



DATE: November 6, 2013

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office/Information Technologies

SUBJECT: **MANAGED SERVICES AGREEMENT FOR LEASED XEROX MACHINES AND OWNED PRINTERS**

SYNOPSIS

Staff recommends that the City Council approve a five-year managed services agreement with Xerox Corporation, of Monroe County, New York, in a total contract amount not to exceed \$1,935,300, which includes the lease payments for 43 Xerox machines; the services of a full time Xerox employee to manage the toner replacement, machine maintenance, automated monitoring and repairs of the leased Xerox fleet and 248 City-owned printers; and authorize the City Manager to execute the agreement.

BACKGROUND

Currently, one full time employee in the Information Technology Division (I.T.) is dedicated to monitoring the fleet of 43 leased Xerox machines and 248 City-owned printers to ensure they are functioning properly along with placing orders for toner cartridges and replacement components, inventorying the toner/components, and replacing toner cartridges for all of the machines. A significant amount of drive time is also required to visit City facilities to replace toner and troubleshoot machine repair requests.

The current monitoring software only provides a machine error alert for the Xerox machines. The I.T. analyst is dependent on the internal customer to submit a Customer Care Support Request to be alerted of a potential City-owned printer repair. The analyst must drive to the actual printer location to troubleshoot the problem.

The existing monitoring software provides toner status for all copiers and printers. The software provides a toner alert when there is 20 percent (on average) toner remaining in the print cartridge. The I.T. analyst must physically check the toner level at the machine to ensure a toner cartridge is replaced when the toner level reaches 5 percent or less. It is not cost effective to replace a printer toner cartridge at a remaining toner level of 20 percent.

For printers owned by the City, the I.T. analyst is responsible to either repair the machine or contact a repair vendor to facilitate the repair. Depending on the troubleshooting results it may be necessary to replace a printer either from an inventory of

gently used machines or replace the printer. In any of the listed scenarios, at least one additional trip is necessary to replace a failed printer.

I.T. met with several leading copier/printer vendors to gain an understanding of their approach to Managed Print Services (MPS). Through the MPS discussion process, Xerox provided a solution that would enable the City to replace thirteen (13) leased machines that will not be off-lease for another year, lower the lease cost and volume print cost of the 13 replacement machines significantly, and fold in existing leases of the thirty (30) existing copier/printers into a consolidated agreement.

An additional advantage to a contract with Xerox is that the existing 248 owned printers would not be required to be replaced. Some of the vendors that I.T. met with required the replacement of the printers to work with their tracking software.

Based on City Administrative Directive Procurement of Goods and Services (AD-21), Section IX, Procurement Clauses; Subsection F. Cooperative Purchasing Agreements - allows for the City of Oceanside to piggy-back onto an existing government contract for services. The services provided by the MPS agreement piggy-back through a cooperative purchasing provision included in The Cooperative Purchasing Network (TCPN) contract, Contract Number R5008, established in 2010.

All TCPN contracts are awarded by a lead public agency, using a competitive solicitation process consistent with applicable procurement laws and regulations. Each solicitation contains language that advises all suppliers that the contract may be used by other government agencies throughout the United States. This language is based on the lead jurisdiction "Joint Powers Authority", or "Cooperative Procurement Authority". TCPN is ISO certified with over 30,000 companies and agencies utilizing at least one TCPN contract.

ANALYSIS

The goal of participating in a managed print services contract is to utilize an on-site Xerox staff to provide proactive copier/printer management with web-based reporting tools to track print volumes, provide consumable management and break-fix management. These services will provide an additional benefit of increasing the level of customer service to City departments.

Some of the key aspects of the MPS are:

1. Consistent management of all copiers and printers utilizing automated web-based asset management software tools and reporting.
2. Break-Fix Management – Proactive break-fix alert and response process tools to maximize the productivity of the equipment, and the staff who use them. Machine issues are often fixed before the end users are aware of them.

3. Supply Management – Supply inventories are monitored and ordered automatically, requiring less manual tracking.
4. Account Management – Consolidated reporting in both electronic and hardcopy formats enables an I.T. analyst to monitor the device cost and performance metrics.

A major benefit of utilizing this MPS is cost savings.

It is anticipated that the annual savings will be \$17,952, \$89,750 for the life of the agreement.

The following information outlines the estimated cost savings by reducing the lease cost and the per copy/print cost of thirteen (13) leased replacement Xerox machines. The proposed annual cost savings more than off-sets the *\$4,910 paid per month for the on-site full-time Xerox staff member, printer consumable cost and the managed print services cost.

	Xerox Fleet Lease Cost Per Month (tax not included)	Xerox Monthly Copy/Print Cost (tax not included)	Printer Monthly Toner and Repair Cost	Total Monthly Cost	Savings	
Current Cost	\$17,276	\$8,125	\$2,800**	\$28,201		
Proposed Cost	\$15,275	\$6,520	\$4,910*	\$26,705		
Savings	\$2,001	\$1,605	-\$2,110	\$1,496	\$17,952	Annual
					\$89,750	5 Years

** Current cost of toner and printer repairs only.

The I.T. analyst that is currently performing the copier/printer maintenance functions will be able to focus on network system deployments, software upgrades and a list of projects that have been postponed due to staffing reductions required from previous budget years.

It is anticipated that the project will start within thirty days from the date the contract is signed. From the kickoff date, it is estimated that the start-up processes will take approximately 45 days to complete. From the implementation date, a timeline including project milestones and critical paths will be implemented and closely monitored by the City's project manager and the Xerox project manager.

