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2011-0238

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

I. PARTIES

A. Address

THIS AGREEMENT FOR THE SUPPLY, MANAGEMENT AND SUPPORT SERVICES OF MULTIFUNCTION OFFICE MACHINES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City, and **XEROX CORPORATION** ("Contractor"), a New York corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Xerox Corporation
1001 West Loop South, Suite 500
Houston, TX 77027
Phone: (713) 888-6366
Attention: Ms. Pamela Bynum
Client Delivery Manager

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

XEROX CORPORATION

By: James Cantrell Rafael E. Figueroa
Name: James Cantrell Rafael E. Figueroa
Title: VP, Business Vice President General Manager Development

CITY OF HOUSTON, TEXAS
Signed by:

By: Annise D. Parker
Mayor Brenda L. Murphy

ATTEST (SEAL/WITNESS)

By: Diane Hulslander
Name: DIANE HULSLANDER
Title: NOTARY

DIANE HULSLANDER
Notary Public, State of Texas
My Commission Expires
May 14, 2013

ATTEST/SEAL:

City Secretary

APPROVED:

City Purchasing Agent

COUNTERSIGNED BY:

City Controller

APPROVED AS TO FORM:

Sr. Assistant City Attorney
L.D. No. 0371000199001

DATE COUNTERSIGNED:

4/7/11

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"Application Software" is any Xerox branded software that is marketed as an optional software package that when added to a Xerox-branded product increases the products functionality and/or features.

"Assessment" means the gathering of information by Contractor to make recommendation for Device placement and procurement based on needs and cost saving opportunities as requested by the City.

"Business Day" means an eight-hour City work day.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Department" means a City of Houston Department that through the City Purchasing Agent orders a Device under this Agreement for use by End-Users in that Department.

"City Purchasing Agent" means the City's Purchasing Agent or the person he or she designates.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor Work" includes any work prepared by or processes developed by Contractor, its employees, and/or agents that are not specifically designated as works for hire.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Customer Assets" include any hardware, software, other physical object, and/or workspace owned, lease, rented, licensed and/or controlled by the City

"Customer Content" means any document, drawing, design, form, content developed or licensed by the City,

"Devices" mean machines provided by Contractor under this Agreement that can be used by City End-Users to copy, scan, network print, and fax documents, with finishing features such as duplexing, collating, and stapling, and when connected to the City's computer network allow City End-Users to send commands from their personal computers to the Devices to perform such functions on the Devices from their own workstations.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

"Documentation" means all manuals, brochures, specifications, information and software descriptions in electronic, printed, and/or camera-ready form, and related materials customarily provided by Contractor for use as part of the service

"End-User" means an employee or agent of the City who uses the Devices provided by Contractor under this Agreement.

"Impression" means a hard copy of a document made by a City End-User on a Device provided by Contractor under this Agreement, including a facsimile and scan confirmation page provided by the Device and a facsimile page received over a Device.

"Installation Sites" mean City locations listed in Exhibit "A-1" where Contractor shall provide Devices under this Agreement and any other City locations where City Purchasing Agent requires Contractor to install Devices under this Agreement.

"Monthly Cost" is the fixed monthly equipment fee for each model Device proposed by Contractor in response to City's RFP S30-T23683 and the Monthly Cost for the total number of Devices in use at various City Installation Sites under this Agreement equals the Monthly Minimum Charge payable by City to Contractor under this Agreement.

"Monthly Minimum Charge" is the monthly equipment fee for Devices installed in the City under this Agreement and is the total of the Monthly Cost for each Device installed in the City under this Agreement.

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Output of Services" constitutes electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Contractor specific to and for City per the applicable Scope of Work, but shall not include software.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Xerox Tools" means proprietary tools used by Contractor to provide the Services, and any modifications, enhancements, improvements and derivative works thereof.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

B. Coordinate Performance

Contractor shall coordinate its performance with the City Purchasing Agent and other persons that the City Purchasing Agent designates. Contractor shall promptly inform the City Purchasing Agent and other person(s) of all significant events relating to the performance of this Agreement.

