

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

We have reviewed the City's Request for Proposal ("RFP") and have prepared the requested 60-month Lease Proposal for your consideration. Although the Proposal is based on the requirements included in your RFP, our Proposal does include some responses that are slightly different. This document and our Proposal explain those differences. In addition, we have included some Additional Terms that were not addressed in the City's RFP. Please note that Xerox's Proposal is contingent upon the accuracy of the information included in the City's RFP and Xerox's review of the City's credit. Any material change to the information provided by the City, or the City's credit, may result in a change to Xerox's offer.

Please note that Xerox agrees to negotiate a solution that is acceptable to both parties if any of the below clarifications or Additional Terms are inconsistent with California law, or are otherwise unacceptable to the City. Our team is also prepared to discuss our Proposal in detail, and adjust our proposed equipment, support services, terms, and/or price offering based on the City's final requirements. Upon award of this RFP, Xerox agrees to negotiate a Contract that incorporates the mutually agreed terms contained in the City's RFP, our Proposal, Xerox's Lease Agreement, and any additional negotiated item(s).

**Xerox's Clarifications to the City's RFP**

Xerox provides the following clarifications and comments to the below listed City RFP requirements.

**Bidder Contractor Statement Regarding Insurance Coverage (p.14)** Xerox agrees to include the name of the City as an additional insured under the comprehensive general liability and automobile liability insurance policies only for claims arising out of the willful or negligent acts, or omissions of Xerox in the performance of the services under the contract.

**Professional Services Agreement**

**Term and Termination** Xerox agrees the term of the Agreement shall be for a period of five (5) years from full execution of the agreement. Xerox lease offer is based on a firm 60 month equipment installation commitment that consists of a Monthly Base Charge that covers the cost of the equipment; any trade-in equipment refinanced / buyout amounts; an equipment trade-in credit value; the equipment's F.O.B. shipment, freight, and inside delivery and removal (excluding any unique rigging expenses); the equipment's physical installation, connection to the City's network; user training, and the labor services detailed in our Proposal.

Xerox agrees that the City can terminate the Professional Services Agreement and stop placing orders for any additional equipment with 30-days prior written notice. However, this cancellation provision does not pertain to any individual Lease equipment installed prior to the City's termination notice. In the event the Agreement is terminated, individual Lease placements will continue until their scheduled expiration date, and continue to be governed by, and be subject to, the terms and conditions of the individual Lease Agreement and the Agreement.

Individual Lease placements offer is based on a firm 60-month equipment installation commitment that cannot be terminated without penalty except for fiscal-year funds non-appropriation or an uncured Xerox default. In order to terminate the Agreement due to funding non-appropriation, Xerox requires that the City send Xerox written notice, within 31-days of its governing body's decision not to appropriate funds, stating that the City's governing body failed to appropriate funds and that the governing body was unable to find an assignee within the City's organization to continue the Agreement. The notice must certify that the canceled equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year and indicate that the decision to cancel the Agreement was not initiated by any individual involved in the Agreement's management or execution. In addition, the City will be required to return the equipment to Xerox. The City will then be released from its obligation to make any further payments beyond those through the end of the last fiscal year for which funds have been appropriated.

In order to terminate a service or device due to Xerox's performance failure, Xerox requires that the City notify Xerox in writing of the specific performance failure and provide Xerox 31-calendar days to correct the performance shortfall. The City can terminate the affected services or equipment without penalty if the performance failure is not corrected to the contracted specification.

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

Cancellation for any other reason will result in the following: If Customer defaults under the Contract or any Order, Xerox may, in addition to its other remedies (including cessation of Maintenance Services), remove the Equipment at Customer's expense and require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (a) all amounts then due, plus interest from the due date until paid as allowed under California law; (b) the Minimum Lease Payments (less the Maintenance Services and Consumable Supplies components thereof, as reflected on Xerox's books and records) remaining in the Equipment Order Term, discounted at 4% per annum; (c) the applicable fair market value Purchase Option; and (d) all applicable Taxes. The City will pay all reasonable costs, including attorneys' fees, incurred by Xerox to enforce the Contract. If the City makes the Equipment available for removal by Xerox within 31-days after the notice of default, in the same condition as when delivered, reasonable wear and tear accepted, upon recovery of the Equipment Customer will receive a credit for the fair market value of the Equipment as determined by Xerox, less any costs incurred by Xerox.

**3.2 Payment.** All payments are due within 31-days of the invoice date. Restrictive covenants on payment instruments will not reduce Customer's obligations.