FISCAL IMPACT

The total five year cost of the project is not to exceed \$1,935,300. Information Technologies is funding the project with available funds from FY 2013-14 through FY

2018-19. The available funds are in the Information Systems City Wide Copiers/Printers accounts 155158841.5335 and 155158851.5355 for FY 2013-14.

COMMISSION OR COMMITTEE REPORT

Not applicable.

CITY ATTORNEY'S ANALYSIS

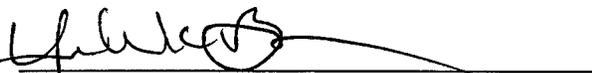
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a five-year managed services agreement with Xerox Corporation, of Monroe County, New York, in a total contract amount not to exceed \$1,935,300, which includes the lease payments for 43 Xerox machines; the services of a full time Xerox employee to manage the toner replacement, machine maintenance, automated monitoring and repairs of the leased Xerox fleet and 248 City-owned printers; and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



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Peter A. Weiss
City Manager

REVIEWED BY:

Michelle-Skaggs Lawrence, Deputy City Manager



Michael Blazenski, Interim Financial Services Director



Exhibits:

1. Services and Solutions Agreement
2. General Amendment



SERVICES AND SOLUTIONS AGREEMENT

THIS SERVICES AND SOLUTIONS AGREEMENT No. 7137718 ("SSA") is between City of Oceanside ("Customer") and Xerox Corporation ("Xerox").

1. **SCOPE AND STRUCTURE.** This SSA sets forth the terms and conditions under which Customer may establish one or more Services Contracts for the acquisition in the U.S. of Services, Maintenance Services and Deliverables from Xerox. Each Services Contract under this SSA constitutes a separate contract and will be assigned its own Services Contract Number consisting of the above SSA number followed by a three digit extension. Each Services Contract will be established when Customer submits and Xerox accepts the first SSO with a new Services Contract Number. Customer may add Services, Maintenance Services or Deliverables to an existing Services Contract by issuing additional Orders referencing the applicable Services Contract Number. Each Services Contract will consist of the applicable terms and conditions of this SSA, the first SSO and each additional SSO or SOW with the same Services Contract Number. A list of Xerox Equipment model numbers and associated accessories is part of this SSA as Attachment 1. Xerox may provide Services and/or Products through its U.S. affiliates. Capitalized terms are defined in Section 25 unless defined where first used.
2. **ORDERS.**
 - a. Orders may consist of SSOs, SOWs, and/or POs. Each Order must reference an applicable Services Contract Number. Unless otherwise provided in an SSO, terms and conditions of such SSO are applicable to all Orders constituting the applicable Services Contract. Customer POs are for order entry purposes only and will be subject solely to the terms and conditions of the applicable Services Contract, notwithstanding anything contained in any such PO at variance with or in addition to the applicable Services Contract.
 - b. Xerox may accept an Order either by its signature or by commencing performance. Xerox reserves the right to review and approve Customer's credit prior to acceptance of each Order. Customer authorizes Xerox (or its agent) to obtain credit reports from commercial credit reporting agencies.
 - c. Orders may be submitted by hard copy or, in the case of SSOs or POs, by electronic means, and those submitted electronically will be considered (i) a "writing" or "in writing"; (ii) "signed"; (iii) an "original" when printed from electronic records established and maintained in the ordinary course of business; and (iv) a valid and enforceable Order.
3. **TERM.**
 - a. This SSA is effective when signed by Xerox and, unless terminated by either party upon 90 days written notice, continues for 60 months. If this SSA expires or is terminated, each Services Contract will (i) remain in effect until the expiration or termination of all Orders constituting such Services Contract, and (ii) be governed by the terms and conditions of this SSA as if it were still in effect.
 - b. The term of each Order will be set forth in such Order. If an Order is terminated, the term of remaining Orders will continue unaltered.
 - c. Except as otherwise provided in an SOW or unless either party provides notice of termination at least 30 days before the end of its term, an Order will automatically renew on a month-to-month basis.
4. **PERSONNEL.** Xerox personnel engaged hereunder will comply with Customer's internal security and safety policies that (a) are provided to Xerox in writing, (b) are reasonable and customary, and (c) do not conflict with the applicable Services Contract. Customer will provide Xerox with reasonable prior written notice of such policies and any changes thereto. During the term of this SSA and for a period of 1 year thereafter, neither party will, directly or indirectly, actively solicit the employment of the other party's personnel (including their supervisors) and agents engaged under a Services Contract. Employment arising from inquiries received via advertisements in newspapers, job fairs, unsolicited resumes or applications for employment will not be considered active solicitation. The sole remedy for breach of this restriction is to receive payment, as liquidated damages and not as a penalty, from the breaching party equal to the individual's then current annual salary (or the fees paid to an agent in the previous 12 months), within 30 days of the start date of the individual. Xerox is an independent contractor hereunder.
5. **ELIGIBLE AFFILIATES.** Customer's Eligible Affiliates may acquire Services, Maintenance Services and Deliverables under this SSA. If an Eligible Affiliate establishes a Services Contract, it will be the "Customer" for the purposes of such Services Contract. If Customer divests an Eligible Affiliate, such divested entity is no longer eligible to establish any new Services Contracts or to submit any additional Orders under an existing Services Contract.
6. **PRICING, PAYMENT, AND TAXES.**
 - a. **PRICING.** Pricing will be as shown in an Order. Services requested and performed outside Customer's standard working hours will be at Xerox's then-current overtime rate.

