

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION**

**REPROGRAPHIC EQUIPMENT LEASE AND MAINTENANCE
AGREEMENT**

Basic Information

Date	
Contractor	Xerox Corporation
Contractor's Address	201 Mission Street, Suite 600 San Francisco, CA 94105
City's Address	Office of Contract Administration – Purchasing Division City and County of San Francisco City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685
Estimated Commencement Date	February 8, 2013
Length of Term	The Master Agreement shall be Three (3) Years with two (2) options to extend the term of the Master Agreement for periods of two (2) years each.

MASTER AGREEMENT

The foregoing Basic Information is incorporated into and made a part of this Agreement (to be defined below). If there is any conflict between provisions, the provisions of the Master Agreement shall govern, followed in order by the provisions of the RFP, and finally the provisions of the Proposal.

This Master Agreement (the "Agreement") made as of the date specified in Article 3 in the City and County of San Francisco, State of California, by and between Xerox Corporation ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by

and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

WITNESSETH:

WHEREAS, City desires to lease certain Equipment (as hereinafter defined) for municipal purposes and Contractor desires to lease such Equipment to City.

WHEREAS, City desires to have Contractor service and maintain such leased Equipment and assist City in its optimal use.

NOW, WHEREFORE, in consideration of the promises and mutual covenants contained in this Agreement and for the other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND OTHER TERMS

1.1 **Specific Terms.** Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

"Basic Information" shall mean the Basic Information set forth at the beginning of this Agreement.

"Business Day" shall mean any day other than a City holiday, a Saturday, Sunday, or day upon which banks in the State of California are authorized or required to be closed.

"CMD" means the Contract Monitoring Division, a division of the Office of the City Administrator, which is charged with responsibility for implementing San Francisco Administrative Code 14B,.

"Commencement Date" shall mean the date when Contractor has (1) completed installation of the Equipment, (2) successfully run all diagnostic routines and production checks, and (3) made the that Equipment is available for use by the City.

"Controller" shall mean the Controller of the City.

"Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.2.

"Equipment" shall mean the Black & White and the Color Production Copiers/Printers (including software licenses and any documentation related thereto) more particularly described in Appendix A, provided by Contractor to City pursuant to this Agreement.

"Event of Default" shall mean each of the events set forth in Section 12.1.

"Liens" shall mean all judgments, materialmen's liens, mechanics' liens, claims, demands, encumbrances and other liens of whatever nature or character, but excluding any liens or encumbrances created by or through Contractor.

"Losses" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatever kind and nature.

"Person" shall mean an individual, partnership, corporation, association, trust, or any other legal entity.

"Payment" shall mean a payment for use and/or maintenance of the Equipment that City is required to make to Contractor under this Agreement as set forth in Article 4 and Appendix B.

"Payment Date" shall mean the date a Payment for the Equipment is due.

Additional Terms. The terms "approval", "acceptable", "consent" or "satisfactory" or similar terms shall mean approved by, acceptable to, consented to or satisfactory to City, acting through the department or commission recommending this Agreement below. The terms "include", "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation." The use of the term "Successor" or "assign" herein refers only to a successor or assign expressly permitted under Article 14.

ARTICLE 2

EQUIPMENT USE AND MAINTENANCE

2.1 **Delivery of Equipment.** Contractor shall cause the Equipment to be delivered to 101 South Van Ness Avenue ("Delivery Site") within fourteen (14) business days of execution of this Agreement. All transportation costs and other expenses, if any, incurred in connection with the delivery of Equipment shall be the responsibility of the Contractor

2.2 **Installation.** Contractor or its authorized representative shall install the Equipment at the Delivery Site in accordance with plans and specifications approved by City and in accordance with all applicable laws, rules, and regulations. It shall be the Contractor's responsibility to examine the delivery site and to advise the City of any electrical, safety, space, or special requirements that are to be met prior to delivery of Equipment. It shall be the City's responsibility to have the site properly prepared for the delivery of Equipment. All costs and expenses incurred in connection with installation of the Equipment shall be the responsibility of Contractor. Contractor agrees that the City may, upon reasonable notice to Contractor, relocate the either or both units of Equipment to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and at no additional charge to City. Prior to any such relocation, the City agrees

to execute and to deliver to Contractor such documents that Contractor reasonably requests to protect Contractor's right, title, and interest in the Equipment.

