's proposed new Contractor for a period of up to ninety (90) calendar days to provide for a smooth transition.
    - 3.3.1 During any transition time, the Contractor shall receive only the cost-per-copy compensation as set forth herein.
    - 3.3.2 As Contractor's equipment is removed (based on the transition plan) the Contractor shall take a final meter reading which shall be offered as the final billing.
4. **OPTION TO RENEW:** At the Owner's discretion and with *mutual consent from the Contractor*, the agreement may be extended beyond the initial period of forty-eight (48) consecutive months **for up to three (3) additional one (1) year terms**
  - 4.1 Terms and conditions of the extension period shall be substantially equivalent to the original terms and conditions.
  - 4.2 Owner's Agent shall notify the Contractor in writing of any/all intentions to extend the contract period at least thirty (30) days prior to expiration of the original contract term.
    - 4.2.1 Contractor shall review the status of the contract agreement at the time of the renewal offer and respond in writing of their intent to renew or decline the Owner's offer.
    - 4.2.2 Details of any/all renewals shall be negotiated by the Owner's Agent and may vary slightly from the original terms and conditions.
    - 4.2.3 Owner's governing body shall approve all renewal terms and reserves the right to accept or reject any details negotiated for the renewal period(s).
5. **COMPENSATION:** The Owner shall pay to the Contractor based on the following rates:
  - 5.1 Flat rates per copy have been negotiated with Contractor and are in addition to, and supercede the details as presented in Contractor's offer (Exhibit - B) and shall be as stated in **Addendum #1 to Exhibit - B.**
    - 5.1.1 **\$.0184** per copy for all black and white copies produced on the digital stand-alone and digital connected (to Owner's network) copier/print devices.
    - 5.1.2 **\$.140** per copy for all color copies produced on ONLY the initial four (4) digital color digital color connected (to Owner's network) copier/ print devices (Konica 7821 color imaging systems).
    - 5.1.3 **See Addendum #1 to Exhibit B for details.**

6. **TAXES.** All taxes, including sales, use and property taxes, shall be paid by the Contractor and shall not be the responsibility of the Owner.
7. **TITLE TO EQUIPMENT.** Title to the equipment shall remain with the Contractor at all times and the Owner shall have no right, title, or interest therein except as expressly set forth in this Agreement.
  - 7.1 Risk of loss, except loss resulting from improper use by the Owner or its employees, shall be assumed by the Contractor.
8. **OWNER'S RESPONSIBILITIES.** The Owner agrees to:
  - 8.1 Prepare the installation site in accordance with Contractor's instructions.
  - 8.2 With Owner's approval, permit Contractor's field representative to enter its premises at all reasonable times to service the equipment;
  - 8.3 Designate a key operator for training in the use of the equipment and, in the event of personnel turnover, notify Contractor immediately for training of a new key operator.
  - 8.4 Provide the Contractor's field representative with access to a telephone.
  - 8.5 Allow the Contractor to obtain a meter reading in person, or by permitting Contractor to collect it remotely via an electronic device.
    - 8.5.1 Only actual meter reading volumes shall be billed, NO estimates and/or averages will be allowed.
  - 8.6 Pay invoices for copying charges within 30 days of their receipt by the Owner.
  - 8.7 Care for the equipment as specified in the operator instructions manual and as instructed by Contractor representatives.
  - 8.8 Upon expiration or termination of this agreement, permit Contractor to remove the equipment (as per a mutually agreeable transition plan) which shall be in good condition, normal wear and tear excluded.
  - 8.9 Be responsible for physical damage to the equipment caused by negligent or willful acts of the Owner or its employees.
9. **ADD, DELETE & RELOCATION OF EQUIPMENT.** City/County Purchasing Agent shall coordinate with the Contractor to determine quantity of copiers, their placement and movement, relocation, addition and deletion of copier equipment and supplies.
  - 9.1 Contractor must be notified 14 days prior to equipment addition, deletion or relocation.
  - 9.2 Relocation of equipment includes the movement of equipment to a different location at the same address (internal relocation) and the movement of equipment to a new address (standard relocation).
  - 9.3 The Owner *shall not be responsible for any additional charges related to any preparation of the equipment for the move, transportation, or the setup of the equipment related to authorized additions, deletions or relocation of equipment.*
10. **SERVICING OF EQUIPMENT.** Contractor warrants the equipment provided under this agreement will be maintained in proper functioning order during the term of this agreement. Contractor makes no other warranties, express or implied, or of merchantability for this equipment.
  - 10.1 If this equipment does not function properly during the contract term, it will be repaired or replaced without charge to the Owner.

