

**REPROGRAPHICS SUPPLY AND SERVICES AGREEMENT**

This Reprographics Supply and Services Agreement (the "Agreement") is made effective as of the 1st day of October, 2011, by and between the **CHICAGO HOUSING AUTHORITY**, an Illinois municipal corporation with its principal office at 60 East Van Buren, in the City of Chicago, State of Illinois (hereinafter, the "**CHA**"), and **XEROX CORPORATION**, (hereinafter, the "Contractor") a New York corporation, authorized to do business in Illinois, with its principal office at 123 South Wacker Drive, Suite 1000, Chicago, Illinois 60606.

**RECITALS**

**WHEREAS**, the CHA requires the supply and delivery high volume reprographic equipment and facilities (the "Equipment"), as well the related and integral provision and performance of maintenance, support, training and other related services to the Equipment (collectively the "Services"), and therefore advertised, solicited and issued Request for Proposal No. 10-00657 (hereinafter, "RFP", which is attached as Exhibit 1 and incorporated herein) from qualified contractors;

**WHEREAS**, the CHA evaluated the Contractor's submissions and proposal (including the Contractor's original and amended proposals and its best and final offer) provided in response to the RFP (which is attached and incorporated herein by reference as Exhibit A to the Agreement) and determined that at minimum, it met the qualifications to be capable of both supplying the Equipment and performing the Services;

**WHEREAS**, the Contractor by submitting its qualifications and proposal in response to the RFP, represents and warrants that it is highly qualified and competent to perform the Services, and has the necessary means, expertise and capacity to fully supply and deliver the Equipment and to complete any Services assigned to it or assumed by it in accordance with this Agreement; and

**WHEREAS**, the Contractor desires and is ready, willing and able to perform the Services identified in the RFP and otherwise provided for or referenced herein;

**WHEREAS**, the Contractor's proposal incorporates, in part, certain prevailing terms and conditions extended by the Contractor to the State of Illinois under that certain "Term Contract" between the State of Illinois - Department of Central Management Services and Contractor, that are extended to other units of government, agencies or other entities, which Term Contract is incorporated herein by reference as Exhibit 2, as if fully and originally set forth herein;

**WHEREAS**, the RFP and this Agreement include and incorporate certain mandatory and prevailing terms and conditions applicable to CHA procurements and contracts, which may, in part, supplement the Term Contract, or which may, in part, supplant and prevail over inconsistent terms and conditions of the Term Contract;

**NOW THEREFORE**, in consideration of the mutual promises and the terms and conditions set forth herein, the CHA and the Contractor agree as follows:

## ARTICLE I INCORPORATION OF RECITALS

1.1 Incorporation of Recitals and Precedence of Terms. The recitals set forth above, are incorporated by reference as if fully set forth herein. In the event of a conflict between any provision of this Agreement and any other documents, this Agreement, the RFP, any specifically approved scope of work or Work Plan (defined below), or the Term Contract shall control, in that order, unless otherwise specified. However, the parties shall attempt in good faith to construe the Agreement harmoniously with other referenced terms and provisions to a reasonable extent.

1.2 Definitions. The following words and phrases have the following meanings for purposes of this Agreement:

**"Confidential Information"** of a party shall mean all confidential or proprietary information and documentation of such party, including with respect to the CHA, all Deliverables and other information of the CHA that is not permitted to be disclosed to third parties under local laws and regulations.

**"Contractor"** means the vendor herein upon the event that such vendor is issued a Notice-to-Proceed by the CHA.

**"Deliverables"** shall mean those tangibles to be provided by the Contractor as described in Section 3.1.

**"Department"** means the Department of Information Technology Services.

**"Documentation"** shall mean all documentary materials such as, but not limited to, work papers, configurations, manuals, and other work product in hard copy or electronic format, prepared by or on behalf of the Contractor, its subcontractors or agents in connection with providing the Equipment or Services.

**"Maintenance and Support Services"** shall mean those portions of the Services which are provided for purposes of performing or maintaining Equipment, service contract, software and/or hardware maintenance and support for any and all elements, components, hardware, software and other equipment specified in Exhibit C.

**"Notice-to-Proceed"** means a written issuance or acceptance of a Work Plan by both the CHA's Director of Procurement and Contracts and direction to commence Services under the Work Plan.

**"Project Documents"** means this Agreement, the Request for Proposal, any written Accepted Work Plan, and any attachments and exhibits incorporated into them.

**"Project Manager"** means the Contractor's staff member indicated on each Work Plan as the person who will direct and coordinate the execution of the Work Plan and who will be the primary contact on the Work Plan.

