

**ORDINANCE 2021-13**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO APPROVING THE LONG-TERM LEASE WITH ALL COPY PRODUCTS, INC. FOR A COPIER SYSTEM AND RELATED SERVICES**

**WHEREAS**, the City has determined it is in its best interest to upgrade the copy system (the “System”) currently utilized at the Fruita Community Center; and

**WHEREAS**, the City solicited bids for a new System; and

**WHEREAS**, the City has determined it is in the best interest of the City to enter into an agreement with All Copy Products, Inc., attached hereto and incorporated herein, for the lease of the System and ongoing service and maintenance of the System (the “Agreement”); and

**WHEREAS**, the Agreement provides the City shall lease the system by making sixty (60) equal monthly payments for the use of the System; and

**WHEREAS**, pursuant to Article 8.25 of the City’s Home Rule Charter, the Council may enter into long-term rental or leasehold agreements by ordinance, and such payments may be made by general appropriations, by imposition of usage fees on the rental of leasehold property, or a combination of both general appropriations and usage fees; and

**WHEREAS**, the City Council has determined entering into the Agreement is in the best interest of the City and desires to enter into said Agreement.

**NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:**

**Section 1.** **Approval of Agreement.** The City Council hereby approves of the Agreement and, subject to annual appropriation, payment required thereunder, and hereby authorizes the City Manager execute the Agreement and take all other steps necessary to effectuate its implementation.

**Section 2.** **Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

**Section 3.** **Effective Date.** This Ordinance shall take effect thirty days after the date of final passage in accordance with Section 6.4 of the Fruita Home Rule Charter.

**Section 4.**     **Safety Clause.** The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Fruita, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 5.**     **No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 6.**     **Publication.** The City Clerk is ordered to publish this Ordinance in accordance with Article 2.13 of the Fruita City Charter.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL**

**THIS 16<sup>TH</sup> DAY OF MARCH, 2021**

ATTEST:

CITY OF FRUITA

\_\_\_\_\_  
Margaret Sell, City Clerk

\_\_\_\_\_  
Joel Kincaid, Mayor

## **EXHIBIT A**



**Page Management Agreement**

APPLICATION NO

CONTRACT NO

**All Copy Products, Inc. - 1635 W 13TH AVE - DENVER, CO 80204 - Phone 303.295.0741 - Fax 303.298.0102**

**This document is written in "plain English". The words "Customer" "you", and "your" refer to you, as the customer. The words, "ACP", "we", "us" and "our" refer to All Copy Products, Inc. or its successors and assigns.**

Full Legal Name			Street Address		Suite No.
Fruita, City of dba Fruita Community Center			324 N Coulson ST		
City	State	Zip	Phone	Fax	
Fruita	CO	81524	(970) 858-0360		
Billing Name (If different from above)			Billing Address		Suite No.
Fruita, City of dba Fruita Community Center			324 N Coulson ST		
City	State	Zip	Email		
Fruita	CO	81524--	nmacdonald@fruita.org		
Equipment Location (If different from above)					

MAKE/MODEL NO./ACCESSORIES	QTY	SERIAL NO.	STARTING METER
Sharp 40 PPM B&W / 40 PPM Full-Color Workgroup Document System	1		
Sharp 1K Stacking 50-sheet Staple Finisher	1		
Sharp 3-Hole Punch Unit (requires MX-FN28/29)	1		
Sharp Fax Expansion Kit	1		
Sharp Paper Pass Unit (required for MX-FN28/29/30/31)	1		
Sharp Stand/1 x 550 + 2,100-sheet Split Tandem Paper Draw	1		

AGREEMENT TERMS		AGREEMENT PAYMENT AMOUNT		SECURITY DEPOSIT
Term in Months	<u>60</u> (mos.)	<u>60</u> Payments of	<u>\$294.54</u>	(Plus Applicable Taxes)
Payment includes <u>2000</u> B&W images per month		Excess images billed	<u>Quarterly @ \$0.0088</u>	per B&W image
Payment includes <u>2000</u> Color images per month		Excess images billed	<u>Quarterly @ \$0.0572</u>	per Color image
Payment includes <u>N/A</u> scans per month		Excess images billed	<u>N/A @ N/A</u>	per scan
All Secure Privacy Protection		Number of Devices:	<u>  </u> x <u>\$8.00</u>	per Device Per Month
Initials: <u>  </u> Accept		Decline (applicable charges will be billed in addition to the Payment set forth above)		

END OF AGREEMENT OPTIONS: You will have the following options at the end of the original term, provided the Agreement has not terminated early and no event of default under the Agreement has occurred and is continuing. 1. Purchase the Equipment at Fair Market Value. 2. Renew the Agreement per Paragraph 1. 3. Return Equipment as provided in Paragraph 8.