- 10.2 Equipment which requires excessive service calls shall be replaced by the Contractor instead of being repaired, excessive being measured by the industry standard with input from Owner's Agent.
- 10.3 Normal maintenance services and repair without charge are Contractor's only obligations under this warranty.
  - 10.3.1 At its own cost and expense, Contractor will provide all necessary supplies (except paper).
- 10.4 Contractor will not be responsible for any consequential or incidental damages resulting from the rental, use, or improper functioning of the equipment.
- 10.5 During normal working hours, a customer equipment services representative of the Contractor will, at the Owner's request, provide equipment repair service on the Owner's premises.
  - 10.5.1 The request for repairs shall be responded to by the Contractor within four hours after request is made by the Owner.
  - 10.5.2 In addition, Contractor agrees to perform routine periodic equipment maintenance as deemed necessary by Contractor.
  - 10.5.3 For purposes of this agreement, normal working hours shall mean 7:30 a.m. to 5:00 p.m. Some Owner offices may start work earlier or stay later than the working hours listed. It is understood that the Contractor's representative shall schedule working times so as to minimize disruption of the Owner's operations. No Owner employee shall be asked to work overtime to accommodate a service/repair request.
  - 10.5.4 The Owner agrees to make the equipment immediately available for the equipment service scheduled or requested.
- 10.6 In the event that any repair or servicing requires removal of the equipment from the Owner's premises for a period of more than 24 hours, Contractor agrees to provide, at no cost to the Owner, replacement equipment equal to or better than the equipment being provided under this agreement, to install the same, and to maintain the same, until such time as the equipment provided under this agreement is repaired or serviced and returned and installed.

## 11. DEFAULT.

- 11.1 If the Owner fails to pay any invoice within 60 days after receipt thereof or if the Owner fails to perform any of its other obligations under this agreement, or if the Owner attempts to remove or sell or transfer or encumber the equipment provided hereunder, the Contractor, in addition to any other remedies that may be legally available to it, at its option, may terminate this agreement and immediately repossess all items of equipment and Contractor owned supplies.
  - 11.1.1 On termination for Owner's default, the Owner shall permit the Contractor's representative to enter its premises to remove the equipment and shall pay all outstanding invoices for actual usage for the month during which termination occurred.

11.2 If the Contractor fails to perform its obligations under this agreement, the Owner may, in addition to any other remedies legally available to it, do the following:

11.2.1 In the event that Contractor fails to properly service or maintain or repair the equipment, the Owner may obtain maintenance servicing or repairs from another *factory trained source* and deduct the cost thereof from future invoices (Contractor will be notified in advance of the outside arrangements); or

11.2.2 In the event that Contractor fails to provide additions, deletions or replacement equipment when required (*within the terms of the specification*), the Owner may obtain substantially equal equipment from another source and charge the Contractor the cost of obtaining such replacement equipment over and above the amount such copying services and equipment would have cost the Owner under this agreement if the Contractor had not defaulted (Contractor will be notified in advance of the arrangements); or

11.2.3 The Owner may, at its option, upon a pre-arranged date, not less than ninety (90) days from written notice to Contractor, terminate this agreement, in which event Contractor shall have a reasonable amount of time to remove its equipment and supplies from the premises of the Owner.