**"Director of Procurement and Contracts"** means the Director of Procurement and Contracts of the CHA and any representative duly authorized to act on his/her behalf.

**"Services"** includes the prior defined reference above and additionally means, collectively, the services, duties and responsibilities described in the Project Documents and any and all work necessary to complete them or carry them out fully as required and in accordance with the terms of this Agreement.

**"Subcontractor"** means any person or entity with whom the Contractor contracts to provide any part of the Services. The term Subcontractor also includes sub-contractors of any tier, suppliers and material men, whether or not in privity with the Contractor.

**"Support Period"** means, time whereby the Contractor will be on site as directed by the CHA for a pre-determined period of time (up to 30 days) following the latest act of the Contractor resulting in the completed supply, delivery, installation, implementation and/or acceptance of Equipment or Services, as applicable. Support Period, however, shall not be construed to modify regular service and response terms applicable to maintenance services or outages related to the Equipment.

**"Warranty Period"** means the period (at least one year) following Acceptance of any Equipment or Services, unless otherwise specified in the Project Documents, if applicable. Contractor shall pass through any manufacturer or supplier warranties for Equipment and shall facilitate any related servicing, repair or replacement incident to an event of warranty coverage.

**"Work Plan"** means the detailed description of the Services to be provided by the Contractor in a response to the Request for Proposal, as well as any Equipment schedules, Purchase Agreement(s), Pool Plan Agreement(s), order forms or other documentation relating to the Equipment.

**"Work Product"** shall include all finished and unfinished originals or copies (when originals are unavailable) of documents, screens, reports, writings, procedural manuals, forms, source and object code, work flow charts, methods, processes, data studies, plans, designs, transformed data, briefs, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, interfaces, computation, papers, supplies, notes, recordings, videotapes, pictorial reproductions, designs or other graphic representations, equipment descriptions, and other materials prepared by the Contractor under this Agreement.

## **ARTICLE II CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

### **2.1 Scope of Services.**

The type of Services which the Contractor shall perform and provide under this Agreement are those described in the RFP, including any attachments, exhibits, addenda or other inclusions, as well as any statement of work, project plan or similar description of services to be provided or rendered, which is attached to this Agreement and incorporated by reference as if fully set forth herein, and all tasks necessary to complete such Services. A copy of the Statement of Work, Work Plan or equivalent document describing in detail the Equipment or Services to be supplied or provided herein, as well as their respective schedules, shall be attached hereto and incorporated herein as Exhibit B. The Contractor must provide Services in accordance with the standards of performance set forth in Section 3.2.

The Contractor is acting as an independent contractor in performing under this Agreement and nothing in this Agreement is intended or should be construed as in any way creating or establishing the relationship of partners or joint venturers between the CHA and the Contractor, or as constituting the Contractor or any officer, owner, employee or agent of the Contractor as an agent, representative or employee of the CHA for any purpose or in any manner whatsoever.

2.2 CHA agrees to provide working space and facilities, and any other services and materials Contractor or its personnel may reasonably request in order to perform the work assigned to them. All work shall be performed at CHA's facilities unless otherwise mutually agreed and shall be performed in a workmanlike and professional manner by employees of Contractor having a level of skill in the area commensurate with the requirements of the scope of work to be performed. Contractor shall make sure its employees, representatives and agents at all times observe security and safety policies of CHA.

2.3. CHA will advise Contractor of the individuals to whom Contractor's personnel will report for purposes of day-to-day work assignments. CHA and Contractor shall develop appropriate administrative procedures to apply to such personnel.

### ARTICLE III CONTRACTOR STANDARDS OF CONDUCT

3.1 Deliverables. In carrying out Services, the Contractor must prepare or provide Deliverables. The Deliverables shall specifically include all equipment, elements or items set forth in Exhibit B, including any ancillary, necessary or related items comprising the Equipment. Deliverables may also include, but are not limited, to various supporting documentation, manuals, forms, source and object code, work flow charts, methods, processes, plans, interfaces, memoranda, computation, papers, supplies, equipment descriptions, and other materials prepared by the Contractor under this Agreement. The CHA reserves the right to reject any and all Deliverables which in the sole judgment of the CHA do not adequately represent the intended number, specification or quality goods or Services to be supplied, or level of completion or standard of performance, do not include relevant information or data, do not comply with federal, state, or local reporting requirements, or do not include all documents which are specified in this Agreement or the applicable Work Plan, or which are reasonably necessary for the purposes for which the CHA made this Agreement with Contractor or for which the CHA intends to use the Deliverables.