C. Personnel of Contractor

Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the City Purchasing Agent.

D. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

E. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR

CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

F. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

(1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

(2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

(3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO $500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

G. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND

DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

H. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

I. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

(a) a description of the indemnification event in reasonable detail,

(b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

J. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies, except Professional Liability and Workers' Compensation, must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better,

according to the most current edition A.M. Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

(1) Commercial General Liability insurance including Contractual Liability insurance:

- $500,000 per occurrence; $1,000,000 aggregate

(2) Workers' Compensation including Broad Form All States endorsement:

- Statutory amount

(3) Professional Liability

- $1,000,000 per occurrence; $1,000,000 aggregate

(4) Automobile Liability insurance

- $1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance polices must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that Contractor shall give 30 days written notice to the City before any policy is canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the City Purchasing Agent, at his or her sole discretion, may

(1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

(2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

K. Warranties

Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods it furnishes, Contractor warrants:

(1) that all items are free of defects in title, design, material and workmanship,

(2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

(3) that each replacement item is either newly manufactured or factory produced new model equipment of comparable age and usage, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces, and

(4) that no item or its use infringes any patent, copyright, or proprietary right.

L. Replacement Warranty

Contractor warrants that during the term of this Agreement, all Devices Contractor provides to the City under this Agreement shall be free from defects in workmanship and materials and that at any time during the term of this Agreement, under Contractor's Total Satisfaction Guarantee policy, Contractor shall replace defective Devices which fail to function for any reason upon being notified by the City Purchasing Agent.

Contractor's Total Satisfaction Guarantee provides that, if the City is not totally satisfied with any of Contractor's equipment, Contractor will, at the City Purchasing Agent's request, replace it without charge with an identical model, or, at the option of Contractor, a model with comparable features and capabilities.

M. Confidentiality

a) Protection of City's Interest. Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the City Purchasing Agent authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

b) Protection of Contractor's Interest. Developments and Pre-Existing Work (collectively "Xerox Work"), Xerox Tools as defined herein, shall be considered Xerox's Confidential Information. "Developments" are items created by Contractor employees, agents and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship, and "Pre-existing Work" are items used or incorporated into a Deliverable or developed or acquired by Contractor independent of performing the Services.

N. Use of Work Products - City may use all documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the City Purchasing Agent on request. Within five working days after this Agreement terminates, Contractor shall deliver to the City Purchasing Agent the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

O. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the City Purchasing Agent of any suspension, revocation, or other detrimental action against his or her license.

P. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

Q. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "E".

R. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

(a) a copy of its drug-free workplace policy,

(b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F," together with a written designation of all safety impact positions and,

(c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "H."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

S. Minority and Women Business Enterprises

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The

objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11 % of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

(1) subcontracts and supply agreements with Minority Business Enterprises,

(2) subcontracts and supply agreements with Women's Business Enterprises, and

(3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding arbitration in Houston, Texas, if directed to do so by the Affirmative Action Director. All agreements must contain the terms set out in Exhibit "D".

T. Contractor's Performance

Contractor shall make End-User satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with End-Users when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering

the highest quality of service to the public. If, in the City Purchasing Agents opinion, Contractor is not interacting in a positive and polite manner with End-Users, he or she shall direct Contractor to take all remedial steps to conform to these standards.

U. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

IV. DUTIES OF THE CITY

A. Payment Terms

City shall pay and Contractor shall accept a Monthly Minimum Charge equal to the Monthly Cost (set out in Exhibit "B") of all Devices in use at the City in that month. Contractor shall prorate the Monthly Cost of Devices in use for a portion of the month. In addition to the applicable Monthly Minimum Charge, City shall pay Contractor $0.0065 per black and white Impression and $0.0609 per color Impression made on the Devices in use in the City during that month. The rate per Impression for both black and white and color Impressions is valid for the entire term of this Agreement and the rate per Impression is not subject to any volume commitment on the part of the City either in terms of the total number of Impressions made on the Devices or the total number of Devices in use in the City at any given time during the term of this Agreement.