This is a noncancelable/non-terminable agreement, meaning that this Agreement cannot be canceled or terminated. You acknowledge and agree that this Agreement consists of the terms and conditions set forth on the reverse side and on the following pages, and specifically include the attached (i) Prepaid Connected Services Addendum and the following Addendums (if box is checked):  Government Contracting Addendum,  Personal Guaranty Addendum, and Other:

**OWNER ACCEPTANCE**

	All Copy Products, Inc.		
Dated	Owner	Signature	Title

**CUSTOMER ACCEPTANCE**

	Fruita, City of dba Fruita Community Center	<b>X</b>	
Dated	Customer	Signature	Title
Federal Tax ID#	Print Name		



## ALL COPY PRODUCTS PAGE MANAGEMENT AGREEMENT TERMS & CONDITIONS

- 1. AGREEMENT:** You agree to rent from us the personal property described under "MAKE/MODEL NO./ACCESSORIES" and as modified by supplements to this Page Management Agreement ("Agreement") signed by you and us (such property and any upgrades, replacements, repairs, and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed Equipment ("Agreement") and supersedes any purchase order or outstanding invoice. This Agreement may be modified only by written agreement and not by course of performance. This Agreement becomes valid upon the date it is accepted and signed by us ("Commencement Date") and continues thereafter for the number of consecutive months shown. As you will have possession of the Equipment from the date of its delivery, if we accept and sign this Agreement you will pay us interim rent for the period from the date the Equipment is delivered to you until the first billing date, as reasonably calculated by us based on the full periodic payment set forth on the first page hereto, plus applicable taxes ("Payment"), the number of days in that period and a month of 30 days. The term will be extended automatically for successive 12 month terms unless you send us written notice between ninety (90) and one hundred fifty (150) days before the end of any term of your intent to return the Equipment AND complete the return within 30 days of the end of term. Notice of your intent to return the Equipment must be sent by certified US mail to All Copy Products, Inc., 1635 W. 13<sup>th</sup> Ave., Denver, CO 80204, Attn: Contracts Distribution. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect. You authorize us to insert or correct missing information on this Agreement including your proper legal name, serial numbers and any other information describing the Equipment. You agree to provide updated annual and/or quarterly financial statements to us upon request. Your failure to sign the Delivery and Acceptance Form does not change or affect your obligation to lease or purchase and pay for Equipment pursuant to the terms of this Agreement or any other contract or agreement you may have entered into with us or your supplier. The original of this Agreement shall be that copy which bears your original signature, a facsimile of your original signature, or your electronic signature and which bears our original signature.
- 2. RENT:** Rent will be payable in installments, each in the amount of the Payment set forth on the face of this Agreement plus any applicable sales, use or property tax. If we pay any tax on your behalf, you agree to reimburse us promptly upon demand along with a processing fee. You will pay the security deposit on the date you sign this Agreement. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owing to us under the terms of this Agreement in our sole discretion.
- 3. MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment and accessories, maintenance by us (during normal business hours), inspection, parts replacement, and the following consumable parts and supplies: drums and cleaning material required for proper operation black toner, color toner, and developer ("Consumables"). Paper, media, and staples must be separately purchased by you. We may charge you a Supply Freight Fee to cover our costs of shipping/delivering supplies to you. We agree to provide initial prepaid connection services pursuant to the Prepaid Connected Services Addendum attached to this Agreement. We retain ownership of all Consumables until used or paid for by you. Upon termination or expiration of this Agreement, all unused Consumables will be immediately returned to us or purchased by you at the current price then in effect. Consumables do not include large format inks, print heads, maintenance kits and media.
- 4. SERVICE CALLS:** Service calls under this agreement will be performed during normal business hours at the installation address shown on the reverse side of this Agreement. Travel and labor time for service calls after normal business hours, on weekends and on holidays, if and when available, will be paid by Customer at the overtime ("Per Call") rates in effect at the time the service call is made. Customer agrees to promptly notify ACP of any requests for service, by contacting the ACP Service Department. During the performance of ACP's maintenance services, Customer agrees that ACP shall have the right to generate all copies/prints/faxes necessary to properly perform its service without being required to credit Customer's account. This Agreement does not include mileage on service calls for customers outside of ACP's normal geographic service area. Service performed after the termination, expiration or nonrenewal of this Agreement will be paid for by Customer on a "Per Call" basis at ACP's then published rates. All on-site service calls are billed at a one-hour minimum and 15-minute increments thereafter. All phone support calls are billed in 15-minute increments with a 15 minute minimum.