- b. **PAYMENT.** Invoices are payable upon receipt and payment must be received within 30 days after the invoice date. For any payment not received within 10 days of its due date, Customer will pay a late charge equal to the greater of 5% of the amount due or \$25. Restrictive covenants will not reduce Customer's obligations. If the provision of Services, Products and/or Maintenance Services begins partially and/or early, Xerox will bill Customer on a pro rata basis, based on a 30-day billing month.
- c. **TAXES.** Customer will be responsible for all Taxes. Taxes will be included in Xerox's invoice unless Customer provides proof of Customer's tax exempt status.
7. **DEFAULT AND REMEDIES.** Customer will be in default if Xerox does not receive any payment within 15 days after the date it is due, or if Customer breaches any other obligation under this SSA, any Services Contract, or any other agreement with Xerox. If Customer defaults, Xerox, in addition to its other remedies (including the cessation of Services), may require immediate payment of (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of 1.5% per month, and (b) any applicable ETCs. Customer will pay all reasonable costs, including attorneys' fees, incurred by Xerox to enforce any Services Contract.
8. **CONFIDENTIAL INFORMATION.** Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (a) was in the public domain before, at the time of, or after the date of disclosure through no fault of the non-disclosing party; (b) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (c) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidentiality obligations set forth herein will expire 1 year after expiration or termination of this SSA or the last effective Services Contract hereunder, whichever is later; provided however, confidentiality obligations with respect to Xerox Work, Xerox Tools and Xerox Client Tools will not expire unless (a), (b) or (c) above become applicable thereto. The parties do not intend for Customer to disclose confidential technical information hereunder, including, but not limited to, computer programs, source code, and algorithms. Customer will only disclose the same pursuant to a separate written agreement. Upon expiration or termination of this SSA or the last effective Services Contract hereunder, whichever is later, each party will return to the other or, if requested, destroy, all Confidential Information of the other in its possession or control, except such Confidential Information as may be reasonably necessary to exercise rights that survive termination of this SSA.
9. **INTELLECTUAL PROPERTY.** Customer represents and warrants that (a) it owns the Customer Content and Customer Assets or otherwise has the right to authorize Xerox to use same to perform Services, and (b) Customer Content will not contain content that (i) is libelous, defamatory or obscene, (ii) violates any applicable laws, regulations, or (iii) infringes any third party rights. Customer acknowledges and agrees that Xerox does not undertake any obligation or duty whatsoever to determine whether Customer Content may be duplicated without violating a third party's copyright. Xerox, its employees, agents and/or licensors will at all times retain all rights to Xerox Work, Xerox Client Tools and Xerox Tools and, except as expressly set forth herein, no rights to Xerox Work, Xerox Client Tools or Xerox Tools are granted to Customer. If required for royalty reporting purposes, Xerox may disclose Customer's name and address to the third party licensor of certain Xerox Tools. Xerox Tools will be installed and operated only by Xerox. Customer will have access to data and reports generated by the Xerox Tools and stored in a provided database as set forth in the applicable SOW, but Customer will have no rights to use, access or operate the Xerox Tools. Xerox may remove Xerox Tools at any time in Xerox's sole discretion, provided that the removal of Xerox Tools will not affect Xerox's obligations to perform Services. If Xerox Client Tools are included as part of the Services, they may be used by Customer only in conjunction with such Services. Customer agrees not to decompile or reverse engineer any Xerox Work, Xerox Client Tools or Xerox Tools. Xerox grants Customer a non-exclusive, perpetual fully paid-up, worldwide right to use, display and reproduce Xerox Work and Documentation only as required for use of the Services and Deliverables for Customer's customary business purposes, and not for resale, license and/or distribution outside of Customer's organization. Customer may not sublicense any rights granted to Customer hereunder, but may authorize a third party ("Designee") to use such rights, solely for Customer's benefit and Customer's internal business purposes. Any Designee operating or maintaining the delivered solution must be subject to written confidentiality obligations with respect to Confidential Information that are no less restrictive than those set forth in this SSA. Output of Services is Customer's sole and exclusive property and Xerox will have no rights therein, except as may be required for Xerox to perform Services. Assessments are provided for Customer's internal business use only, and not for resale, license and/or distribution outside of Customer's organization and the implementation of Assessments may not be performed by any third party. Except as expressly set forth in this Section, no other rights or licenses are granted to Customer. Any rights or licenses that are granted to Customer will immediately terminate if Customer defaults with respect to any of Customer's obligations related to such rights or licenses. Xerox reserves the right to terminate such rights or licenses if Customer defaults under any other obligation under a Services Contract.

10. CUSTOMER RESPONSIBILITIES.

- a. Customer will (i) provide the Customer Assets that Xerox needs to perform the Services and (ii) grant sufficient rights to enable Xerox and its agents to use all Customer Assets and Customer Content.
- b. During the term of an Order, Customer will permit access to Customer personnel that Xerox needs to perform the Services.
- c. Equipment prices include standard delivery charges for all Equipment and, for Equipment for which Xerox retains ownership, standard removal charges. Non-standard delivery or removal charges will be at Customer's expense.
- d. Customer will legally dispose of all hazardous wastes generated from use of Third Party Hardware and associated supplies.