#### 3.2 Standard of Performance.

(a) Professional and Competent. The Contractor will perform all Services required of it under this Agreement with that degree of skill and care normally shown by a professional performing services of a comparable nature and scope. The Contractor shall at all times use its best efforts to assure high quality, timeliness, efficiency and creativity in rendering and completing the Services. The Contractor agrees that performance of the Services in a satisfactory manner shall include quick response to the CHA's needs. Accordingly, the Contractor shall return all telephone calls and respond to all electronic mail on a timely basis. Nothing contained in this Section, however, shall be construed to relieve Contractor of its obligations specifically set forth in a Work Plan.

(b) Satisfactory Performance. The Contractor will perform or cause to be performed all

Services required by the Agreement in accordance with the terms and conditions of this Agreement, in accordance with any federal, state and local laws, statutes, applicable to this Agreement, and per the contracted performance standards. The Contractor must at all times act in the best interests of the CHA consistent with the professional obligations assumed by it in entering into this Agreement and will assure timely and satisfactory rendering and completion of its Services, including but not limited to Deliverables.

(c) Qualified Personnel. The Contractor must assure that all Services which require the exercise of professional skills or judgment must be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. The Contractor covenants with the CHA to furnish its best professional expertise and judgment in furthering the CHA's interests.

(d) Efficiency. The Contractor agrees to furnish efficient business administration and supervision to render and complete the Services at reasonable cost, if furnished on a time and material basis.

3.3 Cooperation The Contractor will at all times cooperate fully with the CHA, its agents, employees, contractors and subcontractors, as well as any other parties providing services with respect to this Agreement, and any interested governmental agency.

3.4 Confidentiality. Contractor agrees that all reports and documents prepared or assembled or received by Contractor, or information that they became aware of in the course of performing Services pursuant to this Agreement, are to remain confidential and to be used solely for the purposes of meeting the objectives of this Agreement. Except as required or necessary to conduct the Services contemplated hereby, Contractor agrees that such reports, documents and information learned in the course of performing Services, shall not be made available to any individual or organization other than the CHA, HUD or courts of competent jurisdiction or administrative agencies pursuant to a subpoena, without the prior written approval of the CHA.

3.5 Failure to Comply If Contractor fails to comply with the above standards, Contractor will perform again, at its own expense, any and all Services required to be performed again as a direct or indirect result of such failure. The duty to perform again is in addition to and not a limitation on any other remedies available to the CHA under this Agreement, at law, or in equity.

#### ARTICLE IV TERM OF AGREEMENT

4.1 Term of Agreement; Options. This Agreement shall take effect as of October 1, 2011, and shall continue until September 30, 2013 (the "Base Term"), or until the Services for all Equipment, task items, supply, delivery, installation, implementation, and other performance requirements (including those pursuant to any Work Plans) are completed in accordance with their respective terms, or otherwise terminated in accordance with the terms of this Agreement. Notwithstanding the foregoing, however, the term of Maintenance and Support Services to be provided under this Agreement shall commence upon the date of the equipment's installation, which is the date that the Contractor determines the equipment to be operating satisfactorily, as demonstrated by the successful completion of diagnostic



· routines, and is available for CHA's use and remain in effect for a term of two (2) years from such acceptance date, provided the equipment is covered by the Contractor's Maintenance Agreement. The terms and conditions of the Maintenance and Support Agreement are set forth in Exhibit C, which is incorporated herein by reference. The CHA additionally retains the right to exercise, as its sole option and discretion, two (2) one-year extension options for Maintenance and Support Agreement upon the same prevailing terms, conditions set forth herein, and subject to the agreed best and final pricing set forth in the accepted Proposal. The Equipment, hardware, software and other materials and elements (as applicable) covered by the maintenance and support term (and any exercised option terms) are set forth in Exhibit D, which is incorporated herein by reference.

4.2 Time is of the Essence. The Contractor will provide Services within the time limits required under this Agreement and as provided in the Project Documents. The Contractor acknowledges that sometimes deadlines for the Services are dictated by the requirements of agencies or events outside the control of the CHA, that failure by the Contractor to meet these deadlines may result in economic or other losses to the CHA, and that in those circumstances, TIME IS OF THE ESSENCE.

## ARTICLE V COMPENSATION

5.1 Amount of Compensation. For the Base Term of this Agreement the CHA shall pay to the Contractor compensation for the Contractor's supply, delivery and installation of the Equipment, and for the Contractor's performance of the Services contemplated herein, in an estimated amount not to exceed of Five Hundred Fifteen Thousand and 00/100 Dollars (\$515,000.00). The fees paid hereunder shall be for the full, complete and satisfactory performance and provision of the Services (including Maintenance and Support Services) and the supply and installation of the Equipment identified in the Agreement and the Project Documents. The Contractor agrees not to perform, and waives any and all claims for payment of work, equipment, systems, supplies or other costs which would result in billings beyond this amount without a prior written amendment to this Agreement authorizing said additional work, cost or expense. The Contractor acknowledges an affirmative duty to monitor its performance and billings to ensure that the scope of work is completed within the previously agreed fee.