1. Addition of Devices

a) In the event a City Department makes a request to the City Purchasing Agent for a Device, then the City Purchasing Agent shall direct Contractor to install the

Device model selected by the City Department at the City Installation Site identified by the Department. Contractor shall add the Device model selected by the City Department and as of the date that the Device is installed for use in the requesting City Department, that Device shall be subject to the terms of this Agreement. The City shall pay the Monthly Cost as part of the Monthly Minimum Charge beginning on the date the City Department requesting the Device uses the Device to make Impressions. The City shall pay charges of $0.0065 per black and white Impression and $0.0609 per color Impression made on that Device from the date that the Device is used by the Department to make such Impressions.

b) Subject to the allocation of funds and the limits set out in §252.048 of the Texas Local Government Code, the price for the additional service shall be negotiated between the Parties and any such additions shall take effect on the date stated in the written request from the City.

c) Should an added product no longer become available for order-taking, Contractor may, with the City's approval, replace the equipment with a similar model having the same or similar features. All such equipment replacements will be subject to the contract services and charges or rates as specified in Exhibit "B" Fee Schedule.

d) In the event an additional service or equipment is not identical to any item already under contract, the charges therefore will then be at the Contractor's normal and customary charges or rates for the similar equipment, locations and/or services classified in Exhibit "B" Fee Schedule, subject to the allocation of funds.

2. Deletion of Devices

At any time during the term of this Agreement, the City Purchasing Agent may direct Contractor in writing to delete a Device provided by Contractor under this Agreement. On receiving the notice, Contractor shall discontinue providing the City with that Device at the City Installation Site identified in the notice effective the day Contractor receives the notice. After Contractor submits an invoice to City with the Monthly Cost for that Device as part of the Monthly Minimum Charge paid by City and for Impressions made on that Device prior to the date of the City Purchasing Agent's notice, Contractor shall exclude both the Monthly Cost for the deleted Device from the City's Monthly Minimum Charge and all charges for Impressions on the Device deleted by City Purchasing Agent from invoices submitted after the Monthly Cost and charges for Impressions on that Device prior to the effective date of the notice have been paid by City.

B. Performance Requirements & Credits for Unavailability of Devices

Contractor shall be responsible for meeting the requirements set forth in Exhibit "A", Scope of Services. Contractor's compliance with the Performance Requirements detailed in Exhibit "C" shall be the measure of whether it meets the requirements set out in Exhibits "A" and "C". Contractor shall credit the City for periods when Devices are unavailable for use by City End-Users because Contractor was unable to respond to service calls within four hours or because upon responding to service calls, Contractor's technicians were unable to complete repairs within four hours of their arrival. Contractor shall calculate the average Impressions made by City End-Users during a given Business Day by calculating the total volume of monthly Impressions on that Device during the previous month, dividing the same by the number of

Business Days during that month and dividing the same by eight to arrive at the average number of Impressions made on that Device in an hour. Contractor shall calculate the total number of Impressions that would have been made on that Device during the hours that the Device was unavailable to City End-Users and provide City with a credit at the rate of $0.0065 per black and white and $0.0609 per color Impression in the following month's invoice to the City.

C. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The City Purchasing Agent will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

D. Method of Payment

The City shall pay Contractor on the basis of monthly invoices submitted by Contractor by electronically reading the meter readings of Impressions made on all Devices connected to the network and manually reading the same on Devices that are not so connected, less credits as set out in IV, B above, if any. Contractor shall submit such invoices to the City Purchasing Agent for validating the readings and for approval. In addition to the readings of Impressions, Contractor shall list the applicable Monthly Cost for each Device and show the applicable Monthly Minimum Charge for that month on each invoice. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

E. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the City Purchasing Agent shall temporarily delete the disputed item and pay the remainder of the invoice. The City Purchasing Agent shall promptly

notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

F. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **$1,200,000.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

$ _____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

G. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where the Installation Sites are located together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement ("Initial Term").