11. EARLY TERMINATION.

- a. Equipment. Equipment included in an Order is being provided for the entire term of the Order. If, prior to the expiration of an Order, Customer terminates Equipment or requires Equipment to be removed or replaced, or Xerox terminates the applicable Order due to Customer's default, Customer will pay all amounts due as of the termination date and the ETCs set forth in the applicable Services Contract.
- b. Services. Unless otherwise set forth in an SOW, Customer may terminate or reduce any Services upon 90 days prior written notice without incurring ETCs. Notwithstanding the foregoing, if any Services are terminated (i) by Xerox due to Customer's default, or (ii) by Customer and Customer acquires Services from another supplier within 6 months of the termination of such Services, Customer will pay all amounts due as of the termination date and ETCs equal to the then current MMC for the terminated or reduced Services, multiplied by the number of months remaining in the term of the applicable Order, not to exceed 6 months.
- c. Amortized Services and Third Party Funds. The cost of certain Services, such as consulting and training, may be amortized over the term of an Order ("Amortized Services"); or Xerox may provide funds to acquire Third Party Hardware, license Third Party Software or retire debt on existing Third Party Hardware ("Third Party Funds"). Amortized Services and Third Party Funds are collectively referred to as "Funds." The Funds amount is included in the MMC. Notwithstanding Section 11.b above, if an Order is terminated prior to expiration for any reason, or if a unit of Third Party Hardware or any Third Party Software for which Third Party Funds have been provided is removed or replaced prior to expiration, Customer agrees to pay to Xerox (i) all amounts due as of the termination date, and (ii) ETCs equal to the remaining principal balance of the Funds, plus a 15% disengagement fee. Customer will maintain the manufacturer's maintenance agreement for any Third Party Hardware and Third Party Software.

12. INDEMNIFICATION.

- a. Each party, at its expense, if promptly notified by the other and given the right to control the defense, will defend the other from, and pay any settlement agreed to by the indemnifying party or any ultimate judgment for, all claims by third parties for personal injury (including death) or damage to tangible property to the extent proximately caused by the willful misconduct or negligent acts or omissions of the indemnifying party, its employees or agents in connection with this SSA.
- b. Xerox, at its expense, if promptly notified by Customer and given the right to control the defense, will defend Customer from, and pay any settlement agreed to by Xerox or any ultimate judgment for, any claim not identified in (i)-(vi) below or subject to 12.c. below that any Services or Deliverables (excluding Third Party Products) infringe a third party's U.S. intellectual property rights. Excluded herein are claims arising from or relating to: (i) Services performed using Customer Assets, Customer Content or other materials provided to Xerox by Customer for which Customer failed to provide sufficient rights to Xerox; (ii) Services performed, or Deliverables provided, to Customer's direction, specification or design, (iii) infringement resulting from or caused by Customer's misuse or unauthorized modification of systems or products; (iv) use of Services or Deliverables in combination with other products, services or data streams not provided by Xerox if such combination forms the basis of such claim; (v) Customer's failure to use corrections or enhancements to the Services or Deliverables provided by Xerox; and (vi) breach of Customer's representations and warranties in Section 9(b). If the use of the Services or Deliverables (excluding Third Party Products) are enjoined as a result of a claim under this Section, or in the reasonable opinion of Xerox are likely to be the subject of such a claim, Xerox will, at its option and sole expense, exercise any or all of following remedies: (w) obtain for Customer the right to continue to use such Services or Deliverables; (x) modify such Services or Deliverables so they are non-infringing; (y) replace such Services or Deliverables with non-infringing ones; or (z) terminate and/or accept the return of such Deliverables and refund to Customer any amount paid, less the reasonable rental value for the period such Deliverable was available to Customer.