5.2 Method of Payment The Contractor shall submit invoices, as agreed to by the Contractor and the CHA. Invoices shall contain a description of the Equipment supplied and/or Services rendered and eligible fees. The CHA shall pay each invoice within sixty (60) days of receipt of a properly submitted and approved invoice. The Contractor shall not be entitled to receive payment unless an invoice relating to such payment is first submitted to the CHA. The invoices shall be subject to the review and approval of the CHA. The Contractor shall furnish such supporting documents and additional information as may be required to approve each invoice. The Contractor's invoice shall include the hours and fees for the Services provided. If the CHA objects to all or any portion of any invoices, it shall notify the Contractor of its objection and both parties shall make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, the CHA will pay the undisputed portion of any invoice without being deemed to have accepted the disputed portion. The equipment purchase price is not subject to dispute.

5.3 Non-Appropriation Funding for any work covered by the terms of this Agreement is

subject to (1) availability of federal funds from HUD, and (2) the approval of funding by the CHA's Board of Commissioners. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted or appropriated funds are rescinded by Congress in any fiscal period during the term of this Agreement, then the CHA may notify the Contractor of such occurrence and the Maintenance Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted but no sooner than the date of notification of termination.

5.4 Right to Offset Any excess costs and damages incurred or suffered by the CHA in the event of termination of this Agreement for default or arising as a result of the exercise by the CHA of any of the other remedies available to it under Article VII; any excess costs or damages incurred or suffered by the CHA otherwise resulting from the Contractor's performance or non-performance under this Agreement; any other set-offs permitted under this Agreement; any credits due to the CHA; or any overpayments made by the CHA may be offset by use of any payment due to the Contractor. If such amount offset is insufficient to cover those excess costs, credits, or overpayments, the Contractor will be liable for and promptly remit to the CHA the balance upon written demand. This right to offset is in addition to, and not a limitation on, any other remedies available to the CHA.

## ARTICLE VI DISPUTES AND RISK

6.1 Disputes In the event of a dispute between the CHA and Contractor involving this Agreement, the Director of Procurement and Contracts and Contractor will attempt to negotiate a resolution. If the parties cannot resolve the dispute through negotiation, either party may, submit the dispute in writing to CHA's Chief Executive Officer for decision. The Chief Executive Officer shall, render a decision concerning the dispute submitted. Unless Contractor, within thirty (30) days after receipt of the decision, shall notify the Chief Executive Officer in writing that it takes exception to the decision of the Chief Executive Officer, the decision of the Chief Executive Officer shall be final and binding. Provided Contractor has given the notice within the time stated above and has brought suit against the CHA not later than one year after Contractor has received notice of the decision of the Chief Executive Officer, then the decision of the Chief Executive Officer for the CHA shall not be final, but the dispute shall be determined on the merits by a court of competent jurisdiction which shall be located according the terms Section 9.8.

6.2 Insurance Contractor agrees to procure and maintain at all times during the term of any work awarded to the Contractor under this Agreement between Contractor and the CHA, the types of insurance specified below in order to protect the CHA from the acts, omissions and negligence of Contractor, its officers, officials, subcontractors, joint ventures, partners, agents or employees. The insurance carriers used by Contractor must be authorized to conduct business in the State of Illinois and shall have a BEST Rating of not less than an "A. X". The insurance provided shall cover all operations under the Agreement, whether performed by Contractor or by its subcontractor, joint ventures, partners, agents, officers or employees. The following levels of insurance are merely guidelines, the CHA may require all or some of the following forms of insurance and may require higher levels of each insurance.

(a) **Workers Compensation and Occupational Disease Insurance** Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois along with Employer's Liability in an amount of not less than \$1MM/\$1MM/\$1MM.

(b) **Commercial/General Liability Insurance** written on an occurrence form (Primary) and Umbrella Liability (Excess).

Commercial/General Liability Insurance provided is to have limits of not less than One Million Dollars (\$1,000,000) per occurrence with an Aggregate of not less than Two Million Dollars (\$2,000,000) (i.e., \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Contractor's agents subcontractors, invitees and guests and their personal property. The CHA is to be endorsed as an additional insured on the Contractor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the CHA.