**3.4 Termination.** Xerox recognizes the City's right to terminate the affected equipment or service for its convenience due to a change in its business needs. However, the Xerox offer is based on a firm 60-month equipment installation commitment that cannot be terminated without penalty except for fiscal-year funds non-appropriation or an uncured Xerox default. Cancellation for any other reason will result in a liquidated damages stated under Term and Termination above.

**4. Insurance Requirements.** Xerox agrees to include the name of the City as an additional insured under the comprehensive general liability and automobile liability insurance policies only for claims arising out of the willful or negligent acts, or omissions of Xerox in the performance of the services under the contract.

**16. Indemnification.** Xerox will agree to this provision with the deletion of the word "sole" in the ninth line. Please note that Xerox does not agree to indemnify the indemnity the City due to any negligent or willful act on the part of the City, its officers, employees, volunteers, or agents, or the negligent or willful acts of any party other than a Xerox officer, employee, or agent.

**17. Appropriations.** Xerox acknowledges the City's right to cancel the Contract or an Order at the end of any fiscal year if their governing body does not appropriate funds for the Contract's or an Order's continuation. In order to terminate under this provision, the City will be required to send Xerox written notice, within 31-days of its governing body's decision not to appropriate funds, stating that its governing body failed to appropriate funds and that the governing body was unable to find an assignee within its organization to continue the Agreement. The notice must certify that the canceled equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year and indicate that the decision to cancel the Agreement was not initiated by any individual involved in the Agreement's management or execution. The notice must certify that the cancelled equipment will not be replaced by equipment with similar features and capabilities during the ensuing year, unless it is determined that the replacement is necessary to allow the City to perform its governmental functions and obligations. The City will be required to return the equipment to Xerox in good working condition, reasonable wear and tear accepted. The City will then be released from its obligation to make any further payments beyond the end of the last fiscal year for which funds have been appropriated.

**Attachment A – Scope of Work.**

**2. Maintenance, Support, and Warranty.**

**Maintenance Services.** Except for Equipment identified as "No Svc.", Xerox (or a designated servicer) will keep the Equipment in good working order ("Maintenance Services"). Maintenance Services are provided as a mandatory part of a Lease Order.

- A. **Basic Maintenance Services.** Maintenance Services will be provided during Xerox's standard working hours, 8 A.M. to 5 P.M., Monday through Friday, in areas open for repair service for the Equipment. Maintenance Services excludes repairs due to: (a) misuse, neglect, or abuse; (b) failure of the installation site or the PC or workstation used with the Equipment to comply with Xerox's published specifications; (c)

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

use of options, accessories or products not serviced by Xerox; (d) non-Xerox alterations, relocation, service or supplies; or (e) failure to perform operator maintenance procedures identified in operator manuals.

- B. **Replacement Parts.** Replacement parts may be new, reprocessed or recovered and all replaced parts become Xerox's property.
- C. **Installation Site.** Customer is responsible for all physical, mechanical, and electrical expenses associated with preparing and maintaining the Equipment installation site, and agrees to give Xerox reasonable access to the Equipment and to provide Xerox adequate storage space for a reasonable quantity of replacement parts and supplies.
- D. **Replacement.** Xerox will, as Customer's exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical model or, at Xerox's option, another Xerox-branded model with comparable features and capabilities. There will be no additional charge for the replacement Equipment during the remainder of the Equipment's Agreement Term.

**Warranty.** Xerox's standard warranty is to repair or replace the equipment, providing the equipment is maintained under a Xerox Warranty Program or Xerox Maintenance Agreement. The warranty period begins following the equipment's installation. Any equipment that needs to be replaced will be replaced with an identical model, or at Xerox's option, a unit with similar capabilities and with comparable usage. Equipment will be deemed accepted, upon installation of the equipment by the technician, after the equipment successfully runs all required diagnostic routines, and the equipment is turned over to the City for the City's use.

**2.e Maintenance, Support, Warranty.** Xerox's response time objective is to return all service calls within one business hour, and to arrive on-site on average within 3.5 to 4 business hours for multifunction color devices, 4 to 8 business hours for multifunction black/white devices, 3.5 to 4 business hours for black/white light production devices, 2 to 4 business hours for black/white production devices, 2.5 business hours for color entry production devices, 2 business hours for color production devices, and eight (8) business hours for desk-top printers if the problem cannot be resolved over the phone. Response time is calculated based on the quarterly response time average for the City's entire Xerox-branded equipment population. Calls can be placed toll free 24-business hours per day, 7 days per week, and 365 days a year. During standard business hours (8 A.M. to 5 P.M., Monday thru Friday), all service calls will be directed to our Service Welcome Center where our service personnel will attempt to resolve the issue over the phone through on-line diagnostics. If the problem cannot be resolved over the phone the representative will provide the caller with the technicians estimated time of arrival. The Service Technician will contact the caller prior to arriving on-site to discuss the problem and determine if they have the appropriate parts, or if there will be a change to the arrival time. Evening, weekend, and holiday phone service is also available. On-site evening, weekend, and holiday service support can also be prearranged or may be available based on evening resource availability. The 24x7-call center and business hour technical support is included in our contract offering. After hour, weekend, and holiday on-site technical support is available at Xerox's then current overtime rate. Please refer to the XPS Description of Services for response time objectives relating to the XPS / Managed Print Services offering.

