



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
March 18, 2015**

**TO:** Mayor and City Council  
**FROM:** Alan H. Shear, Acting City Manager  
**PREPARED BY:** Kathy DeVries, I.T. Administrator  
**SUBJECT:** Lease Agreement with Xerox for Photocopiers  
**DATE:** March 11, 2015

**RECOMMENDATION:**

Authorize the Acting City Manager to execute a sixty (60) month lease agreement with Xerox for seven (7) photocopier machines at City facilities.

**BACKGROUND:**

The City currently has a lease agreement with Xerox for seven photocopiers throughout City facilities. The photocopiers are located at City Hall, the Police Department, the Senior Center, and the Corporation Yard.

The current lease is up for renewal, so the City issued a Request for Proposal (RFP) for leasing photocopiers and service maintenance. Out of the 23 RFPs sent to vendors via mail and email, the City received four bids. All of the proposed machines are new and can be used as copiers, network printers, and scanners.

Staff reviewed and rated all four bids using the following criteria:

- Monthly lease payment
- Average monthly cost per b/w and color prints
- Buyer's Lab Test Report (BLI)
- Leasing Terms and Conditions
- Customer satisfaction

### Cost Comparison of Monthly Lease and Copies

<i>Vendor/Brand</i>	<i>Monthly Lease</i>	<i>Avg. mo. cost- b/w copies</i>	<i>Avg. mo. cost- color copies</i>	<i>Avg. total cost per month</i>
KBA Docusys/Kyocera	\$1,104.00	Provide 87,440/mo. Excess billed at .0055	Provide 7,337/mo. Excess billed at .01	\$1,104.00
Canon/Canon	\$1,424.94	\$428.47 (@.0049)	\$359.51 (@.049)	\$2,212.92
Xerox/Xerox	\$1,394.01	\$428.93 (@.0049)	\$359.51 (@.049)	\$2,182.45
Caltronics/Konica Minolta	\$1,324.93	\$480.92 (@.0055)	\$366.85 (@.05)	\$2,172.70

KBA Docusys Inc. – The proposal copy itself was poor quality with missing pages and omitted words, and the colored text was blurred. Although the proposal was for Kyocera copiers, it mentioned Canon machines throughout. Furthermore, the pages in the proposal referring to energy reduction and recycled parts were actually for Canon copiers. Finally, only the field test reports were provided, not the lab reports.

Canon Solutions – The Buyer’s Lab Reports rated the photocopiers high. However, the vendor does not automatically replenish copier supplies and toner based upon monthly meter reads provided by staff. Therefore, each department would need to track and order supplies. Also, Canon had proposed significant changes to the terms and conditions of the City’s standard agreement and insisted on using it as an attachment to Canon’s agreement. Finally, they were the highest bidder.

Caltronics – The Buyer’s Lab Reports rated the photocopiers good, but were slightly lower than Canon and Xerox. Similar to Canon, Caltronics does not automatically replenish supplies based on monthly meter reads, so each department would have the responsibility to maintain and order supplies.

Xerox – The Buyer’s Lab Reports rated the photocopiers very high. The City currently leases with Xerox and staff can verify the quality of the machines and the positive customer service. Xerox does automatically replenish supplies and toner based on the monthly meter reads.

Based upon the quality of the machines, cost, and current customer satisfaction, staff recommends selecting the proposal submitted by Xerox for the City’s photocopiers.

#### **FISCAL IMPACT:**

The total monthly cost of \$2,182.45 has an annual projected cost of \$26,189.40. This is a savings of \$2,469.00 from the FY14-15 allocated budget for photocopiers.

**ACTION:**

Motion to authorize the Acting City Manager to execute a sixty (60) month lease agreement with Xerox for seven (7) photocopier machines at City facilities.

Attachments:

Xerox Agreement for General Services

Xerox Lease Pricing Exhibit

**APPROVED BY:**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Acting City Manager

## AGREEMENT FOR GENERAL SERVICES

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_ by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and \_\_\_\_\_, hereinafter referred to as CONSULTANT, whose address is \_\_\_\_\_.

The CITY and CONSULTANT hereby agree as follows:

### SPECIFIC PROVISIONS

1. **DESCRIPTION OF PROJECT:**  
Provide a 60-month lease for copiers and copier support services throughout City Hall, Police Department, Corporation Yard and Senior Center.
  
