JK
10/15/15
No. 5

AN ORDINANCE 2015-10-15-0867

AUTHORIZING A CONTRACT WITH XEROX CORPORATION TO PROVIDE CITY DEPARTMENTS WITH LEASED MULTI FUNCTION DEVICES FOR AN ESTIMATED COST OF $1,100,000.00 ANNUALLY, WITH ALL EXPENDITURES IN ACCORDANCE WITH THE CITY'S ADOPTED BUDGET APPROVED BY CITY COUNCIL AND NO FUNDS ENCUMBERED AT THIS TIME.

* * * * *

WHEREAS, the City requires the lease of approximately 400 color/black & white multifunction devices to be used by the City's various departments to meet their general print and document imaging needs; and

WHEREAS, the City issued a Request for Competitive Sealed Proposal (RFCSP) for "Annual Contract for the Lease of Multi Function Devices" on January 9, 2015; and

WHEREAS, the City's evaluation committee scored the responses and based on the scores, recommends that Xerox Corporation, receiving the highest ranking, be awarded a contract; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. An agreement with the Xerox Corporation to provide the City with leased multifunction devices for an estimated cost of $1,100,000.00 annually, is hereby approved. A copy of the agreement is attached hereto and is incorporated by reference as **Attachment I**. The Director of Finance, or his designee, is authorized to execute the agreement and any related documents.

SECTION 2. The amount up to $1,100,000.00 will be encumbered upon issuance of purchase orders, and payment is authorized to Xerox Corporation. All expenditures will be in accordance with the Fiscal Year 2016 and subsequent budgets that fall within the term period of this contract approved by City Council.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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SECTION 4. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 15th day of October, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**5 (in consent vote: 5, 6, 8, 9, 10, 11A, 11B, 12, 13, 15, 16, 17, 19, 20, 22A, 22B)**
Date:	10/15/2015
Time:	10:05:50 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a contract with Xerox Corporation to provide City Departments with leased multi function devices for an estimated cost of $1,100,000.00 annually, with all expenditures in accordance with the City's adopted budget approved by City Council and no funds encumbered at this time. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

Agenda Item:	**5 (in consent vote: 5, 6, 8, 9, 10, 11A, 11B, 12, 13, 15, 16, 17, 19, 20, 22A, 22B)**
Date:	10/15/2015
Time:	10:50:31 AM
Vote Type:	Motion to Reconsider
Description:	An Ordinance authorizing a contract with Xerox Corporation to provide City Departments with leased multi function devices for an estimated cost of $1,100,000.00 annually, with all expenditures in accordance with the City's adopted budget approved by City Council and no funds encumbered at this time. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

Agenda Item:	**5 (in consent vote: 5, 6, 8, 9, 10, 11A, 11B, 12, 15, 16, 17, 18, 19, 20, 22A, 22B)**
Date:	10/15/2015
Time:	10:51:02 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a contract with Xerox Corporation to provide City Departments with leased multi function devices for an estimated cost of $1,100,000.00 annually, with all expenditures in accordance with the City's adopted budget approved by City Council and no funds encumbered at this time. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

INTEGRATION AGREEMENT FOR

ANNUAL CONTRACT FOR LEASE OF MULTI FUNCTION DEVICES REQUEST FOR COMPETITIVE SEALED PROPOSAL ("RFCSP") NO.: 6100005352 (RFCSP)

BETWEEN THE CITY OF SAN ANTONIO, TEXAS AND XEROX CORPORATION.

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation (City), and Xerox Corporation, (Xerox), both of which may be referred to herein collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

1.0 CONTRACT DOCUMENTS

1.1 The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:

a. This Integration Agreement, including;

b. City's Request for Competitive Sealed Proposal No.: 6100005352 (RFCSP) (Exhibit A), including all attachments, addendums and clarification statements thereto;

c. Xerox Statement of Work (Exhibit B);

d. Xerox Response to RFCSP (to include clarification document) (Exhibit C);

e. Xerox Master Service Agreement (Exhibit D); and

f Xerox Services and Solutions Order Form (Exhibit E).

2.0 INSURANCE

2.1 Prior to the commencement of any work under this Contract, **XEROX** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "**ANNUAL CONTRACT FOR LEASE OF MULTI FUNCTION DEVICES**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Contract until such Certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

2.2 **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

2.3 **XEROX'S** financial integrity is of interest to the **CITY**; therefore, subject to **XEROX'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **XEROX** shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at **XEROX'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

2.4 **XEROX** agrees to require, by written contract, that all subcontractor providing goods or services hereunder obtain the same insurance coverages required of **XEROX** herein, and provide a Certificate of Insurance and endorsement that names **XEROX** and **CITY** as additional insureds. **XEROX** shall provide **CITY** with said Certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

2.5 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **XEROX** shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to **CITY** at the address provided below within 10 days of the requested change. **XEROX** shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

2.6 **XEROX** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

- Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**; and

- Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

2.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **XEROX** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **XEROX'S** performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

2.8 In addition to any other remedies the **CITY** may have upon **XEROX'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **XEROX** to stop work hereunder, and/or withhold any payment(s) which become due to **XEROX** hereunder until **XEROX** demonstrates compliance with the requirements hereof.

2.9 Nothing herein contained shall be construed as limiting in any way the extent to which **XEROX** may be held responsible for payments of damages to persons or property resulting from **XEROX'S** or its subcontractors' performance of the work covered under this Contract.

2.10 It is agreed that **XEROX'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.

2.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.

2.12 **XEROX** and any subcontractors are responsible for all damage to their own equipment and/or property.

3.0 INDEMNIFICATION AND RELATED PROVISIONS

3.1 **Xerox covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to Xerox's activities under this Contract, including any acts or omissions of Xerox, any agent, officer, director, representative, employee, Xerox or subcontractor of Xerox, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT XEROX AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

3.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **XEROX** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **XEROX** known to **XEROX** related to or arising out of **XEROX's** activities under this Contract and shall see to the investigation and defense of such claim or demand at **XEROX's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **XEROX** of any of its obligations under this paragraph.

3.3 **XEROX** shall retain defense counsel within seven (7) business days of **CITY'S** written notice that **CITY** is invoking its right to indemnification under this Contract. Failure of the **CITY** to provide a written rejection of **XEROX'S** counsel, including reasonable cause, within (3) days of receipt of **XEROX'S** notice shall constitute acceptance of **XEROX'S** counsel. If **XEROX** fails to retain Counsel within such time period, **CITY** shall have the right to retain defense counsel on its own behalf, and **XEROX** shall be liable for all costs incurred by **CITY**. **CITY** shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

3.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of **XEROX**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for **XEROX** or any subcontractor under worker's compensation or other employee benefit acts.

4.0 LAW APPLICABLE

4.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

4.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

5.0 ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY OF SAN ANTONIO	XEROX CORPORATION
_____	_____
Troy Elliott	Print Name: _____
Director of Finance	Title: _____
Date: _____	Date: _____

Approved as to Form:

_____

Assistant City Attorney