11.3 If a failure to perform is of a nature that it can be cured, a party shall not be deemed to be in default hereunder until written notice has been provided to the defaulting party specifying the alleged default and providing at least three working days after receipt of such written notice of default to cure the same, provided, however, that repeated failure on the part of the Contractor to provide repairs in a timely fashion or to provide supplies shall entitle the Owner to immediately terminate this agreement upon written notice to the Contractor advising it of such termination.

12. **INDEMNIFICATION.** The Contractor shall indemnify and hold harmless the Owner, its officers, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to, attorney fees arising out of or resulting from performance of this agreement, the results and any claims for damages whatsoever, including, without limitation, bodily injury, death, or any injury or destruction of tangible or intangible property including any loss of use resulting therefrom that is caused in whole or in part by Contractor or anyone directly or indirectly employed by Contractor.

12.1 This section shall not require Contractor to indemnify or hold harmless the Owner for any losses, claims, damages, or expenses arising out of or resulting from the sole negligence of the Owner.

13. **FAIR EMPLOYMENT PRACTICES** In the performance of this agreement, the Contractor shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status, pursuant to the requirements of Chapter 11.08 of the Lincoln Municipal Code and Neb. Rev. Stat. § 48-1122 (reissue 1988).

14. **INTEGRATION.** This agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this agreement.
15. **AMENDMENT.** This agreement may be amended or modified only by written Addendum signed by both the Owner and the Contractor.
16. **NOTICES.** Any notice required or permitted to be sent by this agreement shall be sent to the following individuals at the following addresses unless the party to whom notice is to be sent advises the other party of a change:

to the City of Lincoln:

**"K" Street Complex (SW Wing)**  
**Attn: Purchasing Agent (Suite 200)**  
**440 So. 8<sup>th</sup> Street**  
**Lincoln, NE 68508**

to the Contractor:

**Alternative Business Systems, L.L.C.**  
**Attn: Carl Little, President**  
**5005 Russell Circle**  
**Lincoln, NE 68507**

17. **LEGAL COMPLIANCE.** The Contractor shall comply with all federal, state, and local laws together with all ordinances and regulations applicable to the services. The Contractor shall procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under this agreement.
18. **INDEPENDENT CONTRACTOR.** Any and all employees of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this agreement, shall not be considered employees of the Owner and all claims that may or might arise under the Worker's Compensation on behalf of said employees or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of the work or service provided to be rendered herein, shall in no way be the obligation or responsibility of the Owner. For all purposes the Contractor shall be considered an independent Contractor.
19. **INSURANCE.** The Contractor shall maintain during the life of this contract the types and amounts of insurance as specified in the attached "Insurance Requirements for Owner Contracts (**Exhibit - C**)". The City of Lincoln and Lancaster County shall be named as additional insured with regard to the performance of the contract services.

CONTRACT AGREEMENT

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the Owner hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF the Owner and the Contractor have executed this agreement as of the day and year written herein.

EXECUTION BY CITY OF LINCOLN, NEBRASKA

Dated: \_\_\_\_\_ Approved by Executive or No. \_\_\_\_\_

ATTEST: City of Lincoln, Nebraska

\_\_\_\_\_  
City of Lincoln Clerk

\_\_\_\_\_  
Mayor

EXECUTION BY LANCASTER COUNTY, NEBRASKA

Dated: 13<sup>th</sup> November 2002

Approved As to Form:

David Johnson  
For Lancaster County Attorney

Bob Robinson  
County Board Chairperson November 12, 2002

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST: \_\_\_\_\_ (SEAL)  
Secretary

(Seal only necessary if available)

Alternative Business Systems  
Name of Corporation  
5005 Russell Circle  
Address  
Lincoln NE 68507  
City State Zip

By: H. C. [Signature]  
Duly Authorized Official  
President & CEO  
Legal Title of Official

**ADDENDUM #1**  
**To "Exhibit B"- Contractor's Price Proposal**  
**SPECIFICATION #02-146 - Cost-Per-Copy Services**

AGREEMENT BETWEEN: Alternative Business Systems, L.L.C. and City of Lincoln / Lancaster County, Lincoln, NE

FOR: the purpose of modifying and enhancing pricing and/or service details offered in the original response from Contractor for Specification #02-146

This Addendum is hereby entered into by and between Alternative Business Systems, L.L.C., a corporation ("Contractor"), for the purpose of amending a Proposal Response Dated Aug. 20, 2002 (Exhibit B), a copy of which is attached hereto and made a part hereof by this reference.