(c) **Automobile Liability Insurance.** When any motor vehicles (owned, non-owned and hired) are used in connection with the Services to be performed, the Contractor shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The CHA is to be endorsed as an additional insured on the Contractor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the CHA.

(d) **Professional Liability.** Professional Liability insurance covering acts, errors or omissions of your product or work including representations/warranties to this contract, shall be maintained with limits of not less than One Million Dollars (\$1,000,000) per occurrence. Coverage extensions shall include Blanket Contractual Liability and Internet presented issues including but not limited to: Failure of Hotlinks to Work, Failure of Supply Chains, Loss of Data, Theft of Intellectual Property, Transmission of Computer Viruses, Disruption of Service attacks, etc. When policies are renewed or replaced, the policy retroactive date must coincide with or precede the start of Services under this Agreement. A Claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(e) **Umbrella Liability.** Coverage, if applicable, is to follow form of the Primary Insurance requirements outlined above.

**6.3 Related Requirements.** Contractor shall furnish the Chicago Housing Authority, Procurement and Contracts, 60 East Van Buren, Chicago, Illinois 60605, original Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of this Agreement.

**THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO CONTRACTOR COMMENCING WORK UNDER THIS AGREEMENT AT THE DESIGNATED CHA LOCATIONS.**

The Contractor shall furnish the Chicago Housing Authority, Procurement and Contracts Department, 60 East Van Buren, Chicago, Illinois 60605, original Certificates of Insurance evidencing the required coverages to be in force on the Effective Date of this Agreement, and Renewal Certificates



of Insurance, or such similar evidence, if coverages have an expiration or renewal date occurring during the term of this Agreement or extensions thereof. The receipt of any certificates does not constitute agreement by the CHA that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The insurance policies shall provide for ninety (90) days prior written notice to be given to the CHA in the event coverage is substantially changed, cancelled or non-renewed.

Contractor shall require all subcontractors to carry the insurance required herein or Contractor may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "A" above. Evidence of such coverage must be submitted to CHA.

Contractor expressly understands and agrees that any insurance or self-insurance programs maintained by the CHA shall apply in excess of, and will not contribute with insurance provided by Contractor under this Agreement.

**6.4 Indemnification.** Contractor agrees to defend, indemnify and hold the CHA its officers, officials, employees and agents and contractors free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees (including reasonable attorney fees) or other expenses or liabilities of every kind, nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "Claims") arising out of or resulting from Contractor's, its agents', employees' and subcontractors' performance of the Services under this Agreement, and/or the acts or omissions of Contractor, its agents, employees and subcontractors, including but not limited to, the enforcement of this indemnification provision. Without limiting the foregoing, any and all such Claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims at its sole expense and agrees to bear all other costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent. The above indemnification excludes any negligent or willful act on the part of CHA, its employees, or agents, or for any infringement caused by complying with CHA's requirement to use, or the CHA's use of, the Contractor-branded/supplied equipment with equipment or software not provided by Contractor. To avoid infringement, Contractor may modify or substitute an equivalent Contractor-brand product, refund the price paid for the Contractor-brand product (less the reasonable rental value for the period it was available to CHA), or obtain any necessary licenses.

To the extent permissible by law, Contractor waives any limits on Contractor's liability that it would otherwise have by virtue of the Workers Compensation Act or any other law or judicial decision (specifically Kotecki v. Cyclops Welding Corporation, 146 Ill.2d 155 (1991)).

Contractor shall have the right and obligation to conduct and control the defense of any Claim for which the CHA is entitled to indemnification hereunder, provided however, the CHA shall have the right, at its option, to engage separate counsel to monitor the defense of any suit, without relieving

Contractor of any of its obligations under this indemnity provision. Contractor expressly understands and agrees that the requirements set forth in this indemnity to defend, indemnify and hold the CHA harmless are separate from and not limited by Contractor's responsibility to obtain, procure and maintain insurance pursuant to any other section of this Agreement. Further, the indemnities contained in this section shall survive the expiration or termination of this Agreement.

## ARTICLE VII EVENTS OF DEFAULT, REMEDIES, TERMINATION, RIGHT TO OFFSET, SUSPENSION

**7.1 Events of Default Defined.** Each of the following shall constitute an event of default under the Maintenance Agreement:

- (a) Any misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the CHA.
- (b) Contractor's failure to perform any of its obligations in all material respects under this Agreement including, but not limited to, the following:
  - (i) Inability to perform the Services satisfactorily in accordance with the performance standards or as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors; and
  - (ii) Failure to comply in all material respects with any term of this Agreement, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination.
- (c) Any change in majority ownership or majority control of Contractor without the prior written approval of the CHA, which written approval shall not be unreasonably withheld.
- (d) Contractor's default under any other agreement it may presently have or may enter into with the CHA during the term of this Agreement. Contractor acknowledges and agrees that in the event of default under this Agreement the CHA may also declare default under any such other agreements.