B. Renewals

Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions, except that the Monthly Cost for each Device Model shall be reduced as provided in Exhibit "B" for each of the renewal terms. If the City or

the City Purchasing Agent chooses not to renew this Agreement, the City Purchasing Agent shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current term.

If the Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

Upon termination of the Agreement, all Devices shall be removed from all Installation Sites, regardless of when they are installed, and the City has no further obligation to pay for the Devices after they are removed.

C. Termination for Convenience by City

The City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV, A unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S

TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

If Contractor defaults under this Agreement, the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

(1) Contractor fails to perform any of its duties under this Agreement;

(2) Contractor becomes insolvent;

(3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

(4) a receiver or trustee is appointed for Contractor.

If default occurs, the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:

(a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

(b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City Purchasing Agent will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the City Purchasing Agent is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 business days from the date performance is affected, the City Purchasing Agent may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The City Purchasing Agent is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the City Purchasing Agent, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Purchasing Agent is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining

Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the City Purchasing Agent.

O. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Device passes from Contractor to City upon the equipment's installation / acceptance by the City.

P. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

Q. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of

assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

R. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

S. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

T. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY

CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT "A"

SCOPE OF SERVICES

1. Contractor warrants that the Device models listed in Exhibit "B" with the technical specifications for each model set out in Exhibit "A-2" proposed by Contractor in response to City's RFP S30-T23683 meet the City's requirement for multi-function Devices that:

    a) are technically the latest models in each equipment category

    b) offer cost benefits to the City through low recurring charges and high productivity;

    c) can be used continuously without compromising quality at various City locations;

    d) can copy, scan and print documents (from network too) at high speeds while retaining resolution quality without the machines breaking down;

    e) can scan to file and e-mail;

    f) have enough capacity to be deployed at various City Installation Sites according to usage patterns; and

    g) can fax documents and offer features such as duplexing, collating and stapling.

2. Contractor also warrants that the Device models (including the software that is loaded on such models) proposed by Contractor in response to City RFP S30-T23683 are already in use in the market and are not models that are being tested for release.

3. Contractor shall install Devices at City Installation Sites as detailed in Exhibit A-1 that can copy, scan and print.

4. Contractor shall deliver and install the Devices at City Installation Sites listed in Exhibit "A-1", 60 days from the date the City Purchasing Agent issues Contractor the Notice to Proceed letter.

5. After installation, Contractor in consultation with the City Purchasing Agent shall monitor Device usage at all City Installation Sites for a period of 60 days and evaluate usage patterns to see if some Devices need to be moved to other City Installation Sites or if other models of Devices (based on the Reliability Performance Range of Device models set out in Exhibit "B") need to be installed at some City Installation Sites to best meet the needs of City End-Users. Contractor will coordinate and relocate equipment within the same building that does not require any unique rigging requirements. Contractor will provide a separate move charge for any move within the same building that requires unique rigging support or any equipment moves between buildings, subject to the City Purchasing Agent's review and approval of the charge and the allocation of funds..

6. During the term of this Agreement, Contractor shall work with the City Purchasing Agent to redeploy or reassign the Devices based on the needs of the City Departments where such Devices are installed. Contractor shall have enough Devices in its inventory to enable Contractor to add Devices or replace older Devices on which the number of Impressions made exceed the Performance Reliability Range for that Device model set out in Exhibit "B" or malfunctioning Devices with new units based on the needs of City End-Users.

7. Contractor shall provide the City Purchasing Agent with periodic reports and briefings on Device usage and whether the Performance Requirements listed in Exhibit "C" are being met by Contractor. Contractor's representatives assigned to the City account shall have quarterly meetings with the City Purchasing Agent to discuss Performance Requirements issues raised by the City Purchasing Agent and brief City Purchasing Agent about measures taken to address such issues as well as to suggest ways to improve Device usage trends, Device availability, technical support issues, response times and ways to improve the productivity of Devices in City locations. The City will maintain a database on each Device to track meter readings on each Device, the location of the Device and the City Department's use of that Device.