2. **SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT.**  
The services provided by CONSULTANT shall include maintenance, service and supplies for the lease period as stated in the proposal dated \_\_\_\_\_, incorporated herein by reference as Exhibit A.  
In the event that any provision of Exhibit A conflicts with, or is inconsistent with, any term of this Agreement, the terms of this Agreement shall be given full force and effect and supersede that provision of Exhibit A. Nothing stated by Exhibit A may replace, supplant, supersede, or alter any term of this Agreement.
  
3. **PAYMENT**
  - a. **Compensation:**  
The City agrees to pay CONSULTANT for the services specified in Section 2 in accordance with Exhibit "B" ("Terms of Payment /Lease Terms"), which is attached hereto and incorporated herein.
  - b. **Time of Payment Provided** CONSULTANT is not otherwise in default under this Agreement. CONSULTANT shall be compensated monthly for lease charges "Minimum Lease Payment and quarterly for per copy charges for which an itemized invoice shall be submitted City agrees to pay Consultant within thirty (30) days of receipt invoices.
  
4. **TIME OF COMPLETION**
  - a. The CONSULTANT shall perform the work described in Section 2 in accordance with the schedule contained in Exhibit A, attached hereto and incorporated herein.
  
5. CONSULTANT and the CITY agree the schedule in Section 4 above represents their best estimates with respect to completion dates and both CONSULTANT and CITY acknowledge that departures from the schedule may occur. Therefore, both CONSULTANT and CITY will use reasonable efforts to notify one another of changes to the schedule. Any proposed change in the schedule, including a change based on the events described in Section 6, immediately below, shall be delivered to the other party in writing. Any such proposed change by one party shall be subject to the approval of the other party; provided, however, that any such approval may not be withheld unreasonably. The person executing this Agreement on behalf of the CITY shall have the authority to agree to extensions proposed by the CONSULTANT.

6. CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

## GENERAL PROVISIONS

1. The status of CONSULTANT is that of an independent contractor operating having control of his/her work and the manner in which it is performed. CONSULTANT is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY. CONSULTANT is required to obtain a business license with the City. A copy of the business license application is included as Exhibit D.
2. The CONSULTANT agrees that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by CONSULTANT and delivered to and become the property of the City with the exception of proprietary/copyrighted information (as in agreements or software services). In addition, data prepared or obtained under this Agreement shall be made available, upon request, to the City. The foregoing notwithstanding, said documents, plans, etc. which are site specific for the subject project shall not be used for any other work without the consent of CONSULTANT.

CONSULTANT and his/her/its sub-CONSULTANTS shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets and correspondence pertaining to this Agreement. The CONSULTANT shall make such documents and records available for review and/or audit evaluation by representatives of the City at all reasonable times during the contract period and for at least four (4) years from the date of final payment. Upon written request by the City, the CONSULTANT shall provide the City with copies of all pertinent reports and correspondence.

3. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services under this contract. The CONSULTANT shall not engage the services of any person or persons now employed by the CITY, except with the written permission of the CITY. Except as otherwise herein provided, the CONSULTANT shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-CONSULTANTS by CONSULTANT, the CONSULTANT shall

provide to the CITY copies of each and every sub-CONSULTANT contract prior to the execution thereof by the CONSULTANT and sub-CONSULTANT.

4. CONSULTANT shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and nondiscrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.
5. All changes and/or extra work shall be performed and paid for in accordance with the following:
  - a. Only the CITY Manager may authorize extra and/or changed work. CONSULTANT expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of CONSULTANT to secure the CITY Manager's prior, written authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and CONSULTANT thereafter shall be entitled to no compensation whatsoever for performance of such work.
  - b. If the CONSULTANT is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify the CITY Manager of the fact. The CITY Manager shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the CITY Manager determines that such work does constitute extra work, the CITY shall provide compensation to the CONSULTANT on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the CONSULTANT. Such Supplemental Agreement shall be executed by the CONSULTANT and be approved by the necessary CITY officials.
  - c. In the event the CITY Manager determines that such work does not constitute extra work, CONSULTANT shall not be paid extra compensation above that provided herein. The determination of the CITY Manager may be appealed to the CITY Council as long as a written appeal is submitted to the CITY Manager within five (5) days after the date of the CITY Manager's determination. Said written appeal shall include a description of each and every ground upon which CONSULTANT challenges the CITY Manager's determination.
6. CITY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that payment for or acceptance of CONSULTANT'S work by CITY shall not operate as a waiver or release. CONSULTANT shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by CONSULTANT'S failure to so perform.
7. CONSULTANT assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance errors or omissions of CONSULTANT and/or his/her agents or employees. To the extent permitted by law, CONSULTANT shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from

