

AGREEMENT FOR SERVICES #010-S0811

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Xerox Corporation, a New York, duly qualified to conduct business in the State of California, whose principal place of business is P.O. Box 1600, Stamford, CT 06904 and whose local place of business is 2485 Natomas Park Drive, Suite 250, Sacramento, CA 95833 (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide professional services to install new Xerox 4110 Enterprise Printing System; basic operating training; System Administrator training; system and application implementation; and equipment maintenance and supporting software license and support for the Information Technologies Department; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to perform services necessary to provide professional services to install new Xerox 4110 Enterprise Printing System; basic operating training; System Administrator training; system and application implementation; and equipment maintenance and supporting software license and support for the Information Technologies Department.

Consultant Services:

The Contractor agrees to provide System and Application Implementation services, Basic Operator Training, and System Administrator training.

Software License:

The following shall apply to copyrighted software and the accompanying documentation, including but not limited to operating system software, provided with or within the Equipment (“Base Software”). This license does not apply to any Diagnostic Software nor to any software and accompanying documentation made subject to a separate license agreement.

- A. Contractor grants County a non-exclusive, non-transferable license to use the Base Software within the United States, its territories and possessions (the “United States”) only on or with the Equipment with which (or within which) it was delivered. For Application Software, Contractor grants County a non-exclusive, non-transferable license to use this software within the United States on any single unit of equipment for as long as County is current in the payment of any indicated software license fees (including any Annual Renewal Fees). County has no other rights to the Base or Application software and, in particular, may not (1) distribute, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or (3) allow others to engage in same. Title to the Base and Application Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Contractor and/or its licensors (who shall be considered third-party beneficiaries of these software provisions).
- B. Contractor may terminate County’s license for any Base software (1) immediately if County no longer uses or possesses the Equipment or is a lessor of the Equipment and its first lessee no longer uses or possesses it or (2) upon the termination of any agreement under which County has rented or leased the Equipment.
- C. If County transfers possession of the Equipment, Contractor will offer the transferee a license to use the Base Software within the United States on or with it, subject to Contractor’s then-applicable terms and license fees, if any, and provided the transfer is not in violation of Contractor’s rights.

- D. Contractor warrants that the Base and Application Software will perform in material conformity with its published specifications for a 90-day period from the date it is delivered or, for software installed by Contractor, the date of software installation. Neither Contractor nor its licensors warrant that the Base or Application Software will be free from errors or that its operation will be uninterrupted.

Software Support - During the period that Contractor provides Basic Services for the Equipment, Contractor will also provide software support for the Base Software under the following terms. For application Software, Contractor will provide this same level of support provided County is current in the payment of all Initial License and Annual Renewal Fees (or, for programs not requiring Annual Renewal Fees, the payment of the Initial License fee and the annual "Support Only" Fees):

- A. Contractor will assure that Base and Application Software performs in material conformity with its published specifications and will maintain a toll-free hotline during standard business hours to answer related questions.
- B. Contractor may make available new releases of the Base and Application Software that primarily incorporate coding error fixes and are designated as "Maintenance Releases". Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to County. Each new Maintenance Release shall be considered Base or Application Software governed by these Software Terms.
- C. Contractor will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided County reports problems in the manner specified by Contractor.
- D. Contractor shall not be obligated (a) to support any Base or Application Software that is two or more generations older than Contractor's most current release or (b) to remedy coding errors if County has modified the Base or Application Software.

Diagnostic Software – Software used to maintain the Equipment and/or diagnose its failures or substandard performance (collectively "Diagnostic Software") is embedded in, resides on, or may be loaded onto the Equipment. The Diagnostic Software and method of entry or access to it constitutes valuable trade secrets of Contractor. Title to the Diagnostic Software shall at all times remain solely with Contractor and/or Contractor's licensors. County agrees that (1) County's acquisition of the Equipment does not grant County a license or right to use the Diagnostic Software in any manner and (2) that unless separately licensed by Contractor to do so, County will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or to allow third parties to do so). County agrees at all times (including subsequent to the expiration of this Agreement) to allow Contractor to access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of the Diagnostic Software.

Equipment Maintenance:

Maintenance shall be provided for the following equipment:

Xerox 4110 Enterprise Printing System (EPS Printer) to include ESPW (4110 Operating System Software), ANV (4110 Staple Finisher with 2/3 Hole Punch and Post-process inserter), 4110HCF1 (High capacity feeder) and VICROUPA (FreeFlow VI Interpreter Software and License).