- 5. METER READINGS:** Customer agrees to provide ACP true and accurate meter readings monthly and in any reasonable manner requested by ACP. If accurate meter readings are not provided, ACP reserves the right to estimate Customer's meter readings based upon previous meter readings and bill Customer based upon such estimates or send an ACP representative to visually inspect such meter readings, in which event Customer shall also pay ACP an additional charge for such site visit. Upon the election of ACP, Customer agrees to allow the installation of ACP electronic meter collection tool to collect meters where applicable.
- 6. OWNERSHIP OF EQUIPMENT:** Until purchased and title transfers to you, if applicable, ACP shall retain ownership and title to the Equipment (excluding software). If purchased, and if any amounts are due and owing to us for such Equipment, you grant us a security interest in the Equipment until we are paid in full. You agree that we shall have the right to file a UCC-1 financing statement on the Equipment to secure the payment or return of the Equipment at the end of the lease term. You agree to keep the Equipment free and clear of all other liens, encumbrances and claims.
- 7. WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US.
- 8. LOCATION OF EQUIPMENT:** You will keep and use the Equipment only at your address shown above and you agree not to move it to another location without our prior written consent. At the end of the term of this Agreement (or any renewal term), you will return the Equipment to us at your expense, in retail resalable condition, full working order, and in complete repair, at a time, manner and location specified by us. You agree to allow us to inspect the Equipment at any time during normal business hours.
- 9. LOSS OR DAMAGE:** You are solely responsible for the risk of loss of, or any destruction of, or any damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage, and agree to then pay to us the present value of the total of all unpaid rental payments for the full remaining rental term, plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at two percent (2%) per year ("Present Value Rate"). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage.
- 10. COLLATERAL PROTECTION AND INSURANCE:** You agree to keep the Equipment fully insured, at your cost, against all damage or loss and name us as loss payee in an amount not less than replacement cost of the Equipment until this Agreement is terminated. You also agree to secure, at your cost, a general public liability insurance policy from an insurance company acceptable to us and to include us as an additional insured on this policy. You agree to provide us certificates or other evidence of insurance acceptable to us, before this Agreement begins and not less than annually, or, at our sole discretion we may either: 1) obtain insurance and you will pay us for any insurance premium and related charges, on which we may make a profit OR 2) we may waive the insurance requirement and charge you a monthly damage surcharge of up to .0035 of the original Equipment cost and on which we also may make a profit. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR DAMAGE AND LIABILITY INSURANCE COVERAGE ON THIS EQUIPMENT.
- 11. INDEMNITY:** We are not responsible for any loss or injuries of any kind caused by the installation or use of the Equipment. You agree to indemnify, hold us harmless and reimburse us for any loss incurred by us and to defend us against any claim for losses or injury caused by or related to the Equipment. This indemnification will continue after the expiration or termination of this Agreement.
- 12. TAXES AND FEES:** You agree to pay when invoiced all taxes (including personal property tax, interest, fines and penalties) and fees relating to this Agreement or the Equipment. If we pay any of the above for you, you agree to reimburse us and pay us a processing fee for each payment we make on your behalf. You also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law and reimburse us for all costs involved in completing this transaction. On the day the first payment is due, you agree to pay us a fee of \$75.00 to reimburse our expenses for preparing financing statements, other documentation costs and all other ongoing administrative costs during the term of the Agreement. You further agree to pay us, on the day the first payment is due, a fee of up to \$100 to reimburse our expense for delivery and installation of the Equipment. You will indemnify us on an after-tax basis against the loss of any tax benefits anticipated at the commencement date arising out of your failures or omissions. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out, or default. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.