and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature (referred to within this section as "Claims") that may be asserted by any person or entity including CONSULTANT arising out of or in any way connected with the activities of CONSULTANT, his employees and agents hereunder and regardless of CITY'S passive negligence, except that CONSULTANT shall not be responsible to indemnify, hold harmless or defend CITY, its officers, employees and agents to the extent such Claims arise out of the active negligence or willful misconduct of the CITY, its officers, employees or agents. CITY agrees to provide CONSULTANT with reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this Section

8. Without limiting CONSULTANT'S indemnification provided hereunder, CONSULTANT shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with a Best rating of no less than A-VII.
  - a. Workers' Compensation insurance to cover its employees and the CONSULTANT shall require all sub-CONSULTANTs similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the sub-CONSULTANT's employees. All Workers' Compensation policies shall be endorsed with the provision that the insurer shall endeavor to provide thirty (30) days prior notice of cancellation to the CITY. CONSULTANT'S Worker's Compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment.
  - b. Commercial general liability insurance including personal injury and property damage insurance for all activities of the CONSULTANT arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, hazards, CONSULTANT products liability in an amount no less than \$2 million dollars combined, single limit personal injury and property damage for each occurrence. CONSULTANT shall require all sub-CONSULTANTs similarly to provide the same insurance coverage as Consultant for all activities arising out of or in connection with this agreement and add the CITY as additional insured through the endorsement language that is set forth by the following subparagraphs 1-4. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. The commercial general liability policy shall be endorsed with the following language:
    - (1) The CITY OF MARTINEZ is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.
    - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

- (3) The insurance provided herein is primary and no insurance held or owned by the CITY OF MARTINEZ shall be called upon to contribute to a loss.
    - (4) The coverage provided by this policy shall not be canceled without thirty-(30) days prior written notice of cancellation given to the CITY OF MARTINEZ.
  - c. Auto Liability in the amount of \$2,000,000 each accident, combined single limit.
  - d. CONSULTANT shall submit to CITY documentation evidencing its required insurances and any of its sub-CONSULTANTS signed by the insurance agent and companies. Any deductible or self-insured retentions must be declared to CONSULTANT.
9. The CITY shall furnish the CONSULTANT, to the extent that they are available, CITY standards, details, specifications, and regulations applying to the Project and other such information which may be helpful to the CONSULTANT in performance of its service. Any and all additional data necessary for design shall be the responsibility of the CONSULTANT.
10. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon 30 days written notice to CONSULTANT. CONSULTANT may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, CONSULTANT'S serious illness or material breach of this Agreement by the CITY. CONSULTANT'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause, and providing the CITY with 30 days to cure its breach. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at CONSULTANTS' expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by CONSULTANT, CONSULTANT shall only be compensated for all work CONSULTANT satisfactorily performs prior to the time CONSULTANT delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, CONSULTANT shall be compensated for all work satisfactorily performed prior to the time CONSULTANT receives the termination notice, and shall be compensated for all materials ordered by CONSULTANT, and services of others ordered by CONSULTANT prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to CONSULTANT or to the CITY, provided that CONSULTANT is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated without cause pursuant to this section, the City will be subject to termination charges which will be calculated pursuant to the Default and Remedies provision in Section 8 of Exhibit B. Such termination charges will not apply to cancellations associated with fiscal year funding non-appropriation or an uncured Xerox default.

Notwithstanding the provisions of the immediately preceding paragraph, if the CITY asserts non-appropriation of funds as grounds for termination the following terms shall apply: the City shall send to Xerox written notice, within 30 days of its governing body's decision not to appropriate funds, stating that the City's governing body failed to appropriate funds and that the governing body was unable to find an assignee within the City's organization to continue the Agreement. The notice must certify that the canceled equipment is not being replaced by equipment performing similar functions during the

ensuing fiscal year and indicate that the decision to cancel the Agreement was not initiated by any individual involved in the Agreement's management or execution. In addition, the City will be required to return the equipment to Xerox. The City will then be released from its obligation to make any further payments beyond those through the end of the last fiscal year for which funds have been appropriated.