2.3 **Training.** Contractor shall provide training to the City personnel within fourteen days following the delivery of the Equipment.

2.4 **Maintenance.**

a. **Responsibility.** Price paid under this Agreement shall include the full operational use of each piece of Equipment described in Appendix A, monthly maintenance as prescribed and service repairs as needed (see Appendix B). The Contractor shall provide preventive and remedial maintenance service from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on City holidays. All preventive maintenance shall be performed in accordance with the manufacturer's specifications.

b. **Recurring Problems/ Service Response Requirements.** Repeated service calls for the same Equipment problems will not be tolerated by the City. If the Contractor's technician fails to repair a serious recurring problem, the City may elect to have the Equipment replaced with another unit that is acceptable to City, at the cost of Contractor as provided in this Section 2.4b. The City may invoke these provisions related to "a serious recurring problem" for any problem that prevents the Equipment from performing according to specifications that is not rectified after three service calls. The replacement of a piece of Equipment shall not alter the term of the Agreement.

The maximum service response time for any Equipment problem shall be 2-4 working hours from the time the service request is initiated; if the problem is not rectified by the third service call for the same problem or such later time as City may allow, the City shall notify Contractor in writing that the Equipment has a serious recurring problem requiring Equipment replacement, and Contractor shall provide an equivalent replacement unit no later than three days after receipt of City's notification.. If replacement takes longer than three business days, Contractor shall provide a credit to City equal to 1/30 of the monthly lease fee for that piece of Equipment for each 24 business hours that the Equipment was not in service. Response time shall not include the period that is not considered the City's departmental normal working hours or the period of time in which the service technician takes to repair the Equipment. Each service call shall be documented by the Contractor in the form of a service call report, a copy of which shall be left with the ReproMail on-site Manager. This service call report shall, at a minimum, indicate the date and time of the service and a description of the needed repair.

c. **Uptime Reports.** On a quarterly basis, Contractor shall provide the City a Equipment uptime report, which shall indicate for each installed Equipment: the install date , total number of service calls, the response time for each service call, the total downtime, and the total percent uptime of each installed Equipment. Contractor shall keep Equipment in working order no less than 95% of the available work time. Failure by Contractor to maintain a 95% uptime standard will be grounds for requiring the Contractor to replace the Equipment at Contractor's expense with a like or better unit and provide a credit to City of 1/30 of the monthly lease that piece of Equipment for each 24 business hours that the Equipment was not in service.

2.5 **No Exclusivity.** Nothing contained in this Agreement shall be deemed to grant Contractor an exclusive right during the term of this Agreement to supply City with printers/copiers matching the specifications of the Equipment or otherwise. City reserves the right, at its sole

discretion, to lease, rent, or purchase similar or different printer/copiers from any other supplier or contractor that may be used contemporaneously with any item of Equipment provided hereunder.

2.6 **Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

ARTICLE 3

TERM

3.1 **Term of Agreement.** Subject to Section 4.3, the Term of this Agreement shall be from March 15, 2013 to March 14, 2016. In addition the City, at its sole discretion, shall have the option to extend the Term of this Agreement for up to two, two year periods, for a total Term of up to seven years. Unless earlier terminated as provided in this Agreement, the Term of this Agreement shall end at 11:59 P.M. San Francisco time on the last day of the Term (as extended by exercised options, if any).

3.2 **Payment Obligation.** City's obligation for Payments shall commence on the later of (a) the Effective Date, or (b) the first day after Contractor completed installation of the Equipment, successfully run all diagnostic routines and production checks for the Equipment, and the Equipment is available for use by the City.