- c. Customer, at its expense, if promptly notified by Xerox and given the right to control the defense, will defend Xerox from, and pay any settlement agreed to by Customer or any ultimate judgment for, all third party claims arising out of or related to Section 12.b(i)-(vi).
 - d. The indemnifying party is not responsible for any litigation expenses of the indemnified party or any settlements unless it pre-approves them in writing.
13. **LIMITATION OF LIABILITY.** Xerox will not be liable to Customer, in the aggregate, for any direct damages in excess of the amounts paid by Customer to Xerox during the 12 months prior to the claim or \$50,000, whichever is greater; and neither party will be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this SSA or any Order hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory. This limitation of liability is not applicable: (a) to any specific indemnification obligations set forth in this SSA; or (b) where either party has (i) exceeded the rights to the other party's intellectual property granted to it under this SSA, or (ii) misappropriated or infringed the other party's intellectual property under this SSA. Other than for amounts due pursuant to this Agreement, Customer will not be liable to Xerox, in the aggregate, for any direct damages in excess of the amounts payable by Customer to Xerox during the 12 months prior to the claim or \$50,000, whichever is greater.
14. **ASSIGNMENT.** Customer may not assign any of its rights or obligations hereunder. Xerox may assign this SSA and any Orders hereunder, in whole or in part, without prior notice to Customer and may release information Xerox has about Customer to an assignee. Each successive assignee of Xerox will have all of the rights but none of the obligations of Xerox pursuant to this SSA. Customer will continue to look to Xerox for performance of Xerox's obligations hereunder and Customer hereby waives and releases any assignees of Xerox from any such claim. Customer will not assert any defense, counterclaim or setoff that Customer may have or claim against Xerox against any assignee of Xerox.
15. **FORCE MAJEURE.** Except for payment obligations, neither party will be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control. The affected party will notify the other party of each such circumstance.
16. **MAINTENANCE SERVICES.**
- a. Except for Equipment identified as "No Svc," Maintenance Services will be provided for the Equipment during Xerox's standard working hours in areas open for repair service. Maintenance Services excludes repairs due to: (i) misuse, neglect or abuse; (ii) failure of the installation site or the PC or workstation used with the Equipment to comply with Xerox's published specifications; (iii) use of options, accessories or products not serviced by Xerox; (iv) non-Xerox alterations, relocation, service or supplies; or (v) failure to perform operator maintenance procedures identified in operator manuals. Replacement parts may be new, reprocessed or recovered and all replaced parts become Xerox's property. Xerox will, as Customer's exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical model or, at Xerox's option, another model with comparable features and capabilities. Notwithstanding anything to the contrary herein, Xerox will have no obligation to replace Equipment beyond its end of service date. There will be no additional charge for the replacement Equipment during the initial Term. Unless the applicable Order requires Xerox to provide meter readings, Customer will provide them using the method and frequency identified by Xerox. If Customer does not provide a meter reading, Xerox may reasonably estimate the reading and bill Customer accordingly.
 - b. **CARTRIDGES.** If Xerox is providing Maintenance Services for Equipment that uses Cartridges, Customer will use only unmodified Cartridges purchased directly from Xerox or its authorized resellers in the U.S. Failure to use such Cartridges will void any warranty applicable to such Equipment. Cartridges packed with Equipment and/or furnished by Xerox as Consumable Supplies will meet Xerox's new Cartridge performance standards and may be new, remanufactured or reprocessed and contain new and/or reprocessed components. To enhance print quality, Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point. Many Equipment models are designed to function only with Cartridges that are newly manufactured, original Xerox Cartridges or with Cartridges intended for use in the U.S. Equipment configuration that permits use of non-newly manufactured original Xerox Cartridges may be available from Xerox at an additional charge.
 - c. **PC/WORKSTATION REQUIREMENTS.** For Equipment requiring connection to a PC or workstation, Customer must use a PC or workstation that either (i) has been provided by Xerox, or (ii) meets Xerox's published specifications.
17. **CONSUMABLE SUPPLIES INCLUDED.** If specified in an Order, Xerox will provide Consumable Supplies for Equipment. Consumable Supplies are Xerox's property until used by Customer, and Customer will (a) use them only with the Equipment included in the applicable Order, (b) return all Cartridges to Xerox as provided herein, and (c) at the end of the term of the applicable Order, return any unused Consumable Supplies to Xerox at Xerox's expense using Xerox-supplied shipping labels or destroy them in a manner permitted by

applicable law. Should Customer's use of Consumable Supplies exceed Xerox's published yields by more than 10%, Xerox will notify Customer of such excess usage. If such excess usage does not cease within 30 days after such notice, Xerox may charge Customer for such excess usage. If Xerox provides paper under a Services Contract, upon 30 days notice, Xerox may adjust paper pricing or either party may terminate the provision of paper.

18. **EQUIPMENT STATUS.** Unless Customer is acquiring Previously Installed Equipment, Equipment will be either: (a) "Newly Manufactured", which may contain some recycled components that are reconditioned; (b) "Factory Produced New Model", which is manufactured and newly serialized at a Xerox factory, adds functions and features to a product previously disassembled to a Xerox predetermined standard, and contains both new components and recycled components that are reconditioned; or (c) "Remanufactured", which has been factory produced following disassembly to a Xerox predetermined standard and contains both new components and recycled components that are reconditioned. Xerox makes no representations as to the manufactured status of Third Party Hardware.
19. **TITLE, RISK OF LOSS AND PROTECTION OF XEROX'S RIGHTS.** Title to Equipment and Third Party Hardware will remain with Xerox unless purchased by Customer. Risk of loss for the Products will pass to Customer upon delivery. Customer will keep the Products insured against loss and the policy will name Xerox as Loss Payee. Customer hereby authorizes Xerox or its agents to file financing statements necessary to protect Xerox's rights to Equipment and Third Party Hardware.
20. **WARRANTIES AND DISCLAIMERS.**
 - a. **SERVICES WARRANTY.** Xerox warrants to Customer that the Services will be performed in a skillful and workmanlike manner. If the Services do not comply with the service levels in an applicable SOW, Customer will notify Xerox in writing detailing its concerns. Within 10 days following Xerox's receipt of such notice, Xerox and Customer will meet, clarify the Customer's concern(s) and begin to develop a corrective action plan ("Plan"). As Customer's exclusive remedy for such non-compliance, Xerox will either modify the Services to comply with the applicable service levels or re-do the work at no additional charge within 30 days of finalizing the Plan or another time period agreed to, in writing, by the parties.
 - b. **THIRD PARTY PRODUCT WARRANTY.** For Third Party Products selected solely by Xerox for an Order, Xerox warrants they will operate substantially in conformance with applicable service levels in the SOW. If, within a reasonable time after provision of such Third Party Products, they cannot be brought into substantial conformance with the service levels in the SOW, and such non-conformance is a result of Xerox's use of such Third Party Products, Customer's exclusive remedy is to receive a refund of any fees paid for the non-conforming Third Party Products upon their return to Xerox. Xerox will pass through to Customer any warranties provided to it by the manufacturer or licensor of Third Party Products to the extent permissible.
 - c. **WARRANTY DISCLAIMER AND UCC WAIVER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, XEROX MAKES NO OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED; AND XEROX DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND ANY WARRANTIES RELATING TO DESIGN, PERFORMANCE, FUNCTIONALITY, OR COMPATIBILITY WITH CUSTOMER'S SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND AS PERMITTED BY APPLICABLE LAW, CUSTOMER WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.
 - d. The warranties set forth in this SSA are expressly conditioned upon the use of the Services and Deliverables for the purposes for which they were intended or designed, and do not apply to Services or Deliverables subjected to misuse, accident, alteration or modification by Customer or any third party (except as specifically authorized in writing by Xerox). In no event will Xerox be responsible for any failure to perform Services caused by: (i) Customer Assets, Customer Content, or services, maintenance, design implementation, supplies or data streams provided by Customer, Customer's agent or service provider to Xerox for use hereunder, (ii) Customer's failure to contract for the minimum types and quantities of Products required by Xerox to perform the Services, or (iii) Customer's failure to perform its obligations under Section 10.a. or b.
21. **SOFTWARE TERMS.**
 - a. **SOFTWARE LICENSE.** Xerox grants Customer a non-exclusive, non-transferable license to use in the U.S.: (i) Base Software only with the Equipment with which it was delivered; and (ii) Application Software only on any single unit of Equipment for as long as Customer is current in the payment of all applicable software license fees. Customer has no other rights to Software. The Base Software license will terminate; (y) if Customer no longer uses or possesses the Equipment; or (z) upon the expiration of any Order under which Customer has rented or leased the Equipment (unless Customer has exercised an option to purchase the Equipment). Neither Xerox nor its licensors warrant that Software will be free from