11. Should the CONSULTANT fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving 30 days written notice of such termination, stating the reasons for such termination in such event, and providing CONSULTANT thirty days, which may run concurrently with the termination notice period, or other time agreed upon by the parties to cure its breach. CONSULTANT shall be compensated as above, provided, however, that if the CONSULTANT failed to cure its breach there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the CONSULTANT'S breach to perform under the terms of this Agreement which, of that amount of damage, shall include such damage incurred during the 30-day termination notice period provided under this Section.
12. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
13. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by parties to this Agreement.
14. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed **return** has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a breach of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this section is intended to modify, extend, or alter in any way the periods for a cure to be made of a breach under Sections 10 and 11. The notice period under this section may run concurrently and overlap, in whole or in part, with the cure period given under Sections 10 and 11.
15. All notices permitted or required hereunder shall be addressed as follows:  
If to the CITY:  
City Manager  
City of Martinez  
525 Henrietta Street  
Martinez, CA94553

If to the CONSULTANT:

16. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the CITY OF MARTINEZ, California.

CITY OF MARTINEZ  
A Municipal Corporation

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

By: \_\_\_\_\_, City Manager

CONSULTANT is a corporation duly organized and validly existing and in good standing under the laws of the State of California, and is authorized to perform the services under this agreement. The corporate officer executing this agreement has been authorized and directed to do so by corporate resolution.

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

CONSULTANT  
APPROVED AS TO FORM

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

City Attorney

Attachments:

Exhibit A: Lease Pricing Exhibit

Exhibit B: Terms of Payment /Lease Terms

Exhibit C: Proof of Required Insurance

Worker's Compensation Insurance

Commercial General Liability Insurance

Commercial General Liability – Auto Insurance

Exhibit D: Business License Application

## EXHIBIT B

### TERMS OF PAYMENT/LEASE TERMS

1. **TOTAL SATISFACTION GUARANTEE.** If you are not totally satisfied with any Xerox-brand Equipment delivered under this Agreement, Xerox will, at your request, replace it without charge with an identical model or, at Xerox's option, with Xerox Equipment with comparable features and capabilities. This Guarantee applies only to Xerox-brand Equipment that has been continuously maintained by Xerox under this Agreement or a Xerox maintenance agreement. For "Previously Installed" Equipment, this Guarantee will be effective for 1 year after installation. For all other Equipment, this Guarantee will be effective for 3 years after installation unless the Equipment is being financed under this Agreement for more than 3 years, in which event it will expire at the end of the initial Term of this Agreement.
2. **Non-Cancelable Agreement.** THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN. YOUR OBLIGATION TO MAKE ALL PAYMENTS, AND TO PAY ANY OTHER AMOUNTS DUE OR TO BECOME DUE, IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF XEROX'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. ANY CLAIM AGAINST XEROX MAY BE ASSERTED IN A SEPARATE ACTION AND SOLELY AGAINST XEROX.
3. **LEASE COMMENCEMENT, PAYMENT, TAXES & CREDIT HISTORY**
  - A. **Lease Commencement.**

The Term for each unit of Equipment will commence upon: (i) the delivery of customer-installable Equipment; or (ii) the installation of Xerox-installable Equipment ("Commencement Date") and will continue for the number of full calendar months shown as "Lease Term" on the Exhibit A, Pricing Exhibit. Any partial month in the Term will be billed on a pro rata basis, based on a 30 day month. Unless either party provides notice of termination at least thirty days before the expiration of the Initial Term, it will renew automatically on a month-to-month basis on the same terms and conditions. During this renewal period, either party may terminate the Equipment upon at least 30 days notice. Upon termination, you will make the Products available for removal by Xerox. At the time of removal, the Equipment will be in the same condition as when delivered (reasonable wear and tear excepted).
  - B. **Payment.**

Payment (including applicable Taxes) is due within 30 days after receipt of invoice, with all charges being billed in arrears. Restrictive covenants on

instruments or documents submitted for or with payments you send to Xerox will not reduce your obligations.