3.3 **Termination for Convenience.**

a. **Termination during Term.** City shall have the option, in its sole discretion, to terminate the Agreement at any time during the term hereof, for convenience and without cause by giving Contractor thirty days written notice of such termination. The notice shall specify the date on which termination shall become effective. If City terminates the Agreement for convenience within 36 months of its Effective Date, City shall pay Contractor a "Termination Fee" equal to the monthly fees set forth in Appendix B times the number of months remaining after the noticed effective termination date until the expiration of the 36 month term less the unearned Service Maintenance fees for that period, discounted at 4% per annum (to present value for early payment). The Termination Fee shall not apply to City's election to terminate this Agreement for convenience more than 36 months after its Effective date. If either or both devices are replaced during the initial 36-month Agreement term, with City's approval, through Xerox's Total Satisfaction Guarantee Program, and the Equipment is subsequently terminated for the City's convenience, the City shall pay a "Termination Fee" as described herein for the number of months remaining between the date of the replacement and the earlier of the 36 months or the expiration of this Agreement, adjusted to reflect the proportion of monthly fees and unearned Service and Maintenance Fees attributable solely to the replaced unit. Except as expressly provided in this Section 3.3 (a), the Termination Fee shall not apply to termination of this Agreement under any other provision of the Agreement, including but not limited to termination for failure to appropriate funds under Section 4.3.

b. **Obligations upon Termination for Convenience.** Upon City's election to terminate for convenience, City shall pay Contractor for those services performed, pursuant to this

Agreement, to the satisfaction of the City up to the date of termination, as described in Section 3.3.a above.

Upon termination of this Agreement for Convenience, Contractor shall submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, and any other amounts due as stated in Section 3.3.a above. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise. Within 10 days after City makes this payment, Contractor shall remove the Equipment from City premises.

ARTICLE 4

PAYMENTS

4.1 **Amount.** City shall pay to Contractor the Equipment Payments in the set monthly amount plus "click" charges set forth in Appendix B. The set monthly prices include the cost per month of the Equipment and all features, duty cycle, standard delivery, installation, and training, all maintenance during normal business hours, software, and all consumable supplies, excluding paper and staples. Payments shall be made by City to Contractor at the address specified in Article 16 or in such alternate manner, including electronic payment, as the parties have mutually agreed upon in writing. If this Agreement should expire or terminate before the end of any period covered by the applicable Payment, such Payment shall be prorated on a per diem basis based on the actual number of calendar days falling within such period.

4.2 **Payment Dates; Statements.** At least forty-five (45) days prior to the Payment date for the Equipment hereunder, Contractor shall invoice City the total amount due and payable on such Payment Date. As set forth in Contractor's Response to RFP #96200 and summarized in Appendix B of this Agreement, Contractor's invoice shall itemize the monthly rental charge, click charges, and maintenance charges for each piece of Equipment. The invoice shall also set forth the hours each piece of Equipment was non-operational during normal City business hours during the invoice period. Should Contractor fail to receive any Payment when due and payable, Contractor shall within five (5) days of the Payment Date send written notice thereof to City. Notwithstanding the foregoing requirement, City's receipt of the foregoing invoices and notices from Contractor is not a condition precedent to City's obligation to make the required Payments when due and payable.

4.3 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

4.4 **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

4.5 **Supercedure of Conflicting Provisions.** IN THE EVENT OF ANY CONFLICT BETWEEN SECTION 4.3 OR 4.4. AND ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF SECTIONS 4.3 AND 4.4 SHALL GOVERN.

4.6 **Payments Not a Debt.** City shall pay the Payments required under this Agreement exclusively from legally available funds. City intends, and Contractor understands, that the obligations of City to make any and all Payments shall constitute a current expense of City and shall not in any way be construed to be a debt of City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by City, nor shall any terms or conditions contained herein constitute a pledge of the general tax revenues, funds or monies of City.

4.7 **Maximum Compensation.** In no event shall the amount of this Agreement exceed \$1,400,000 (One million, four hundred thousand dollars and zero cents).