8. Contractor shall provide all newly manufactured or factory produced new model, digital equipment and shall ensure that it does not deploy any used, refurbished, or repackaged Devices at any City Installation Site under this Agreement.

9. Contractor shall ensure that all Devices it provides to City under this Agreement meet the requirements of the City's Information Technology Policy regarding networked Devices and software used to run such Devices.

10. **DEVICE SOFTWARE**

a) Contractor warrants that Contractor's Xerox Office Services Software Suite proposed by Contractor in response to City's RFP S30-T23683 meets the City's requirement for Device software that:

i. manages and supports the Devices;

ii. reports on usage patterns, troubleshoots and alerts when the Device needs to be serviced;

iii. makes the Device user-friendly for data collection;

iv. minimizes contract administration costs; and

v. optimizes Device availability and performance.

b) Specifically, Contractor warrants that Contractor's Xerox Office Services Software Suite will:

i. enable authorized personnel to configure Devices, check Device status, troubleshoot problems, track print usage and change settings via a Web browser;

ii. allow for group-based management of many printers as if they were one;

iii. proactively monitor Device status and provide alerts on printer problems;

iv. track Device usage over time to find the best fit for Devices within the City; and

c) Contractor warrants that Contractor's Xerox Office Services Software Suite with the following hardware and software requirements meets the City's technical requirements:

i. Hardware Requirements

Installation Type	Mid to High End Configuration
Devices Monitored	400 or more networked output devices
Processor (AMD equivalent processors are supported)	Intel® Pentium 4® Processor at 3 GHz or Intel Core 2 duo
RAM Memory	2GB or more
Storage	Minimum 3GB for basic monitoring, additional space may be required for larger or more complex deployments.

The City will provide a server, hardware, or virtual, with virus protection.

ii. Pre-Installation Software Requirements:

Database Requirements:

- Microsoft SQL Server 2005 Express SP2
- Microsoft SQL Server 2005 SP2
- Microsoft SQL Server 2008

***Note**: An Administrator account on the SQL server is needed during installation to create the XDM databases. It is not needed beyond installation. A user account with only Database Owner (dbo) permissions for the XDM databases will be created during the installation.*

Supported Operating Systems:

- Windows Server 2008® x86, x64 and R2 x64

- Windows Server 2003® x86 SP2 and x64 SP2 (Service Pack 2 is required)

Required Windows Components:

- Application Server Console
- ASP.NET
- Network COM+ access
- Internet Information Services
  - Common Files
  - Internet Information Services Manager
  - WebDAV Publishing
  - World Wide Web Service

Other Components:

- MDAC 2.8
- Microsoft .NET® 3.5 (Must be installed prior to installation)
- ASP.NET 2.0 AJAX Extensions 1.0
- MSXML 6.0 (Microsoft Core XML Services)
- Internet Explorer® 6.0 or higher

***Note**: Internet Explorer Enhanced Security Configuration should be disabled on the XDM server.*

Running Services Required:

- ASP.NET State Service (Manual Start State)
- COM + Event System

- COM + System Application
- Distributed Transaction Coordinator (Also referred to as MSDTC)
- IIS Admin Service
- Internet Information Service (IIS)
- Windows Print Spooler
- Remote Procedure Calls
- Windows Management Instrumentation
- World Wide Web Publishing Service
- MS SQL Server
- Xerox Discovery Service (XDM Service)
- Xerox Scheduler Service (XDM Service)
- Xerox SDK Service (XDM Service)

Note: *Xerox Device Manager does NOT use the Windows SNMP service so it should be disabled if not needed by other applications.*

iii. Post-Installation Requirements

XDM Run-As Account (Service Account):

- Local administrator permissions. (Created during installation)
- Depending on services Xerox will perform as part of the future state management program, a trusted domain account may be required with Domain Users, Print Operators, and/or Local Administrator on certain servers.