C. **Taxes.**

You will be responsible for all applicable taxes, fees or charges of any kind (including interest and penalties) assessed by any governmental entity on this Agreement or the amounts payable under this Agreement ("Taxes"), which will be included in Xerox's invoice unless you timely provide proof of your tax exempt status. Taxes do not include personal property taxes in jurisdictions where Xerox is required to pay personal property taxes, and taxes on Xerox's income. This Agreement is a lease for all income tax purposes and you will not claim any credit or deduction for depreciation of the Equipment, or take any other action inconsistent with your role as lessee of the Equipment.

D. **Credit.** You, to the extent required by applicable law, authorize Xerox (or its agent) to obtain credit reports, make such other credit inquiries as Xerox may deem necessary at any time, furnish payment history information to credit reporting agents, and release to prospective assignees of this Agreement or any rights hereunder credit-related information Xerox has about you and this Agreement. Even if Products have been delivered, Xerox may, within sixty (60) days following its acceptance of this Agreement, revoke the Agreement if your credit approval is denied.

4. **PRODUCTS.** "Products" means the equipment ("Equipment"), Software and supplies identified in this Agreement. You agree the Products are for your business use (not resale) in the United States and its territories and possessions ("U.S.") and will not be used for personal, household or family purposes.

5. **ASSIGNMENT.**

A. If you wish to assign any rights or obligations under this Agreement, you shall provide a written notice to Xerox of such request for consent, with said notice including the name of the proposed assignee. Your request to assign this Agreement will be granted by Xerox if: (1) you are not in default under this Agreement or any other agreement with Xerox; (2) the proposed assignee meets Xerox's then current credit criteria for similar transactions as determined by Xerox in its sole discretion; and (4) you and the proposed assignee execute a writing, in a form acceptable to Xerox, confirming said assignment. Assignment by you requires the written consent of Xerox and may not be accomplished by operation of law.

B. Xerox may assign this Agreement, in whole or in part, to a parent, subsidiary or affiliate of Xerox, or to a person or entity for the purposes of securitizing a pool of assets or as part of a third party financial transaction without prior notice to you; provided, however, any proposed assignment to a person or entity not identified previously in this sentence shall require your prior written consent. In the event of an

assignment permitted by the preceding sentence, Xerox, without notice to you, may release information it has about you related to this Agreement. Each successive assignee of Xerox shall have all the rights but none of the obligations of Xerox hereunder. You shall continue to look to Xerox for performance of Xerox's obligations, including the provision of Maintenance Services, and you hereby waive and release any assignees of Xerox from any such claim relating to or arising from the performance of Xerox's obligations hereunder. You shall not assert any defense, counterclaim or setoff that you may have or claim against Xerox against any assignees of Xerox. In the event of an assignment by Xerox, you shall remit payments due in accordance with remittance instructions of the assignee.

6. **MINIMUM LEASE PAYMENTS.**

The Minimum Lease Payment, plus any additional Print Charges covers the cost of (i) the use of the equipment; (ii) the equipment's maintenance, and (iii) consumable supplies, if applicable. The Minimum Lease Payment will commence following the Equipment's installation and is billed monthly. Charges for excess prints will be reconciled and billed monthly or quarterly, as applicable in arrears.

7. **TITLE, RISK AND RELOCATION**

- A. Title and Risk of Loss. Until you exercise your Purchase Option: (a) title to Equipment will remain with Xerox; (b) Equipment will remain personal property; (c) you will not attach the Equipment as a fixture to any real estate; (d) you will not pledge, sub-lease or part with possession of it, or file or permit to be filed any lien against it; and, (e) you will not make any permanent alterations to it. Risk of loss passes to you upon delivery and remains with you until Xerox removes the Equipment. You will keep the Products insured against loss or damage and the policy will name Xerox as a loss payee.
- B. Relocation. Equipment prices include standard delivery charges and, for Xerox-owned Equipment, standard removal charges. Charges for non-standard delivery or removal and for any Equipment relocation are your responsibility. Relocation of Xerox-owned Equipment must be arranged (or approved in advance) by Xerox and may not be to a location outside of the U.S.