errors or that its operation will be uninterrupted. The foregoing terms do not apply to Diagnostic Software or to software/documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement. Third Party Software is subject to license and support terms provided by the vendor thereof.

- b. **SOFTWARE SUPPORT.** For Base Software, Software Support will be provided during the initial term of the applicable Order and any renewal period, but not longer than 5 years after Xerox stops taking customer orders for the subject Equipment model. For Application Software, Software Support will be provided as long as Customer is current in the payment of all applicable software license and support fees. Xerox will maintain a web-based or toll-free hotline during Xerox's standard working hours to report Software problems and answer Software-related questions. Xerox, either directly or with its vendors, will make reasonable efforts to: (i) assure that Software performs in material conformity with its user documentation; (ii) provide available workarounds or patches to resolve Software performance problems; and (iii) resolve coding errors for the current Release and the previous Release for a period of 6 months after the current Release is made available to Customer. Xerox will not be required to provide Software Support if Customer has modified the Software. Maintenance Releases or Updates that Xerox may make available will be provided at no charge and must be implemented within 6 months. Feature Releases will be subject to additional license fees at Xerox's then-current pricing. Each Release will be considered Software governed by the provisions of this Section 21 (unless otherwise noted). Implementation of a Release may require Customer to procure, at Customer's expense, additional hardware and/or software from Xerox or another entity. Upon installation of a Release, Customer will return or destroy all prior Releases. Xerox may annually increase Software license and support fees for Application Software. For State and Local Government Customers, this adjustment will take place at the commencement of each of Customer's annual contract cycles.
 - c. **DISABLING CODE.** Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (i) Xerox is denied access to periodically reset such code; (ii) Customer is notified of a default under a Services Contract; or (iii) Customer's license is terminated or expires.
 - d. **DIAGNOSTIC SOFTWARE.** Diagnostic Software is a valuable trade secret of Xerox. Xerox does not grant Customer any right to use Diagnostic Software. Customer will allow Xerox reasonable access to the Equipment during Customer's normal business hours to remove or disable Diagnostic Software if Customer is no longer receiving Maintenance Services from Xerox.
 - e. **TITLE AND RIGHTS.** Title and all intellectual property rights to Software and Diagnostic Software will reside solely with Xerox and/or its licensors (who will be considered third-party beneficiaries of Section 21.a). Customer will not, and will not allow its employees, agents, contractors or vendors to: (i) distribute, copy, modify, create derivatives of, decompile or reverse engineer Software or Diagnostic Software; (ii) activate Software delivered with the Equipment in an inactivated state; or (iii) access or disclose Diagnostic Software for any purpose.
22. **REMOTE SERVICES.** Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox from the Equipment via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. All such data will be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view or download any Customer data, documents or other information residing on or passing through the Equipment or Customer's information management systems.
23. **DATA SECURITY.** Certain models of Equipment can be configured to include a variety of data security features. There may be an additional cost associated with certain data security features. The selection, suitability and use of data security features are solely Customer's responsibility. Upon request, Xerox will provide additional information to Customer regarding the security features available for particular Equipment models.
24. **MISCELLANEOUS.** The parties agree to add the following document as Attachment 2 to this SSA: "Professional Services Agreement Insurance Requirements." This SSA and the Services Contract(s) hereunder constitute the entire agreement of the parties as to its subject matter, supersede all prior and contemporaneous oral and written agreements, and will be construed under the laws of the State of California (without regard to conflict-of-law principles). In the event of any conflict between terms and conditions, the order of precedence will be this SSA, the SSO and the SOW, except where expressly stated otherwise in this SSA. Customer authorizes Xerox or its agents to communicate with Customer by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address that Customer provides to Xerox. In any action to enforce this SSA or any Services Contract hereunder, the parties agree to the jurisdiction and venue of the federal or state courts in San Diego County, California and to waive their right to a jury trial. If a court finds any term of this SSA or any Services Contract to be unenforceable, the remaining terms of this SSA and the Services