- **SMTP Mail Server:**
- SMTP Server Name or IP Address
- SMTP Port (default is port 25)
- From Email Address (what email address should be used when sending outgoing mail)
- SMTP Security Settings (Username and password if required to send mail)

Proxy Server (if required):

- Proxy Server Name or IP Address
- Proxy Port
- Proxy Security Settings (Username, Domain and password if required by Proxy Server)

***Note**: Xerox Device Manager is NOT able to utilize scripts for proxy server settings.*

Device Discovery (IP Sweep):

- IP Subnet addresses to be scanned for output devices
- Subnet Masks

***Note**: Xerox Device Manager is a vendor neutral networked out device management tool.*

***Note**: Xerox Device Manager can use multiple methods for discovering output devices. Our preferred method is to use an IP Sweep which sequentially scans a subnet range looking for SNMP compliant print devices.*

iv. **Network Ports and Traffic.** For a full Xerox Office Services implementation, Xerox Device Manager will require access to the Internet via SSL for integration with Xerox Services Manager.

Common Ports Used by XDM:

Port Number	Protocol	Comment
80	HTTP	Default web server access port for content. Can be changed by IIS administrator.
443	HTTPS	Default secure web server access port (SSL) if configured.
161	SNMP	Network port for SNMP for device communication.
162	SNMP TRAP	Default network port for SNMP for device trap communication.
25	SMTP	Default outbound email used for email alerts and reporting status notifications from XDM.
135	RPC	Used for managing print servers and some job agent scenarios.
389*	LDAP	Used for Active Directory queries.
9100, 2105, 2000	TCP/IP	Print job submission, trouble-shooting printer test pages, device firmware upgrade.
139, 445*	TCP/IP	Print server administration and some operations with remote job agent.
445*	SMB	Used for job agent operations
n/a	ICMP	No port. Used for troubleshooting.
1433	SQL Server	Used for MS SQL Server communications.

*** Not required for most implementations.**

XDM Network Traffic Estimates:

Network Communication Type	Frequency*	Average Data Transfer
Device Discovery	Twice per month	31KB/Printer 1KB/Non-printer
Status Polling	Once per hour (Business)	13KB/Printer

Historical Data Gathering	Once per day	5KB/Printer
Job Tracking (If used.)	As jobs are completed	4KB/Print Job

**Note: Frequency of data transfers is fully configurable and is dependent on customer requirements and service level agreements*

11. **TRAINING**

a) Contractor shall provide Devices with user interface panels that City End-Users are already familiar with resulting in a shorter learning curve.

b) During the 60-day period when Contractor installs all Devices under this Agreement, Contractor shall provide the City with a team of trainers to train City End-Users in operating the new Devices located in their offices.

c) During the term of this Agreement, Contractor shall provide a dedicated trainer to schedule training sessions for City End-Users upon receiving notice from the City Purchasing Agent that a City Department has requested for such training for End-Users identified by that Department or when new Devices are installed at a City Installation Site or when Contractor upgrades Devices supplied under this Agreement.

d) Contractor's dedicated trainer shall conduct such End-User training sessions either on-line or in person, for groups of City End-Users or one-on-one sessions as directed by the City Purchasing Agent.

Key Operator Training

e) Contractor's trainers shall provide Key Operators identified by City Departments to handle such duties with hands-on training in how to:

i. use the features on the Device and the functions of each such feature;

ii. install print queues;

iii. install and utilize the print driver on the Device;

iv. submit print jobs from a single network client;

v. use the features of the print drive so that they can use advanced features such as cascade printer driver installation and configuration to remaining network clients based on requirements;

vi. use the Web-based printer access feature;

vii. validate key application settings; and

viii trouble shoot problems.