8. **Default & Remedies, Late Charges & Collection Costs.**

- A. For any payment not received by Xerox ten (10) days or later, after the due date as set forth herein, Xerox may charge, and you agree to pay, a late charge equal to the higher of five percent (5%) of the amount due or \$25 (not to exceed the maximum amount permitted by law) as reasonable collection costs.
9. B. You will be in default under this Agreement if (1) Xerox does not receive any payments within fifteen (15) days after the date it is due or (2) if you breach any other obligation hereunder. If you default under the Agreement or any Order, Xerox may, in addition to its other remedies (including cessation of Maintenance

Services), remove the Equipment at your expense and require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (a) all amounts then due, plus interest from the due date until paid as allowed under California law; (b) the Minimum Lease Payments (less the Maintenance Services and Consumable Supplies components thereof, as reflected on Xerox's books and records) remaining in the Equipment Order Term, discounted at 4% per annum; and ; and (d) all applicable Taxes. . You will make the Equipment available for removal by Xerox within 30-days after the notice of default, in the same condition as when delivered, reasonable wear and tear excepted. **Lease Termination.** Upon termination of the Agreement, and if you have not purchased the Equipment, you shall make the Equipment available for removal by Xerox when requested to do so by Xerox and, at the time of removal, the Equipment shall be in the same condition as when delivered (reasonable wear and tear excepted), together with any related software.

10. **Finance Lease.** A lease order under the contract is a "finance lease" under Article 2A of the Uniform Commercial Code and, except to the extent provided under the Agreement, and to the extent permitted by California law; you waive all rights and remedies conferred upon a lessee by Article 2A. Notwithstanding the above, nothing in this section shall alter, affect, restrict, supersede, abridge or impair any of the rights or remedies established under the terms of the Agreement for General Services.
11. **Protection of Xerox's Rights.** You authorize Xerox or its agent to file, by any permissible means, financing statements necessary to protect Xerox's rights as lessor of the Equipment. You will promptly notify Xerox of a change in ownership, or if you relocate your principal place of business or change the name of your business.
12. **CONSUMABLE SUPPLIES.** If "Consumable Supplies" is identified in Maintenance Plan features, Maintenance Services will include black toner and/or solid ink and color toner and/or solid ink, if applicable ("Consumable Supplies"). Highlight color toner, clear toner, and custom color toner are excluded. Depending on the Equipment model, Consumable Supplies may also include developer, fuser agent, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits. Xerox may charge a shipping and handling fee for Consumable Supplies. Consumable Supplies are Xerox's property until used by you, and you will use them only with the Equipment for which "Consumable Supplies" is identified in Maintenance Plan Features. If Consumables Supplies are furnished with recycling information, Customer will return the used item to Xerox for remanufacturing. Shipping information is available at [Xerox.com/GWA](http://Xerox.com/GWA). Upon expiration of this Agreement, Customer will include any unused Consumable Supplies with the

Equipment for return to Xerox at the time of removal. If your use of Consumable Supplies exceeds Xerox's published yield by more than 10%, Xerox will notify you of such excess usage. If such excess usage does not cease within 30 days after such notice, Xerox may charge you for such excess usage. Upon request, you will provide current meter reads and/or an inventory of Consumable Supplies in your possession.

13. **CARTRIDGES.** If Xerox is providing Maintenance Services for Equipment utilizing cartridges designated by Xerox as customer replaceable units, including copy/print cartridges and xerographic modules or fuser modules ("Cartridges"), you agree to use only unmodified Cartridges purchased directly from Xerox or its authorized resellers in the U.S. Cartridges packed with Equipment and replacement Cartridges may be new, remanufactured or reprocessed. Remanufactured and reprocessed Cartridges meet Xerox's new Cartridge performance standards and contain new or reprocessed components. To enhance print quality, Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point. In addition, 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.
14. **MAINTENANCE SERVICES.** Except for Equipment identified as "No Svc.", Xerox (or a designated servicer) will keep the Equipment in good working order ("Maintenance Services"). The provision of Maintenance Services is contingent upon Customer facilitating timely and efficient resolution of Equipment issues by: (a) utilizing Customer implemented remedies provided by Xerox; (b) replacing Cartridges; and (c) providing information to and implementing recommendations provided by Xerox telephone support personnel. If an Equipment issue is not resolved after completion of (a) through (c) above, Xerox will provide on-site support as provided herein. Maintenance Services will be provided during Xerox's standard working hours in areas open for repair service for the Equipment. 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 your 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. There will be no additional charge for the replacement Equipment during the remainder of the initial Term. If meter reads are a component of your Maintenance Plan, you will

provide them using the method and frequency identified by Xerox. If you do not provide a meter reading for Equipment not capable of Remote Data Access, or if Remote Data Access is interrupted, Xerox may estimate the reading and bill you accordingly.