- 13. ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign, or transfer this Agreement, the assignee will have the same rights and benefits but none of our obligations that we have under this Agreement, (i) the new owner will not be subject to any defenses, or set offs that you may have against us, and (ii) such assignee will not be responsible for our obligations under Paragraphs 3-5, 19 or under the Prepaid Connected Services Addendum, which obligations will remain our sole responsibility.
- 14. DEFAULT AND REMEDIES:** If you do not pay any rental payment or other sum due to us or another party when due or if you fail to perform any of your promises in the Agreement or any other agreement with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 15% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may retain your security deposit and at our option, we can terminate or cancel this Agreement and you agree: (1) to pay all sums due under this Agreement; (2) to pay the unpaid balance of this Agreement discounted at six percent (6%); (3) to pay the amount of any purchase option, and if none is specified, 20% of the original Equipment cost which represents our anticipated residual value in the Equipment; and (4) to immediately return the Equipment, at your sole cost, to a location designated by us. We may recover interest on any unpaid balance at the rate of 8% per annum or the maximum permissible legal rate, whichever is greater. We may also use any of the remedies available under Article 2A of the Uniform Commercial Code as enacted in the state in which our principal office, or that of any assignee is located. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney's fees and actual court costs, regardless of whether any legal action is actually filed. If we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. It is further agreed that your rights and remedies are governed by this Agreement and you waive your rights under Article 2A (508-522) of the UCC.
- 15. SECURITY DEPOSIT:** If required by us, any security deposit posted by you is non-interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth on the first page hereto. If all conditions herein are complied with and provided you have not ever been in default of this Agreement, the security deposit will be refunded to you after the return of the Equipment.
- 16. CONSENT TO LAW, JURISDICTION, AND VENUE:** This Agreement shall be deemed fully executed and performed in the state of our principal office or of that of any assignee's principal office and shall be governed by and construed in accordance with such laws. If we or any assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, you irrevocably agree that any such matter may be adjudicated in any court or courts in the state of our principal office or of that of any assignee's principal place of business, or in any court or courts in your state of residence, or in any other court having jurisdiction over you or Equipment, all at the sole election of us or our assignee. You agree to waive trial by jury in any action between you and us.
- 17. OVERAGES AND COST ADJUSTMENTS:** You agree to comply with any billing procedures designated by us, including notifying us of the meter reading at the end of each month. At the end of the first year of this Agreement and once each successive twelve-month period, we may increase your payment, and the excess image charge by a maximum of 15% of the existing charge.
- 18. UPGRADE/DOWNGRADE PROVISION:** AFTER INCEPTION OF THE AGREEMENT AND UPON YOUR REQUEST, WE MAY REVIEW YOUR IMAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING TO ACCOMMODATE YOUR NEEDS.
- 19. ALL SECURE:** Selection of the All Secure program will provide an authorized All Copy Products engineer to schedule a call either onsite or at our facility to use a set of enhanced passwords and data security measures to ensure your hard drives have added security protection. At the end of service or disposal of this unit ACP will sanitize and remove all data to US Department of Defense standard for security. If Equipment has been removed for the location noted on the first page, you must call ACP to initiate this service. Failure to request our engineer to perform these steps before any equipment leaves your office will negate the guarantees of the All Secure program. Equipment picked up by ACP will not require pre-scheduling and a proof of completion will be provided by ACP once the machine has been sanitized.
- 20. POSTAGE DEVICES:** Postage measurement devices referenced herein which are subject to a rental agreement between you and an authorized manufacturer (Postage Manufacturer), are not part of the Equipment and your use and the ownership of such devices will be governed exclusively by your rental agreement with the Postage Manufacturer. You will need to reference your rental agreement with the Postage Manufacturer for the term of, and your rights and obligations under the rental agreement. For your convenience, payments under this Agreement may include the rental amounts you owe the Postage Manufacturer under the rental agreement.