WHEREAS, the City of Lincoln and Lancaster County (City/County) has caused to be prepared, in accordance with law, Specifications, Plans, and other documents for a request to provide Cost-per-copy Services for the City of Lincoln and Lancaster County. Specification #02-146 (Exhibit A), and has caused to be published and advertisement for and in connection with said Work; and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City/County, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City/County, in the manner prescribed by law has publicly opened, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined the Contractor to be the lowest responsive, responsible Proposer for said Work; and

WHEREAS, the City/County having examined the Proposal has negotiated with the Contractor to include the following amended details of the Agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants stated herein the parties agree as follows:

1. The prices listed in Exhibit B on the price proposal for Cost-per-copy photocopy services shall be replaced with the following negotiated prices which will be billed to the City of Lincoln Purchasing Division based on actual department/division/agency usages:
  - 1.1 \$.0184 per copy for all black and white copies produced on the digital standard stand alone and digital connected copiers to Owner's network;
    - 1.1.1 The .0184 cost-per-copy shall be reduced to \$.0175 for any individual print device that generates a minimum of 200,000 copies per month. This rate will only apply to individual print device volume and only the months were the print device generates the minimum of 200,000 copies.
  - 1.2 \$.14 per copy for all color copies produced on ONLY THE INITIAL FOUR (4) digital color copier/print devices connected to Owner's network;

- 1.3 The rates listed herein 1.1 & 1.2 shall be inclusive of all accessories and equipment including, but not limited to: fax boards, print servers, software, automatic document feeders, document finishers, and memory upgrades to support scanning, etc. to provide complete useable devices to meet the Owners' needs.
- 1.3.1 Contractor shall provide the following accessories by category:
- CATEGORY 1:** Stand-alone multifunctional copier with fax/scan capability, complete with duplexing and document feeder.
- CATEGORY 2 & 3:** Connected copier with all hardware / software, fax / scan capability, complete with duplexing and document feeder and large capacity paper tray , sort/staple functions.
- CATEGORY 4 to 7:** Connected copier with all hardware / software, complete with duplexing, document feeder, large capacity paper tray(s), finisher with staple/sort functions.
- 1.4 All charges listed include required maintenance, preventative maintenance, staples and supplies **excluding only paper**. Charges shall commence on the day following installation, and the monthly charge shall be billed in arrears. Contractor shall provide monthly statement of copies produced by PIN number along with a total of all copies produced
- 1.5 A tentative list of copy equipment proposed for the initial installation on this program is included with these contract documents (see **Attachment #2**). It is understood that this list may be updated from time to time as needs of the Owner may change during the term of the Agreement.
- 2) In addition to the work listed in the RFP (Exhibit A), Contractor offers (Exhibit B), the City/County accepts the following program details:
- 2.1 **MASTER BILLING:** Contractor shall provide one Master monthly invoice, which will include a break down of all copy/print volume by agency/department/division including machine number, user location, monthly volume and both individual and master total.
- 2.1.1 All copies shall be billed at the negotiated cost-per-copy rates.
- 2.1.2 The Purchasing Division shall pay this invoice within 14 days of receipt.
- 2.2 **INDIVIDUAL BILLING:** In addition to the Master monthly invoice supplied, the Contractor shall provide an individual bill by machine and end user including the mark-up percentage designated by the Purchasing Agent to cover only the cost for Purchasing to administer the program.
- 2.3 **PRINT AUDIT SOFTWARE:** Contractor offers to the Owner Print Audit (print tracking & auditing software) at the Government Rate as specified on the attached pricing schedule (**Attachment #1**). Owner shall have the sole authority to determine the number and location of all Print Audit seat licences purchased.
- 2.4 **COLOR COPY/PRINT EQUIPMENT:** Contractor will supply four (4) color print /copy devices (Konica 7821 color imaging system) for placement at locations as specified by Owner. It is understood that the price per copy on **ONLY THESE FOUR** color print/copy devices shall be as listed in the Master Agreement.