End-User Training

f) Contractor shall provide City End-Users with training in how to operate the Devices and maintain the Devices by replenishing toner, developer, staples and by clearing paper jams.

g) Contractor shall provide web links to training materials for each Device that contains instructions on the basic operation and maintenance of the Device titled, "Training and Information" user guide.

h) In addition, Contractor's dedicated trainer shall provide on-site training sessions of 1.5 to 2.5 hours that will:

i. instruct End-Users on how to use the Training and Information CD ROM;

ii. give End-Users a product overview including Device features and their functions;

iii. review the Copy features on the Device especially as it pertains to documents most used by End-Users;

iv. review the functions of the print driver;

v. review the scanning capability of the Device;

vi. show how to load paper and media;

vii. provide an overview of general maintenance tasks; and

viii. demonstrate how to troubleshoot.

System/Network Administrator Training

i) Contractor shall provide training to City IT staff on the software and the networking features on the Devices, as requested.

12. TECHNICAL SUPPORT

Managed Services Help Desk

a) Contractor shall provide the City with its Managed Services Help Desk staffed with its Customer Service Representatives to support City End-Users in the various departments where the Devices are located.

b) Contractor's Managed Services Help Desk will take calls from End-Users on both printer and Device problems. Contractor's Customer Service Representatives shall assess the problem and dispatch either a DocuCare Associate or service technician (see (g) & (k) below) to resolve the problem.

c) Contractor warrants that Contractor will answer 95% of all calls to this help desk from City End-Users within 2 minutes.

d) Contractor shall provide City End-Users at City Installation Sites with the option of calling Contractor's help desk via a toll free telephone number, or via facsimile or e-mail.

e) Contractor shall provide the City Purchasing Agent with comprehensive monthly reports on the calls to its Managed Services Help Desk from City End-Users that detail the following:

i. Total number of service calls

ii. Number of remote call solves

iii. Number of technician dispatches

iv. Downtime per machine

v. Meter reads

vi. Total number of supplies order calls

vii. Number of supplies ordered per serial number

viii. Supplies costs (chargeable and non-chargeable)

ix. Number of issues escalated

f) Contractor shall provide three on-site trained technical support specialists ("DocuCare Associates") to respond to Device problems as and when they arise.

g) Contractor's DocuCare Associates shall conduct preventive maintenance procedures to maximize equipment uptime by inspecting the Devices on a scheduled basis.

h) Contractor's DocuCare Associates shall provide key operator functions such as regular cleaning of platen glass, checking paper and toner supplies to reduce Device downtime.

i) In addition to the three DocuCare Associates, Contractor shall provide a fourth Associate who shall troubleshoot any problems with the software and networked Devices upon being notified by the City's IT staff.

Service Calls

j) Contractor shall provide the City with a full-service maintenance plan to cover all the Devices for parts, labor and time necessary to conduct repairs.

k) Under the plan, Contractor shall provide service technicians from its facilities that are located closest to the City Installation Site where the Device requires to be repaired or serviced.

l) Contractor shall assign a Team Leader for each Device model to allow the Team Leader to dispatch a service technician to respond to the City's request for repairs.

Supplies

m) Contractor shall supply copy/print cartridges, toner and developer containers, and other supplies to provide the City with Devices designed to:

- provide maximum uptime
- reduce machine contamination
- decrease unscheduled service calls

- eliminate document waste

n) City Departments shall ship the cartridges and toners in their containers using prepaid postage labels provided by Contractor to enable Contractor to recycle these items under its Green World Alliance Reuse/Recycle Program.

o) Staples, binding tape, paper and other specialty supply items shall be provided by the City.

13. COMMUNICATIONS NETWORK COMPATIBILITY/NETWORK INFRASTRUCTURE

Contractor warrants that the Devices provided under this Agreement are compatible with the City's network and meet the technical requirements set out below:

a) Fast Ethernet internal print server;

b) 802.11b wireless internal print server;

c) Bluetooth wireless print adapter;

d) USB interface;

e) Connectivity for USB or serial or LocalTalk or parallel port; and

f) 10/100 Base T network post options.

14. ENTERPRISE APPLICATION

Contractor warrants that Contractor's proposed software, Xerox Office Services Software Suite, shall provide the City with an enterprise-wide application that:

a) is compatible with Windows 2000, XP, 2003, 2008 and NT;