**7.2 Remedies.** Upon the occurrence of any event of default which Contractor fails to cure within thirty (30) calendar days after receipt of notice given by the CHA in accordance with the terms of the Maintenance Agreement, the CHA may declare Contractor in default and invoke any or all of the following remedies:

- (a) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the CHA.
- (b) Pursue any and all remedies, legal and/or equitable, available to the CHA.
- (c) The right to withhold all or any part of Contractor's compensation

hereunder.

- (d) The right to deem Contractor non-responsible in future contracts to be awarded the CHA.

The remedies under this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies existing now or hereafter, at law, in equity or by statute. The CHA's failure to exercise any right or remedy shall not be construed as a waiver of any event of default or acquiescence thereto.

**7.3 Termination for Convenience.** Notwithstanding the foregoing, the CHA may terminate the Services to be performed under the Maintenance Agreement for convenience at any time by giving notice, in writing, to the Contractor when the Agreement may be deemed to be no longer in the best interest of the CHA. Contractor shall continue to render the Services until the effective date of termination. No costs incurred by Contractor after the effective date of the termination shall be allowed. The CHA shall reimburse Contractor for all of the direct and reasonable costs, as determined by the CHA, that were properly incurred through the date of termination.

**7.3 Suspension.** The CHA may request at any time that Contractor suspend its Maintenance Services or any part thereof by giving ten (10) business days prior written notice to Contractor or upon no notice in the event of emergency. Contractor shall promptly resume performance of such Maintenance Services under the same terms and conditions as stated herein when requested to do so by the CHA.

**7.4 No Damages for Delay.** Contractor agrees that it shall make no claims against the CHA for damages, charges, interest, additional costs or fees incurred by reason of suspension of work or delays under the Maintenance Agreement caused by the CHA. Contractor's sole and exclusive remedy for suspension of work or delays caused by the CHA is an extension of time equal to the duration of the suspension or delay to allow Contractor to perform.

## **ARTICLE VIII**

### **WARRANTIES, REPRESENTATIONS AND SPECIAL CONDITIONS**

**8.1 Warranties and Representations.** In connection with the execution of this Agreement, Contractor warrants and represents to CHA:

(a) That it is financially solvent and that it and each of its employees, agents or subcontractors of any tier are competent to perform the Services required under this Agreement.

(b) That no officer, agent or employee of the CHA is employed by Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, except as may be permitted in writing by the CHA and HUD, and that no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of Contractor to any employee of the CHA as an inducement for the award of this Agreement; and Contractor further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be voidable as to the CHA.

(c) That Contractor and its subcontractors are not in default at the time of the execution of this Agreement, or deemed by the CHA's Director of Procurement and Contracts Department to have, within the last five (5) years been found to be in default on any contract awarded by the CHA.

(d) That Contractor shall not knowingly use the services of any ineligible contractor for any purpose in the performance of the Services under this Agreement.

(e) That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor.

(f) That Contractor and, to the best of its knowledge, its subcontractors are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E-1 *et seq.* (1989), as amended; and CHA's Ethics Policy (attached).

(g) That Contractor has disclosed any and all relevant information to the CHA and Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.

(h) That Contractor is a duly organized and validly existing corporation under the laws of the State of Illinois, or is otherwise lawfully authorized to do business within the State of Illinois and has and will continue to have at all times during the term of this Agreement all licenses necessary to render the Services required hereunder.

(i) That Contractor has the power and authority to enter into and perform obligations under this Agreement, and that this Agreement, when executed will constitute the duly authorized, valid and legally binding obligation of Contractor.

(j) That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, agents, or employees, has induced the Contractor to enter into this Agreement or has been relied upon by the Contractor.

**8.2 Joint and Several Liability** In the event that the Contractor, or its permitted successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by the Contractor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

**8.3 Ownership of Work Product.** Contractor acknowledges that all data, work papers, reports, documentation, drawings, photographs, film and all negatives, tapes and the masters therefore, prototypes, and other material, or other work product generated and assembled either in hard copy or on diskette, on the Contractor supplied equipment (hereinafter, "Work Product") will belong solely to the CHA and the Contractor will retain no rights therein. Neither party anticipates the development of any customized products or programming in connection with the services provided under the Contract. Any products or programming developed while providing services under the Contract shall remain the Contractor's property, unless the CHA specifically contracts with and compensates Contractor to develop products or programs for the exclusive use of CHA. Contractor agrees to grant the CHA a non-exclusive, non-transferable, perpetual right to use any programs created by Contractor under the Contract strictly for the CHA's internal business use and not for resale and/or distribution to third parties.