2.5 **BUY-OUT OF TWO EXISTING LEASES:** Contractor will buy-out the two leases for photocopy equipment currently held by Citycorp Vendor Finance, Inc., details as follows:  
Account #1230761 Konica #7150 copier #55NE02087 - P.W. Eng. Services  
Account #1230762 Konica #7150 copier #55NE04490 - Parks & Recreation  
Account #1230762 Konica #2020 copier #552226688 - Parks & Recreation

2.6 **WAIVER OF PERFORMANCE BOND:** Owner has waived the requirement for a \$25,000 performance bond due to Contractor's previous contract performance with Owner. Owner acknowledges Contractor's financial commitment to the City/County in the form of all new digital copy/print equipment which will be supplied upon implementation of this contract.

3. All other terms of the Contract and Proposal Response (Exhibit A & B), not in conflict with this Addendum, remain in effect.

The Parties to the Agreement do hereby agree that all the terms and conditions of this Addendum to the Agreement shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties do hereby execute this Addendum.

EXECUTED this 1 day of Nov, 2002.

**Alternative Business Systems, L.L.C.**

BY: [Signature]

EXECUTED this \_\_\_ day of \_\_\_\_\_, 2002.

**City of Lincoln, Nebraska**

BY: \_\_\_\_\_  
**Mayor**

EXECUTED this 12 day of November, 2002.

**Lancaster County Board of Commissioners**

BY: [Signature]  
Chair

APPROVED AS TO FORM this 13<sup>th</sup> day of November, 2002

**Lancaster County Attorney**

BY: [Signature]  
Deputy County Attorney

**Attachment #1**

**Print Audit**  
Print Tracking & Auditing Software

**Print Audit 4**

|                                     | 1-25<br>Seats   | 26-50<br>Seats  | 51-100<br>Seats | 101-250<br>Seats | 251-400<br>Seats | 400+ |
|-------------------------------------|-----------------|-----------------|-----------------|------------------|------------------|------|
| Suggested<br>GEM<br>Retail<br>Price | \$58.00<br>each | \$55.00<br>each | \$45.00<br>each | \$38.00<br>each  | \$33.00<br>each  | *    |

**Print Audit Enterprise**

|                                     | 1-25<br>Seats   | 26-50<br>Seats  | 51-100<br>Seats | 101-250<br>Seats | 251-400<br>Seats | 400+ |
|-------------------------------------|-----------------|-----------------|-----------------|------------------|------------------|------|
| Suggested<br>GEM<br>Retail<br>Price | \$29.00<br>each | \$28.00<br>each | \$23.00<br>each | \$19.00<br>each  | \$17.00<br>each  | Call |

**\*Print Audit 4 Site License Program**

| Level | Number of Seats         | Suggested Retail<br>Price | Suggest GEM<br>Retail Price |
|-------|-------------------------|---------------------------|-----------------------------|
| A     | 401-1000 Seats          | \$35,000.00               | \$17,500.00                 |
| B     | 1001-5000 Seats         | \$50,000.00               | \$25,000.00                 |
| C     | 5001-10,000 Seats       | \$60,000.00               | \$30,000.00                 |
| D     | 10,001-25,000 Seats     | \$80,000.00               | \$40,000.00                 |
| E     | 25,001-50,000 Seats     | \$120,000.00              | \$60,000.00                 |
| F     | 50,001-100,000<br>Seats | \$160,000.00              | \$80,000.00                 |
| U     | Unlimited Seats         | \$200,000.00              | \$100,000.00                |