



## COST PER IMAGE AGREEMENT

AGREEMENT NO.:

**CUSTOMER ("YOU" OR "YOUR")**FULL LEGAL NAME: **CITY OF BROKEN ARROW**ADDRESS: **220 SOUTH 1ST STREET BROKEN ARROW, OK 74012****EQUIPMENT AND PAYMENT TERMS**☐ SEE ATTACHED SCHEDULE

TYPE, MAKE, MODEL NUMBER, SERIAL NUMBER, AND INCLUDED ACCESSORIES	NOT FINANCED UNDER THIS AGREEMENT	BEGINNING METER READING		MONTHLY IMAGE ALLOWANCE		EXCESS PER IMAGE CHARGE (PLUS TAX)	
		B&W	COLOR	B&W	COLOR	B&W	COLOR
SEE EQUIPMENT SCHEDULE <input type="checkbox"/>						0	0
TOTAL CONSOLIDATED MONTHLY IMAGE ALLOWANCE AND EXCESS PER IMAGE CHARGES (IF CONSOLIDATED)							

EQUIPMENT LOCATION: **MULTIPLE LOCATIONS**METER FREQUENCY: **Monthly**TERM IN MONTHS: **62**MONTHLY BASE PAYMENT AMOUNT\*: **\$4533.69** (\*PLUS TAX)PURCHASE OPTION\*: **Fair Market Value**SECURITY DEPOSIT: **\$0****CONTRACT**

THIS AGREEMENT ~~shall have an initial term of one year with four automatic renewals. Said renewals shall be subject to annual appropriations by the City. IS-NON-CANCELABLE AND-IRREVOCABLE-IT CANNOT BE TERMINATED.~~ PLEASE READ CAREFULLY BEFORE SIGNING. YOU AGREE THAT THIS AGREEMENT AND ANY CLAIM RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE of Oklahoma, this Cost Per Image Agreement and RFP 24.113 drafted by the City. ~~IN WHICH OUR (OR, IF WE ASSIGN THIS AGREEMENT, OUR ASSIGNEE'S) PRINCIPAL PLACE OF BUSINESS IS LOCATED~~ AND ANY DISPUTE CONCERNING THIS AGREEMENT WILL BE ADJUDICATED IN A FEDERAL OR STATE COURT IN SUCH STATE. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN SUCH COURTS AND WAIVE TRANSFER OF VENUE. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL.

**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 AND THIRD PAGE OF THIS THREE-PAGE AGREEMENT. THIS AGREEMENT IS BINDING UPON OUR ACCEPTANCE HEREOF.

(As Stated Above)

**X**

CUSTOMER

SIGNATURE

PRINT NAME &amp; TITLE

DATE

**OWNER ("WE", "US", "OUR")****J. D. Young Company, Inc.**

OWNER

SIGNATURE

PRINT NAME &amp; TITLE

DATE

116 West 3rd St Tulsa, OK 74103-3406

**CERTIFICATE OF DELIVERY AND ACCEPTANCE**

The Customer hereby certifies that all the Equipment: 1) has been received, installed, and inspected, and 2) is fully operational and unconditionally accepted.

SIGNATURE: **X**

NAME AND TITLE:

DATE:



## ADDITIONAL TERMS AND CONDITIONS

**AGREEMENT.** You want us to now provide you the equipment and/or software referenced herein, excluding equipment marked as not financed under this Agreement ("Equipment") and you unconditionally agree to pay us the amounts payable under the terms of this agreement ("Agreement") each period by the due date. This Agreement is binding upon our acceptance hereof and will begin on the date the Equipment is delivered to you or any later date we designate. If we designate a later commencement date, you agree to pay us an additional amount equal to the periodic payments due under this Agreement prorated for the period between the date the Equipment is delivered to you and the commencement date. We may charge you a one-time origination fee of \$125.00. If we do not receive by the due date, at the remittance address indicated on your invoice, any amount payable to us, you will pay a late charge equal to: 1) the greater of ten (10) cents for each dollar overdue or twenty-six dollars (\$26.00); or 2) the highest lawful charge, if less. Any security deposit will be returned upon full performance.