**8.5 Subcontracts and Assignments.** Unless otherwise provided for herein, or previously disclosed in Contractor's Proposal, Contractor shall not subcontract, assign or otherwise delegate all or any part of its obligations under this Agreement or any part hereof without the prior written approval of the CHA. Any attempted subcontract, assignment or delegation shall be void and of no legal effect.

Contractor shall not transfer or assign any funds or claims due or which may become due under this Agreement without the prior written approval of the CHA. Any attempted transfer or assignment of any contract funds, either in whole or in part, or any interest therein, which shall be due or become due to Contractor without such prior written approval of the CHA shall be void and of no legal effect. The CHA expressly reserves the right to assign or otherwise transfer all or any part of its rights or interests hereunder.

**8.6 Business Documents.** To the extent applicable, Contractor shall provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreements, and evidence of its authority to conduct business in the State of Illinois including, without limitation, registrations of assumed names.

**8.7 Conflict of Interest.**

(a) No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly or CHA employee shall be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

Contractor covenants that it, its officers, directors and employees, and the officers, directors and employees of each of its members of a joint venture, and subcontractors, presently have no interest and shall acquire no interest, direct or indirect, in this Agreement which would conflict in any manner or degree with the performance of the Services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed. Contractor agrees that if the CHA determines that any of Contractor's services for others conflict with the Services



that Contractor is to render for the CHA under this Agreement, Contractor shall terminate such other services immediately upon request of the CHA.

Additionally, pursuant to the conflict of interest requirements in OMB Circular A-102 and 24 CFR §85.36(b)(3), no person who is an employee, agent, contractor, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to CHA or HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such CHA and HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure or for one (1) year thereafter.

(b) Furthermore, Contractor represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 f(1989), as amended.

**8.8 Independent Contractor.** The Contractor and the CHA recognize that Contractor is an independent contractor and not an employee, agent, partner, joint venturer, covenantor, or representative of the CHA and that CHA will not incur any liability as the result of Contractor's actions. Contractor and its employees, representatives, and agents shall at all times represent and disclose that they are independent contractors of the CHA and shall not represent to any third party that they are an employee, agent, covenantor, or representative of the CHA. The CHA shall not be obligated to withhold any funds from Contractor for tax or other governmental purposes, with respect to its employees, agents, representative or subcontractors. Contractor and its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to employees of the CHA including workers' compensation insurance coverage. Company shall not exercise control over Contractor.

**8.9 MBE/WBE Participation and Section 3 Requirements.** Contractor agrees to comply with the CHA's MBE/WBE (Minority and Women Business Enterprises) Policy. In addition, Contractor shall comply with CHA's Section 3 Policy. Prior to issuance of the Notice to Proceed, the Contractor shall state the degree of MBE/WBE participation and level of commitment to CHA's Section 3 Policy and thereafter, throughout the term of this Contract, fulfill the stated levels of participation and commitment. The Contractor's Utilization Plan is hereby incorporated into the Agreement by reference as Exhibit E.

## **ARTICLE IX GENERAL CONDITIONS**

**9.1 Entire Agreement.** This Agreement, comprised of this Agreement and the Exhibit(s) attached hereto and incorporated herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein. In the event of an inconsistency between the terms, conditions and provisions of the Agreement and the Exhibits attached hereto, the terms of the Agreement shall control.

9.2 **Counterparts.** This Agreement may be executed by several identical counterparts, each of which shall be deemed an original and constitute one agreement binding on the parties hereto.

9.3 **Amendments.** No changes, amendments, modification or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of Contractor and by the Chief Executive Officer of the CHA or his designated representative. The CHA shall incur no liability for additional Services without a written and signed amendment to this Agreement pursuant to this Section. Whenever in this Agreement Contractor is required to obtain prior written approval, the effect of any approval which may be granted pursuant to Contractor's request shall be prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event may approval apply retroactively to a date before the approval was granted.

9.4 **Non-Discrimination Requirements.** Contractor shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances including, but not limited to, The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 *et seq.* (1989), as amended, and all regulations promulgated thereto. Contractor shall particularly remain in compliance at all times with: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 *et seq.*, (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 *et seq.*, (1990). Illinois Human Rights Act, 775 ILCS 511-101 *et seq.*, as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, 111. Admin. Code Tit.44 s 750 Appendix A; Employment Opportunity Clause, 111. Admin. Tit. 44 s 750 Appendix A; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*, as amended. Chicago Human Rights ordinance, s2-160-010 *et seq.*, of the Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 *et seq.*, of the Municipal Code of Chicago, as amended. In addition, Contractor must furnish such reports and information as requested by the Chicago Commission on Human Relations.