15. **EQUIPMENT STATUS.** Unless you are acquiring "Previously Installed" Equipment, Equipment will be (1) "Newly Manufactured", which may contain some reconditioned components; (2) "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 new and reconditioned components; or (3) "Remanufactured", which has been factory produced following disassembly to a Xerox predetermined standard and contains new and reconditioned components.
16. **SOFTWARE LICENSE.** Xerox grants you a non-exclusive, non-transferable license to use in the U.S.: (a) software and accompanying documentation provided with Xerox-brand Equipment ("Base Software) only with the Xerox-brand Equipment with which it was delivered; and (b) software and accompanying documentation identified in this Agreement as "Application Software" only on any single unit of equipment for as long as you are current in the payment of all applicable software license fees." Base Software" and "Application Software" are referred to collectively as "Software". You have no other rights and may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer Software; (2) activate Software delivered with the Equipment in an inactivated state; or (3) allow others to engage in same. Title to, and all intellectual property rights in, Software will reside solely with Xerox and/or its licensors (who will be considered third-party beneficiaries of this Section). Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (x) Xerox is denied access to periodically reset such code; (y) you are notified of a default under this Agreement; or (z) your license is terminated or expires. The Base Software license will terminate; (i) if you no longer use or possess the Equipment; (ii) you are a lessor of the Equipment and your first lessee no longer uses or possesses it; or (iii) upon the expiration or termination of this Agreement, unless you have exercised your 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.
17. **SOFTWARE SUPPORT.** Xerox (or a designated servicer) will provide the software support set forth below ("Software Support"). For Base Software, Software Support will be provided during the initial Term and any renewal period but in no event longer than 5 years after Xerox stops taking customer orders for the subject model

of Equipment. For Application Software, Software Support will be provided as long as you are 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: (a) assure that Software performs in material conformity with its user documentation; (b) provide available workarounds or patches to resolve Software performance problems; and (c) resolve coding errors for (i) the current Release and (ii) the previous Release for a period of 6 months after the current Release is made available to you. Xerox will not be required to provide Software Support if you have modified the Software. New releases of Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates". Maintenance Releases or Updates that Xerox may make available will be provided at no charge and must be implemented within six months. New releases of Software that include new content or functionality ("Feature Releases") will be subject to additional license fees at Xerox's then-current pricing. Maintenance Releases, Updates and Feature Releases are collectively referred to as "Releases". Each Release will be considered Software governed by the Software License and Software Support provisions of this Agreement (unless otherwise noted). Implementation of a Release may require you to procure, at your expense, additional hardware and/or software from Xerox or another entity. Upon installation of a Release, you will return or destroy all prior Releases.

18. **DIAGNOSTIC SOFTWARE.** Software used to evaluate or maintain the Equipment ("Diagnostic Software") is included with the Equipment. Diagnostic Software is a valuable trade secret of Xerox. Title to Diagnostic Software will remain with Xerox or its licensors. Xerox does not grant you any right to use Diagnostic Software, and you will not access, use, reproduce, distribute or disclose Diagnostic Software for any purpose (or allow third parties to do so). You will allow Xerox reasonable access to the Equipment to remove or disable Diagnostic Software if you are no longer receiving Maintenance Services from Xerox, provided that any on-site access to your facility will be during your normal business hours
19. **FIXED PRICING.** If "Pricing Fixed for Term" is identified in Maintenance Plan Features, the maintenance component of the Minimum Payment and Print Charges will not increase during the initial Term of this Agreement.
20. **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.