EPSCNTRL (COCUSP Controller) to include 4110ENABL (4110 Controller Licensing Enablement), CABLEKIT1 (VHDCI / HD-68 SCSI Cable Option Kit) and EPSTAND (Controller Stand)

Services shall include, but not be limited to the following:

- *Repairs and Parts:* Contractor will make adjustments and repairs necessary to keep equipment in good working order (including such adjustments or repairs required during initial installation). Parts required for repair may be new, reprocessed, or recovered. All replaced parts/materials will become Contractor's property.
- *Hours and Exclusions:* Unless otherwise stated, Basic Service will be provided during Contractor's standard working hours (excluding contractor-recognized holidays) in areas within the United States, its territories and possessions open for repair service for the equipment at issue. Basic Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship (and shall exclude repairs or adjustments Contractor determines to relate to or be affected by the use of options, accessories or other connected products not serviced by Contractor as well as any non-Contractor alterations, relocations, service, supplies or consumables).
- *Installation Site and Meter Readings:* The equipment installation site must conform to Contractor's published requirements throughout the term of this Agreement. If applicable, County must provide meter readings in a manner prescribed by Contractor. If County fails to provide timely readings, Contractor may estimate them and bill county accordingly.
- *Remedy:* If Contractor is unable to maintain the equipment as described above, Contractor will, as County's exclusive remedy, replace the equipment with an identical product or, at Contractor's option, another product of equal or greater capabilities. This replacement product shall be subject to these same terms and conditions including any remaining warranty period.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto. The term of this agreement shall be for the period of May 1, 2007, through April 30, 2010. This agreement may be extended for one additional three (3) year period, if mutually agreed to by both parties hereto, in writing not less than thirty (30) days prior to the expiration of this Agreement..

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor monthly in arrears and within thirty (30) days following the County’s receipt and approval of itemized invoice(s) identifying services rendered. For the purposes of this Agreement, the billing rates shall be:

Consulting and Implementation Services

System and Application Implementation	\$3,200.00
Basic Operator Training (1 onsite operator training class for up to 4 people)	\$1,200.00
System Administrator Training (1 onsite system administrator class for 1 person)	\$995.00

Equipment Maintenance and Supporting Software License and support

4110 EPS Printer	Fixed Price Cost-per-Print Plan for 3 Years. Bill code #29H31 Months 1 - 3: \$250.00 per month base Includes service and supplies for 125,000 prints per month. Prints 125,001 and above billed at \$0.0020 Months 4 - 36: \$871.62 per month Includes service and supplies for 125,000 prints per month. Prints 125,001 and above billed at \$0.0063.
EPSCNTRL Controller	Fixed Price Service Plan for 3 Years Bill Code #29830 Months 1 - 3: \$0.00 per month base Months 4 - 36: \$52.50 per month base

Total amount of this Agreement shall not exceed \$50,395.00 inclusive of all applicable charges under the terms of the Agreement.

ARTICLE IV

Confidentiality of Data: All data and information relative to the County operations, which is designated confidential by the County and made available to the Consultant in order to carry out this Agreement shall be protected by the Consultant from unauthorized use and disclosure.

Permission, granted by the County, to disclose information on one occasion or at public hearing held by the County relating to the Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasions.

The Consultant shall not comment publicly to the press or any media regarding this Agreement or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from the Board of Supervisors.

The Consultant shall not issue any news release or public relations item of any nature whatsoever regarding services performed or to be performed under this Agreement without prior review of the contents thereof by the County and receipt of the County's written permission.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
INFORMATION TECHNOLOGIES DEPARTMENT
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: STEVE FEATHERSTON, ASSISTANT DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

XEROX CORPORATION
C/O INTEGRATED BUSINESS SOLUTIONS
2982 BRIDLEWOOD DRIVE
EL DORADO HILLS, CA 95765
ATTN: TOM MATZAT

With a carbon copy sent to:

XEROX CORPORATION
2845 NATOMAS DRIVE
SUITE 250
SACRAMENTO, CA 95833
ATTN: LIZ STAFFORD

or to such other location as the Contractor directs.

ARTICLE XII

Indemnity: The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

ARTICLE XIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XV

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XVI

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XIX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Steve Featherston, Assistant Director, Information Technologies Department, or successor.

ARTICLE XX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

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REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: _____ Dated: _____
Steve Featherston, Assistant Director
Information Technologies Department

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: _____ Dated: _____
Jacqueline Nilius, Director
Information Technologies Department

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chairman
Board of Supervisors
"County"

ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors

By: _____ Date: _____
Deputy Clerk

-- CONTRACTOR --

Dated: _____

XEROX CORPORATION
A NEW YORK CORPORATION

By: _____

Liz Stafford
Vice President, Western Region
"Contractor"

By: _____

Corporate Secretary

Dated: _____