9.5 **Compliance with HUD Regulations.** Contractor shall comply with all the provisions of HUD regulations, and other applicable federal, state and local laws, ordinances and executive orders including, but not limited to, the Uniform Administrative Requirements contained in 24 C.F.R. Section 85.1 *et seq.*, (1993), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d *et seq.*); Fair Housing Act (42 U.S.C. 3601-20 *et seq.*); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*); National Environmental Policy Act of 1969 (24 C.F.R. Part 58); Clean Air Act (42 U.S.C. § 1857(h) *et seq.*); Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), as amended; Executive Order 11246, as amended by Executive Orders 12086 and 11375; Executive Order 12372; Executive Order 11738; Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd "Anti-Lobbying" Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689); Environmental Protection Agency regulators (40 C.F.R. part 15); and Energy Policy and Conservation Act (Pub. L. 94-163).

**9.6 Religious Activities.** In connection with this Agreement, Contractor agrees that:

- (a) Contractor shall not discriminate against any person on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion; and
- (b) Contractor shall not discriminate against any person on the basis of religion when rendering the services hereunder and shall not limit such services or give preference to persons on the basis of religion.

**9.7 Drug-Free Workplace.** Contractor shall establish procedures and policies to promote a "Drug-Free Workplace." Contractor shall notify all employees of its policy for maintaining a "Drug-Free Workplace" and the penalties that may be imposed for drug abuse violations occurring in the workplace. Further, Contractor shall notify the CHA if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.

**9.8 Governing Law.** This Agreement shall be governed as to performance and interpretation in accordance with Federal Laws and the laws of the State of Illinois. Contractor hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Contractor agrees that service of process on Contractor may be made, at the option of the CHA, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Contractor or by personal delivery on any officer or director of Contractor. If Contractor brings any action against the CHA concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

**9.9 Severability.** If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or enforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

**9.8 Interpretation.** The headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such Exhibits or documents entered into in accordance with the terms and conditions hereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

9.10 Assigns. All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors.

9.11 Waiver. Whenever under this Agreement the CHA by a proper authority expressly waives in writing Contractor's performance in any respect or expressly waives a requirement or condition to either the CHA or Contractor's performance, the waiver in writing so granted shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the Agreement regardless of the number of times the CHA may have waived the performance of a requirement or condition under this Agreement.

## ARTICLE X COMMUNICATION AND NOTICES

10.1 Communication Between the Parties. All communication by Contractor shall be with the Director of Procurement and Contracts. All Deliverables required to be submitted under this Agreement shall be sent to the CHA Department of Procurement and Contracts, Chicago Housing Authority, 60 East Van Buren, Chicago IL 60605. No verbal or oral communication between the parties shall change any of the terms and conditions of this Agreement. Nothing stated herein shall be construed as a waiver or modification of the requirements for notice or service of process of litigation, as set forth in the Illinois Code of Civil Procedure, the Federal Rules of Civil procedure, the local rules of the Circuit Court of Cook County, and the local rules governing U.S. District Court for the Northern District of Illinois.

10.2 Notices. Any notices sent to Contractor shall be mailed by certified mail return receipt requested, postage prepaid to:

Xerox Corporation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices sent to the CHA shall be mailed by certified mail, postage prepaid to:

Chicago Housing Authority  
60 East Van Buren, 13<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attn.: Director of Procurement and Contracts

With a Copy to:

Office of the General Counsel  
60 East Van Buren, 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attn.: General Counsel

# ARTICLE XI AUTHORITY

11.1 CHA's Authority. Execution of this Agreement by the CHA is pursuant to the United States Housing Act of 1937, 42 U.S.C. §1437 et seq., regulations promulgated by HUD, and the State Housing Authorities Act, 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances.

11.2 Contractor's Authority. Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors and the signature(s) of each person signing on behalf of Contractor, have been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Chicago Housing Authority and Contractor have executed this Agreement as of the date first written above.

## CHICAGO HOUSING AUTHORITY

By: Valerie Hawthorne-Berry  
Valerie Hawthorne-Berry  
Director of Procurement and Contracts

Date

12/21/11

## XEROX CORPORATION

By: David L. ...  
Title: DEPT. GEN. MGR.

Date

12/16/2011

APPROVED AS TO FORM BY:

Scott W. ...  
Chicago Housing Authority  
Office of the General Counsel

Date

12/15/11