**NET AGREEMENT. THIS AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE AGREEMENT TERM. YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL AMOUNTS DUE UNDER THIS AGREEMENT FOR THE ENTIRE TERM. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST AMOUNTS DUE UNDER THIS AGREEMENT FOR ANY REASON.**

**IMAGE CHARGES AND OVERAGES.** You are entitled to make the total number of images shown under Image Allowance (or Total Consolidated Image Allowance, if applicable) each period during the term of this Agreement. If you make more than the allowed images in any period, you will pay us an additional amount equal to the number of the excess images made during such period multiplied by the applicable Excess Per Image Charge. Regardless of the number of images made in any period, you will never pay less than the Base Payment Amount. You agree to provide us with the actual meter readings on any business day as designated by us, provided that we may estimate the number of images used if such meter readings are not received within five days after being requested. We will adjust the estimated charge for excess images upon receipt of actual meter readings. You agree that the Base Payment Amount and the Excess Per Image Charges may be proportionately increased at any time if our estimated average page coverage is exceeded. After the end of the first year of this Agreement and not more than once each successive twelve-month period thereafter, the Base Payment Amount and the Excess Per Image Charges (and, at our election, the Base Payment Amount and Excess Per Image Charges under any subsequent agreements between you and us that incorporate the terms hereof) may be increased by a maximum of 15% of the then existing payment or charge. Images made on equipment marked as not financed under this Agreement will be included in determining your image and overage charges.

**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.** In entering into this Agreement, you understand and agree that payments under this Agreement include amounts owed to us for maintenance, services, and supplies as further described in the Services and Supplies Addendum hereto (the "Services Addendum"). The amounts owed us to in connection with the Services Addendum are separate and distinct from the amounts payable to us in connection with our provision of the Equipment, which amounts may be invoiced as one payment for your convenience. You agree that you will look solely to us for performance under the Services Addendum 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. A contract shall not be assigned or subcontracted by the contractor in part of whole without the written consent of The City of Broken Arrow, which consent shall not be unreasonably withheld.~~ 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, including but not limited to our obligations to provide the maintenance, services, and supplies under the Services Addendum or any potential claim, defense, or set-off you may otherwise assert thereunder. Notwithstanding the foregoing, if we sell or assign this Agreement or our rights in the Equipment, we will retain our obligations under the Agreement.

**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. This indemnity will survive the expiration of this Agreement. 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 City is a self-insured entity and as such as a lessee of goods herein shall not be required to obtain insurance for the Seller's property. Seller shall be solely responsible for any insurance on Seller's property.~~

**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.** At the end of the term of this Agreement (or any renewal term) (the "End Date"), this Agreement will renew for an additional one-year period under the same terms unless a) we receive written notice from you, at least 60 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, at your expense. 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. If the returned Equipment is not immediately available for use by another without need of repair, you will reimburse us for all repair costs. You cannot pay off this Agreement or return the Equipment prior to the End Date without our consent. If we consent, we may charge you, in addition to other amounts owed, an early termination fee equal to 5% of the amount we paid for the Equipment.

**DEFAULT/REMEDIES.** If a payment becomes 10+ days past due, or if you otherwise breach this Agreement, you will be in default, and we may require that you return the Equipment to us at your expense and pay us: 1) all past due amounts and 2) all remaining payments for the unexpired term, plus our booked residual, discounted at 3% per annum; and we may disable or repossess the Equipment and use all other legal remedies available to us. You agree to pay all costs and expenses (including reasonable attorney fees) we incur in any dispute with you related to this Agreement. You agree to pay us interest on all past due amounts at the rate of 1.5% per month, or at the highest rate allowed by applicable law, if less.

**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 any provision of this Agreement is unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law. 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.

## Services and Supplies Addendum

The Equipment will receive service during the term of this Agreement during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. At the end of the Agreement's term, to continue a service and supply agreement on the Equipment as reflected by this Addendum, a new service agreement will need to be signed at that time.

At the end of the Agreement's term, the Customer agrees to return unused supplies such as toner, toner waste containers, parts, ink, staples, and masters that were provided at no charge by JD YOUNG. If for any reason the Customer does not return these items, Customer agrees to pay JD YOUNG for any remaining items.