**PREPAID CONNECTED SERVICES ADDENDUM**

Customer Number
0

Date
2/19/2021

See reverse for complete terms and conditions

<b>S H I P T O</b>	<b>Company Name:</b> Fruita, City of dba Fruita Community Center			<b>B I L L T O</b>	<b>Company Name:</b> Fruita, City of dba Fruita Community Center		
	<b>Street Address:</b> 324 N Coulson ST		<b>Suite:</b>		<b>Street Address:</b> 324 N Coulson ST		<b>Suite:</b>
	<b>City:</b> Fruita	<b>State:</b> CO	<b>Zip:</b> 81524		<b>City:</b> Fruita	<b>State:</b> CO	<b>Zip:</b> 81524--
	<b>Main Phone #:</b> (970) 858-0360		<b>Main Fax #:</b>		<b>Main Phone #:</b> (970) 858-0360		<b>Main Fax #:</b>
	<b>Key Operator Name:</b> Nicole Goertz		<b>Location:</b>		<b>Buyer's Name:</b> Nicole Goertz		<b>Title:</b> Facility Manager
	<b>Key Operators Phone #:</b> (970) 858-0360		<b>Key Operator Fax #:</b>		<b>Buyer's Phone #:</b> (970) 858-0360		<b>Buyer's Fax #:</b>
	<b>Cross Street:</b>		<b>Office Hours:</b>		<b>County:</b>		<b>Office Hours:</b>

**Equipment Covered**

**Print Controller**
     
  **Scanning**
     
  **PC Faxing**

Equipment Model / Serial #	Hours Included	Base Charge / Hour	Total Cost	Mo Qtr. Yr.
Initial Install of equipment	4	\$100.00	\$400.00	1st 90 days
MX-4071				
<b>Total Charge:</b>			<b>NC</b>	

Comments:

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**Customer IT Contact**

Contact Name/Title:

Email:

Direct Dial:

**Authorization**

FM AUDIT AUTHORIZATION

**Accepted**

**Declined**

## All Copy Products, Inc. Prepaid Connected Services Addendum Terms and Conditions

- 1. GENERAL:** All Copy Products, Inc. ("ACP") agrees to provide Prepaid Connected Services for the number of hours listed on this Addendum or for a period of 90 days whichever expires first. Upon completion of the initial Prepaid Connected Services Addendum, Customer (hereinafter "You" or "Your"), this Addendum may automatically renew pursuant to Section 4, below. Only the Equipment listed on this Addendum/order is covered by the Prepaid Connected Services Addendum and provides the service of our professional services engineer in connecting office equipment or other devices ("Equipment") to your computer or computer network, or building your computer network. The Addendum includes design consultation, software and hardware installation and telephone and/or on-site technical support. It is Your responsibility to perform all necessary backups on the personal computers ("PCs") or computer network ("Network") prior to actual installation or other services being performed. ACP bears no responsibility for any damage done to or information lost from Your PCs or Network. ACP will provide services under this Addendum during normal business hours, 8 AM to 5 PM, Monday through Friday, except holidays. Addendum services provided after normal business hours, on weekends or holidays, if available, will not be covered by this Addendum and will be billed at ACP's standard rates in effect at the time the service is performed.
- 2. SCOPE OF WORK: Customer Responsibilities** – You will: allow ACP a to provide remote support connection to your PCs or Network via LogMeIn/Rescue; provide a tested network port near the connected device(s); provide a tested patch cable for the connected device(s); ensure Your IT staff or equivalent will be available onsite during the entire installation process; provide proper power and phone line; and have all workstations in good working condition with all software updates and service packs installed. and allow the installation of the ACP's electronic meter collection tool. If You have a third-party email server or FTP, it is Your responsibility to have the necessary ports open, by the date of installation, with Your host provider. **ACP Responsibilities** – ACP will contact Your designated IT staff member to perform necessary network discovery for determination of how to configure the connected Equipment; set up and pretest Your Equipment before delivery to Your location; deliver and configure the Equipment; connect Your Equipment to the PCs/Network via a remote and/or on-site session; train customer's IT staff member on PCs/Network server set up and configuration, workstation printer setup and configuration, and use of drivers. All information viewed by ACP personnel shall be considered confidential and may not be disclosed without consent by You unless ordered by law.
- 3. TERM AND RENEWAL:** The Addendum shall become effective upon the delivery and acceptance of the Equipment. Unless terminated as set forth herein, upon expiration of the previous block of hours/time period, this Addendum shall automatically renew, for an additional block of time to be used within the next 12 month period. If You desire not to renew the Addendum, You must give written notification to ACP of such decision (i) not less than five (5) days after receipt of a new invoice for a new block of prepaid connected service time, or (ii) prior to the next performance of connected services by ACP. If ACP provides any connected services, other than as part of the Prepaid Connected Services Addendum, such services shall be provided on a per call basis.
- 4. BREACH OR DEFAULT:** If You do not pay all charges billed under the terms of this Addendum, promptly when due, or in the event of a breach of any other term of the Addendum by You, ACP may (a) refuse to service the device(s) until full remittance is made, (b) provide service on a per call basis, (c) require C.O.D. payment in full at the time of service at the current per call rates, and (d) take any and all actions as provided by law. Such remedies shall be cumulative, and the waiver by ACP of any one breach by You shall not deem a waiver by ACP of any other or subsequent breach. ACP reserves the right to withhold service or supplies if any charges due by You to ACP become past due, regardless of whether those charges are related to this Addendum. For purposes of this Addendum, "Per Call" means the full charge rates ACP charges to other customers who are not on the Prepaid Connected Service Addendum program.
- 5. MISCELLANEOUS:** You understand and agree that ACP does not warrant results of the computer services provided and there are no warranties, expressed or implied, including but not limited to any warranties of merchantability or fitness for a particular purpose. When requested by You, ACP shall attempt to estimate the amount of time necessary to complete the requested computer services, then required. Customer specifically acknowledges and agrees that ACP is not responsible or accountable for improper, irregular or non-industry standard set up of Your computer network, system or personal computers. ACP is not responsible for computer services provided by a previous third party vendors, or for the age or functionality of Your computer hardware and/or software. You understand and agree that problems with or irregular set up of Your computer hardware and software could cause a delay in the performance or completion of the connected services and take more time to repair or resolve than estimated. You agree that in no event shall ACP be liable to You for any direct, indirect, special or consequential damages or lost profit rising out of or related to this Addendum, the performance of services or breach thereof.







## STATE AND LOCAL GOVERNMENT ADDENDUM

### AGREEMENT #

Addendum to Agreement # \_\_\_\_\_ and any future supplements/schedules thereto, between City of Fruita, as Customer and **All Copy Products, Inc.**, as Owner ("Agreement"). The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Owner.

The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (i) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (ii) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (iii) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (iv) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (v) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period, from now until the end of the term of this Agreement; and (vi) your exact legal name is as set forth on page one of this Agreement.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed either automatically or by mutual ratification, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated or the term of this Agreement has been renewed, return the Equipment to us per the terms of the Agreement. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which event this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you.

**TITLE TO THE EQUIPMENT:** If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document."

Any provision in the Agreement stating that this Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "Unless the purchase option is \$1.00 or \$101.00, at the end of the initial term, this Agreement shall renew on a month-to-month basis under the same terms hereof unless you send us written notice at least 30 days before the end of any term that you want to purchase or return the Equipment, and you timely purchase or return the Equipment."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."



Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement and any supplements hereto. You authorize and ratify our filing of any financing statement(s) and the naming of us on any vehicle title(s) to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from this Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under this Agreement when due or you fail to perform in accordance with the covenants, terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentation to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

**All Copy Products, Inc.**

\_\_\_\_\_  
Lessor

\_\_\_\_\_  
Customer

**X**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.



## Amendment

This Amendment amends that certain agreement and State and Local Government Addendum attached thereto by and between All Copy Products, Inc. ("Owner") and City of Fruita dba Fruita Community Center ("Customer") which agreement is identified in the Owner's internal books and records as Agreement No. 1643112 (the "Agreement"). All capitalized terms used in this Amendment, which are not otherwise defined herein, shall have the meanings given to such terms in the Agreement.