ARTICLE 5

EQUIPMENT

5.1 **Title.** Title to the Equipment shall at all times be retained by the Contractor. City shall not have any right, title or interest in the Equipment except the right to quiet enjoyment as expressly set forth in Section 5.7 while under lease. If requested by Contractor, City shall affix and maintain, at Contractor's expense, in a prominent position on each unit of Equipment, plates, tags or identifying labels indicating Contractor's ownership of the Equipment.

5.2 **Liens.** City shall keep the Equipment and all parts thereof free from any and all Liens.

5.3 **Personal Property.** During the term of this Agreement, the Equipment shall remain personal property and shall not be deemed to be affixed to or a part of real property on which the Equipment may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter becomes in any manner physically affixed or attached to real property or any building thereon.

5.4 **Relocation.** City may upon reasonable notice to Contractor, relocate either or both units of Equipment to any location within the geographic boundaries of City, at City's sole discretion per section 2.2. Prior to any such relocation the City agrees to execute or obtain and to deliver to Contractor such documents as Contractor may reasonably request to protect Contractor's right, title and interest in the Equipment.

5.5 **Efficiency and Conservation**

a. **Compliance with Environmental Standards .** The Equipment provided under this Agreement shall comply with Version 1.1 ENERGY STAR Imaging Equipment specifications, RoHS Directives, and other Environmental performance standards as specified in Appendix C.

b. **Paper Content.** The City intends to use whenever possible paper consisting of 100% postconsumer waste (PCW) content, 85 Bright (or the current U.S. Government standard). Equipment provided under this Agreement must meet the performance standards of this Agreement while using recycled as well as multiple weights of virgin paper. City may designate Equipment that is unable to function reliably with 100 postconsumer waste recycled content paper as Equipment with a "serious recurring problem" subject to the remedies set forth in Section 2.4.

5.6 **Return of Equipment.** Upon expiration or termination of the Agreement, City shall return possession of the Equipment to Contractor in the condition in which the Equipment is required to be maintained according to this Agreement, normal wear and tear excepted. At Contractor's sole expense, Contractor shall cause the Equipment to be removed and transported from the City premises. If Contractor fails to accept and remove the Equipment within fifteen (15) days after such termination or expiration, City shall have the right (but no obligation) to remove the Equipment and place it in any storage facility within the geographical boundaries of the City, at Contractor's sole expense. Contractor shall hold City free and harmless from any expense or damage of any kind associated or occasioned thereby or arising there from.

5.7 **Quiet Enjoyment.** Provided the City is not in default of this Agreement, Contractor shall guarantee and shall not disturb the City's quiet use and enjoyment of the Equipment during the term of this Agreement.

5.8 **Inspection by Contractor.** With at least five (10) business days prior notice, Contractor shall have the right, during normal business hours (8:00 AM to 5:00 PM PST), subject to applicable law, to enter upon the premises where the Equipment is located to inspect or to observe use of the Equipment.

5.9 **Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

ARTICLE 6

AUDITS; NOTICE OF CHANGES; FALSE CLAIMS; INDEPENDENT CONTRACTOR

6.1 **Inspection and Audit.** Contractor agrees to maintain and make available to the City, its employees and authorized representatives, during regular business hours, all accurate files, records, books, invoices, documents and other data relating to this Agreement or the Equipment. Contractor shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section. To the extent any of the foregoing are not located within ten (10) miles of the geographic boundaries of City, Contractor shall make them available, within forty-eight (48) hours after any request by City within such physical boundaries or within ten (10) miles thereof.

6.2 **Notification of Changes in Circumstances.** Contractor shall notify City immediately of any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

6.3 **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for three times the amount of damages that the City sustains because of the false claim; a civil penalty of up to \$10,000 for each false claim; and City's costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

6.4 **Independent Contractor; Payment of Taxes and Other Expenses**

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing

services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

ARTICLE 7

TAXES

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, the Equipment or any of the activities contemplated by this Agreement. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Use of City Real Property.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally such possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such possessory interest is created, then the following shall apply:

a. Contractor, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property