Contract will remain in effect. The delay or failure by either Party to enforce any right or remedy under this SSA or any Services Contract will not constitute a waiver or forgiveness of such right or remedy. Xerox may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this SSA or any Order, which will be admissible in any action to enforce it, but only SSA or Order held by Xerox will be considered an original. Except for documentation of Equipment replaced by Xerox for reasons other than trade-in, all changes to this SSA or any Order will be made in an amendment signed by both parties. Customer represents that: (a) it has the lawful power and authority to enter into this SSA, (b) the person signing this SSA or any Order is duly authorized to do so, (c) entering into this SSA will not violate any law or other agreement to which it is a party, (d) it is not aware of anything that will have a material negative effect on its ability to satisfy its payment obligations under this SSA or any Services Contract, and (e) all financial information it has provided, or will provide, to Xerox is true and accurate and provides a good representation of Customer's financial condition. Each party will promptly notify the other, in writing, of any change in ownership, or if it relocates its principal place of business or changes the name of its business. The following four clauses will control over every other provision in a Services Contract: (w) Customer and Xerox will comply with all laws applicable to the performance of its obligations hereunder, (x) in no event will Xerox charge or collect any amounts in excess of those allowed by applicable law, (y) any part of a Services Contract that would, but for this Section, be construed to allow for a charge higher than that allowed under any applicable law, is limited and modified by this Section to limit the amounts chargeable under such Services Contract to the maximum amount allowed by law, and (z) if in any circumstances, an amount in excess of that allowed by law is charged or received, such charge will be deemed limited to the amount legally allowed and the amount received by Xerox in excess of that legally allowed will be applied to the payment of amounts owed or refunded to Customer.

25. DEFINITIONS.

- a. "Application Software" means software and accompanying documentation identified in an Order as "Application Software."
- b. "Assessments" means assessment and recommendation reports created by Xerox in the performance of assessment Services.
- c. "Base Software" means software and accompanying documentation provided with Equipment.
- d. "Cartridges" means Equipment components designated by Xerox as customer replaceable units, including copy/print cartridges and xerographic modules or fuser modules.
- e. "Confidential Information" means this SSA, Orders and certain business information identified as confidential that each party may disclose to the other. Customer Content is considered Customer Confidential Information. Xerox Work, Xerox Tools and Xerox Client Tools are considered Xerox Confidential Information.
- f. "Consumable Supplies" means black toner (excluding highlight color toner), black developer, Cartridges and, if applicable, fuser agent. For full-color Equipment Orders that include Consumable Supplies, Consumable Supplies also includes, as applicable, color toner and developer. For Equipment identified as "Phaser", Consumable Supplies may also include, if applicable, black solid ink, color solid ink, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits.
- g. "Customer Assets" means all hardware, software and or workspace owned, leased, rented, licensed and/or controlled by Customer, and any services used by Customer that Xerox needs to use or access to enable Xerox to perform the Services.
- h. "Customer Content" means documents, materials and data provided in hard copy or electronic format by Customer to Xerox containing information about Customer and/or Customer's clients.
- i. "Deliverables" means Products, Output of Services, Assessments and Documentation.
- j. "Developments" means items created by Xerox and its 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 or materials, in the course of performing Services.
- k. "Diagnostic Software" means software used by Xerox to evaluate or maintain the Equipment.
- l. "Documentation" means all manuals, brochures, specifications, information and software descriptions, in electronic, printed, and/or camera-ready form, and related materials customarily provided by Xerox for Customer's use as part of the Services.
- m. "Eligible Affiliate" means any domestic entity which controls, is controlled by, or is under common control with Customer. Control (including the terms controls, controlled by and under common control with) means direct or indirect power to direct the management and policies of an entity.
- n. "Equipment" means Xerox-brand equipment.
- o. "ETCs" means early termination charges paid by Customer in the event of early termination, for loss of bargain and not as a penalty, as more fully defined in this SSA or the applicable Services Contract.
- p. "Feature Releases" means new releases of Software that include new content or functionality.