Owner and Customer have mutually agreed that the following modifications be made to the Agreement:

1. The sentence in the section entitled "**AGREEMENT**" which reads "You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed Equipment ("Agreement") and supersedes any purchase order or outstanding invoice," is hereby deleted in its entirety and replaced with the following:

"You agree to all of the terms and conditions contained in this Agreement, the Addendum attached hereto, and any supplement(s), which together are a complete statement of our Agreement regarding the listed Equipment ("Agreement") and supersede any purchase order, outstanding invoice, request for proposal, response or other related documents."

2. The sentence in the section entitled "**AGREEMENT**" which reads "The term will be extended automatically for successive 12 month terms unless you send us written notice between ninety (90) and one hundred fifth (150) days before the end of any term of your intent to return the Equipment AND complete the return within 30 days of the end of term," is hereby deleted in its entirety and replaced with the following:

"The term will be extended automatically month to month unless you send us written notice thirty (30) days before the end of any term of your intent to return the Equipment AND complete the return within 30 days of the end of term."

3. The sentence in the section entitled "**LOCATION OF EQUIPMENT**" which reads "You will keep and use the equipment only at your address shown above and you agree not to move it unless we agree to it," is hereby deleted in its entirety and replaced with the following:

"You will keep and use the equipment only at your address shown above and you agree not to move it unless we consent, which consent shall not be unreasonably withheld."

4. The sentence in the section entitled "**LOSS OR DAMAGE**" which reads "You are responsible for the risk of loss or for any destruction of or damage to the Equipment," is hereby deleted in its entirety and replaced with the following:

"Except for loss or destruction caused by our gross negligence or willful misconduct, you are responsible for the risk of loss or for any destruction of or damage to the Equipment."

5. The following sentence is hereby deleted from the section entitled "**INDEMNITY**":

"You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment."

6. The following sentence is hereby deleted from the section entitled "**TAXES AND FEES**":

"You also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law and reimburse us for all costs involved in completing this transaction."

7. The sentence in the section entitled "**ASSIGNMENT**" which reads "We may sell, assign, or transfer this Agreement without notice," is hereby deleted in its entirety and replaced with the following:

"We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

8. The following is hereby added as the second sentence in the section entitled **"DEFAULT AND REMEDIES"**:

"You will also be considered in default if: (i) you fail to perform in accordance with the terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentations to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy."

9. The following sentence is hereby added to the section entitled **"DEFAULT AND REMEDIES"**:

"Any remedies made by you shall be limited to the extent permitted by law and legally available funds."

10. The following sentence is hereby added to the end of the section entitled **"DEFAULT AND REMEDIES"**:

"Notwithstanding the foregoing, neither party shall be liable for indirect, incidental, special, consequential or punitive damages, including but not limited to lost profits."

11. The sentences in the section entitled **"CONSENT TO LAW, JURISDICTION, AND VENUE"** which read "This Agreement shall be deemed fully executed and performed in the state of Owner or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Owner or its Assignee shall bring any judicial proceeding in relation to any matter rising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the State of the Owner or its Assignee's principle place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Owner or its Assignee," are hereby deleted in their entirety and replaced with the following:

"This Agreement shall be deemed fully executed and performed in the state of Colorado and shall be governed by and construed in accordance with its laws. If the Owner or its Assignee shall bring any judicial proceeding in relation to any matter rising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in Mesa County, Colorado."

Owner and Customer have mutually agreed that the following modifications be made to the State and Local Government Addendum:

12. The following sentences are hereby added to the beginning of the section entitled **"NON-APPROPRIATION OR RENEWAL"**:

"Both parties understand and acknowledge that Customer is subject to Article X, §20 of the Colorado Constitution ("TABOR"). Neither party intends to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of Customer are expressly dependent and conditioned upon the continuing availability of funds beyond the term of Customer's current fiscal period ending upon the next succeeding December 31."

13. The sentence in the section entitled **"NON-APPROPRIATION OR RENEWAL"** which reads "You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which even this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you," is hereby deleted in its entirety and replaced with the following:

"You shall notify us in writing within fifteen days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which even this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you."

Except as specifically modified by this Amendment, all other terms and conditions of the Agreement remain in full force and effect. If, and to the extent there is a conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control. 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. This Amendment is not binding until accepted by Owner.

All Copy Products, Inc.  
Owner

City of Fruita dba Fruita Community Center  
Customer

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

By: **X** \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Print Name & Title

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

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