JD YOUNG agrees to furnish supplies for the Equipment. Supplies include toner, toner waste containers, parts, staples, and masters to be delivered at accepted intervals in quantities as usage history dictates. See exclusions below (Items not covered by this Agreement). JD YOUNG may add a fee to the Agreement to cover shipping and handling expenses incurred by providing supplies included in this Agreement. Toner consumption is based on manufacturer's stated yields on standard "letter size" copies. At the end of each billing cycle, the Customer may be billed for any ink/toner used in excess of that required based on yields stated above.

### **ITEMS NOT COVERED BY THIS ADDENDUM:**

- A. Supplies that are not included in this Agreement are paper, ink and printheads for wide format and inkjet devices. If applicable, other supply exceptions include:
- B. Repair or replacement of parts and/or Equipment damaged by accident, fire, flood, lightning, theft, power failure, abuse, unsuitable environmental conditions, or other circumstances not under the control of JD YOUNG, including the use of an improperly phased and/or under-grounded electrical outlets.
- C. Service provided at Customer's request outside the principle period of maintenance, (8:00 a.m. to 5:00 p.m., Monday through Friday).
- D. Service required because of inadequate facilities on site or by the failure of equipment or systems other than the Equipment covered by this Agreement. This includes without limitation equipment or systems furnished by telephone companies, power companies, or by other vendors of equipment, software, or programming.
- E. Relocation: Upon written notice by Customer and subsequent acceptance by JD YOUNG, JD YOUNG agrees to provide, at Customers' expense, equipment removal relocation service at JD YOUNG'S then current rates.
- F. Expenses incurred by the Customer such as copies and binding due to Customer's Equipment being inoperative.
- G. Software support, upgrades and security of Customer information unless specifically listed as a covered item and proper charges applied.

**DESCRIPTION OF EQUIPMENT**

MAKE, MODEL NUMBER & INCLUDED ACCESSORIES	SERIAL NO.	NOT FINANCED UNDER THIS AGREEMENT	BEGINNING METER READING		MONTHLY IMAGE ALLOWANCE		EXCESS PER IMAGE CHARGE (PLUS TAX)	
			B&W	COLOR	B&W	COLOR	B&W	COLOR
TOSHIBA ESTUDIO3525AC	SLNN85944	<input type="checkbox"/>	208	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85436	<input type="checkbox"/>	170	109	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85905	<input type="checkbox"/>	272	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85475	<input type="checkbox"/>	207	67	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85595	<input type="checkbox"/>	255	110	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85658	<input type="checkbox"/>	297	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85601	<input type="checkbox"/>	231	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85519	<input type="checkbox"/>	224	103	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85481	<input type="checkbox"/>	221	104	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85836	<input type="checkbox"/>	323	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85432	<input type="checkbox"/>	228	100	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85495	<input type="checkbox"/>	217	102	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85473	<input type="checkbox"/>	197	100	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN86019	<input type="checkbox"/>	144	113	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85747	<input type="checkbox"/>	213	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85930	<input type="checkbox"/>	263	91	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85907	<input type="checkbox"/>	214	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85711	<input type="checkbox"/>	215	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85704	<input type="checkbox"/>	216	41	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85566	<input type="checkbox"/>	243	64	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85720	<input type="checkbox"/>	166	100	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85941	<input type="checkbox"/>	219	103	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85737	<input type="checkbox"/>	212	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85565	<input type="checkbox"/>	248	61	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85816	<input type="checkbox"/>	236	45	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85807	<input type="checkbox"/>	236	45	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85732	<input type="checkbox"/>	168	161	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85967	<input type="checkbox"/>	220	101	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN86005	<input type="checkbox"/>	255		0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85523	<input type="checkbox"/>	193	100	0	0	.0055	.048
TOSHIBA ESTUDIO3525AC	SSLN85486	<input type="checkbox"/>	217	53	0	0	.0055	.048
TOHSIBA ESTUDIO4525AC	SSAP87005	<input type="checkbox"/>	159	101	0	0	.0055	.048
TOTAL CONSOLIDATED MONTHLY IMAGE ALLOWANCE AND EXCESS PER IMAGE CHARGES (IF CONSOLIDATED)								

**VERIFICATION**

The undersigned acknowledges having received a copy of this Schedule. A copy of this document containing your original or facsimile signature, or other indication of your intent to agree to the terms set forth herein, shall be enforceable for all purposes.

X

CUSTOMER

SIGNATURE

PRINT NAME &amp; TITLE

DATE