- q. "Maintenance Releases" or "Updates" means new releases of Software that primarily incorporate compliance updates and coding error fixes.
- r. "Maintenance Services" means the services provided by Xerox (or a designated servicer) to keep the Equipment in good working order.
- s. "MMC" means the Monthly Minimum Charge identified in an Order which, along with any Additional Impression Charges, covers the cost for the Services, Products and Maintenance Services. The MMC may also include lease buyout funds, Third Party Funds, supplemental funds, monthly equipment component amounts, remaining Customer obligations from previous contracts, amounts being financed or refinanced, and Amortized Services. One-time items are billed separately from the MMC.
- t. "Order" means any (i) SSO, (ii) SOW which references an applicable Services Contract Number and is signed by Customer and Xerox, or (iii) PO.
- u. "Output of Services" means electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Xerox specific to and for Customer per the applicable Order, but does not include software.
- v. "PO" means a Customer-issued purchase order accepted by Xerox that references an applicable Services Contract Number.
- w. "Pre-existing Work" means items used or incorporated into the Services or Deliverables, or developed or acquired by Xerox independent of performing the Services.
- x. "Products" means, collectively, Consumable Supplies, Equipment, Software and Third Party Products.
- y. "Releases" means, collectively, Maintenance Releases, Updates and Feature Releases.
- z. "Services" means managed services (e.g. copy center and mailroom services), consultative services, and/or professional services, including, but not limited to, assessment, document management, imaging and language translation services.
- aa. "Services Contract" means this SSA together with one or more Orders designated by the same Services Contract Number.
- bb. "Services Contract Number" means a 10 digit number assigned by Xerox to each Services Contract.
- cc. "Software" means Application Software and Base Software.
- dd. "Software Support" means the support and maintenance of software provided by Xerox (or a designated servicer).
- ee. "SSO" means a Services and Solutions Order issued by Xerox pursuant to this SSA.
- ff. "SOW" means a statement of work describing Services and Deliverables which (i) is incorporated by reference into an SSO, or (ii) references an applicable Services Contract Number and is signed by Customer and Xerox.
- gg. "Taxes" means all taxes, fees or charges of any kind (including interest and penalties) assessed by any governmental entity on this SSA or any Order hereunder or the amounts payable to Xerox under this SSA or any Order. Taxes do not include personal property taxes in jurisdictions where Xerox is required to pay personal property taxes, or taxes on Xerox's income.
- hh. "Third Party Funds" is defined in Section 11.c.
- ii. "Third Party Hardware" means non-Xerox brand equipment.
- jj. "Third Party Products" means, collectively, Third Party Hardware and Third Party Software.
- kk. "Third Party Software" means non-Xerox brand software.
- ll. "U.S." means the United States and its territories and possessions.
- mm. "Xerox Client Tools" means certain Xerox proprietary tools (including any modifications, enhancements, improvements and derivative works) that are owned by Xerox and are licensed to Customer for its use under an accompanying click wrap license agreement.
- nn. "Xerox Tools" means certain Xerox proprietary tools (including any modifications, enhancements, improvements and derivative works) used by Xerox to provide certain Services.
- oo. "Xerox Work" means, collectively, Developments and Pre-Existing Work.

City of Oceanside

XEROX CORPORATION

Signature

Signature

Name (please print)

Name

Title

Title

Address

Address

Date

Date

Attachment # 1

City of Oceanside

List of Xerox Equipment Model Numbers and Associated Accessories

W7845/55PT

<u>Market Code</u>	<u>Description</u>
FINLX-3HP	3-hole punch (FIN-LX)
LINE1FAX	1 LINE FAX
OFCFINRLX	Office Finisher LX
STAPLERKT	Convenience stapler
Network Scanning Included	

WC7775P

<u>Market Code</u>	<u>Description</u>
1LNFAX	Embedded Fax-1 line
ADVCFNR	ADV Finisher – 2/3 Hole
D250STPLR	Convenience Stapler
FINMPLT	ADV&PRO Fin Mobility
HCFDR	High Capacity Feeder
HCFMPLT	HCF Mobility Plate
IOTMPLT	IOT Mobility Plate
ISFAXKIT	Internet & Serverfax
SCANNING	Network Scanning Kit

Attachment #2

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT INSURANCE REQUIREMENTS

1. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

2. **LIABILITY INSURANCE.**
 - 2.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

 - 2.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 2.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 2.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 2.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 2.6 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 2.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 2.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 2.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
3. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration

Xerox Services and Solutions Agreement # 7137718

of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

General Amendment



THIS General Amendment number 1 ("Amendment") amends Agreement No. 7137718 ("Agreement") between City of Oceanside ("Customer") and Xerox Corporation ("Xerox") as follows.

The following sections are added to the above Services and Solutions Agreement:

- 1. **Authority to Contract.** The services and products acquired under this Services and Solutions Agreement are available through a cooperative purchasing provision included in The Cooperative Purchasing Network ("TCPN") Contract, Contract Number R5008. This Services and Solutions Agreement is customized based on the specific Customer product configurations and quantities, impression volumes, support requirements, and the terms and conditions of this Services and Solutions Agreement and this Amendment.
- 2. **Funding.** This provision is applicable to governmental entities only. Customer represents and warrants that all payments due and to become due during Customer's current fiscal year are within the fiscal budget of such year and are included within an unrestricted and unencumbered appropriation currently available for the acquisition of the Products, and it is Customer's intent to use the Products for the entire initial term and to make all payments required under the Agreement or an Order. If (a) through no action initiated by Customer, Customer's governing body does not appropriate funds for the continuation of the Agreement or an Order for any fiscal year after the first fiscal year and has no funds to do so from other sources, and (b) Customer has made a reasonable but unsuccessful effort to find an assignee within Customer's general organization who can continue the Agreement or an Order, the Agreement or the Order may be terminated. To effect this termination, Customer must, 30-days prior to the beginning of the fiscal year for which Customer's governing body does not appropriate funds for the upcoming fiscal year, notify Xerox that Customer's governing body failed to appropriate funds and that Customer has made the required effort to find an assignee. Customer's notice must certify that canceled Equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year. Customer agrees to release the Equipment to Xerox and, when returned, the Equipment will be in good condition and free of all liens and encumbrances. Customer will then be released from any further payments obligations beyond those payments due through the end of the funded fiscal year."

Capitalized terms not defined in this Amendment have the meaning assigned to them in the Agreement. Except as set forth in this Amendment, the Agreement and Order will remain as stated. In the event of a conflict between the terms and conditions of the Agreement and this Amendment, the Amendment will control.

IN WITNESS WHEREOF, duly authorized representatives of Customer and Xerox have executed this Amendment.

City of Oceanside

Xerox Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____