## **GENERAL TERMS AND CONDITIONS**

21. **REPRESENTATIONS.** The individuals signing this Agreement are duly authorized to do so and all financial information you provide completely and accurately represents your financial condition.
22. **LIMITATION OF LIABILITY.** Except for liability (including all "Claims" referenced by section 7 of the Agreement for General Services) under the indemnification obligations set forth in this Agreement, Neither party will be liable to the other for any direct damages in excess of \$50,000 or the amounts paid hereunder, 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 Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory.
23. **FORCE MAJEURE.** Xerox will not be liable to you during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control. Xerox will notify you if such a circumstance occurs.
24. **WARRANTY DISCLAIMER.** XEROX DISCLAIMS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. This Agreement is a "finance lease" under Article 2A of the Uniform Commercial Code and, except to the extent expressly provided herein, and as permitted by applicable law, you waive all of your rights and remedies as a lessee under Article 2A.
25. **INTELLECTUAL PROPERTY INDEMNITY.** Xerox will defend, and pay any settlement agreed to by Xerox or any final judgment for, any claim that a Xerox-brand Product infringes a third party's U.S. intellectual property rights. You will promptly notify Xerox of any alleged infringement and permit Xerox to direct the defense. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless it pre-approves them in writing. To avoid infringement, Xerox may modify or substitute an equivalent Xerox-brand Product, refund the price paid for the Xerox-brand Product (less the reasonable rental value for the period it was available to you), or obtain any necessary licenses. Xerox is not liable for any infringement based upon a Xerox-brand Product being modified to your specifications or being used or sold with products not provided by Xerox.
26. **REMOTE SERVICES.** Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox or transmitted to or from Xerox by the Equipment connected to Customer's network (" Remote Data") via electronic transmission to a secure off-site location ("Remote Data Access"). Remote Data Access also enables Xerox to transmit to Customer Releases for

Software and to remotely diagnose and modify Equipment to repair and correct malfunctions. Examples of Remote Data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. Remote Data may be used by Xerox for billing, report generation, supplies replenishment, support services, recommending additional products and services, and product improvement/development purposes. Remote Data will be transmitted to and from Customer in a secure manner specified by Xerox. Remote Data Access will not allow Xerox to read, view or download the content of any Customer documents or other information residing on or passing through the Equipment or Customer's information management systems. Customer grants the right to Xerox, without charge, to conduct Remote Data Access for the purposes described above. Upon Xerox's request, Customer will provide contact information for Equipment such as name and address of Customer contact and IP and physical addresses/locations of Equipment. Customer will enable Remote Data Access via a method prescribed by Xerox, and Customer will provide reasonable assistance to allow Xerox to provide Remote Data Access. Unless Xerox deems Equipment incapable of Remote Data Access, Customer will ensure that Remote Data Access is maintained at all times Maintenance Services are being performed.

Major Account Lease Pricing Exhibit

City of Martinez  
RFP

QTY	Product/ Market Code	Accessories/Descriptions	CPM	Term (mos)	Periodic Base Charge	B/W Prints Included	Color Prints Included	B/W Print Charge	Color Print Charge	Supplies Included	Staples Included
5	5865APT	WorkCentre 5865 Printer/Copier w/ SPDH 4 Trays & Print Controller & Color Scanning, Initialization Kit OFF50FINR -2K RoHS Ofc Finisher MultiPos Staple 3HOLE -3 Hole Punch Kit	65	60	\$210.26	0	0	\$0.0049	N/A	Yes	No
1	W7830P	WorkCentre 7830 Printer with 3T Module (3 x 520 sheets), 520 Sheet Tray, 100 Sheet Bypass, 1x250 OCT, DADF, EIP, Data Security, Job Based Accounting, PostScript, Full Network Scan, Server Fax, iFax, Std Output Tray, Left Side Tray, Init Kit OFCFINRLX -Office Finisher FINLX-3HP -2/3-Hole Punch	30	60	\$168.94	0	0	\$0.0050	\$0.0490	Yes	No
1	W7835PT	WorkCentre 7835 Printer with Hi Cap Tandem Tray, (520 sheet, 2000 sheet A4/Letter), 520 sheet Tray, 100 Sheet Bypass, 1x250 OCT, DADF, EIP, Data Security, Job Based Accounting, PostScript, Full Network Scan, Server Fax, iFax, Std Output Tray, Init Kit OFCFINRLX -Office Finisher FINLX-3HP -2/3-Hole Punch	35	60	\$173.77	0	0	\$0.0050	\$0.0490	Yes	No