**2.f Maintenance, Support, Warranty, Loaner.** Although Xerox does not normally provide loaner equipment, all Xerox-branded equipment is backed by our Total Satisfaction Guarantee, which allows the City, at its request, to replace the equipment with an identical model or, at the option of Xerox with a machine with comparable features and capabilities, and comparable usage. The guarantee will be effective for three years following the equipment's installation for purchased equipment that has been continuously maintained by Xerox or its authorized representatives under a Xerox express warranty or Xerox maintenance plan, and during the entire 60-month equipment Lease term, except for equipment damaged or destroyed due to an Act of God. If the situation arises, where the equipment does not perform to its published specification and the City elects to exercise the Total Satisfaction Guarantee, Xerox will meet with the City's representative and arrange a mutually agreeable time for the equipment's exchange.

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

**3. Training; 14. Trade-in Existing Photocopiers.** Customer warrants that Customer has the right to transfer title to the Equipment Customer is trading in as part of an Order ("Trade-In Equipment"), and that the Trade-In Equipment is in good working order and has not been modified from its original configuration (other than by Xerox). Title and risk of loss to the Trade-In Equipment will pass to Xerox when Xerox removes the Trade-In Equipment from Customer's premises. Customer will maintain the Trade-In Equipment at its present site and in substantially the Trade-In Equipment's present condition until removed by Xerox. Customer will pay all accrued charges for the Trade-In Equipment, up to and including payment of the final principal payment number and all applicable maintenance, administrative, supply and finance charges until Xerox removes the Trade-In Equipment from the Customer's premises.

**Additional Terms**

These additional terms are incorporated into the Xerox Proposal and are in addition to the terms included in the City's RFP.

**General Terms**

2. **Products.** "Products" means Xerox-brand equipment ("Equipment"), Software, Consumable Supplies and Maintenance Services ordered under the Contract. Customer represents that the Products: (i) will be used in Customer's business in the United States, its territories and possessions ("U.S.");
3. **Equipment Status.** Equipment will be (a) "Newly Manufactured," which may contain some reconditioned components; or (b) "Factory Produced New Model", which is manufactured and newly serialized at a Xerox factory, adds functions and features to a product previously disassembled to a Xerox predetermined standard, and contains new and reconditioned components;
4. **Delivery & Removal.** Equipment prices include standard delivery charges for all Equipment and, for Equipment for which Xerox retains ownership, standard removal charges. Non-standard delivery or removal will be at Customer's expense. Examples of non-standard delivery charges include use of stair creepers, up-ending or dissembling Equipment to move through tight doorways or through narrow halls.
5. **Equipment Commencement & Installation Dates.** The initial Term of an Order that includes Equipment will commence on the "Installation Date", which means: (a) for Equipment installed by Xerox, the date Xerox determines the Equipment to be operating satisfactorily and is available for Customer's use, as demonstrated by successful completion of diagnostic routines; and (b) for Equipment designated as "Customer Installable", the Equipment delivery date.
6. **Customer Training and Analyst Services.** Initial Customer Training and Analyst Support Services are included in the maintenance pricing. Additional training and analyst services are subject to the hourly rates prices, and terms and conditions in the applicable then-current Training and Analyst Services price list.
7. **Cartridges.** Cartridges packed with Equipment and replacement Cartridges may be new, remanufactured, or reprocessed. Remanufactured and reprocessed Cartridges meet Xerox's new Cartridge performance standards and contain new and/or reprocessed components. To enhance print quality, Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point.
8. **Consumable Supplies.** If "Consumable Supplies" is identified in Maintenance Plan features, Maintenance Services will include black toner and/or solid ink and color toner and/or solid ink, if applicable ("Consumable Supplies"). Depending on the Equipment model, Consumable Supplies may also include developer, fuser agent, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits. Consumable Supplies specifically excludes highlight color toner, custom color toner, specialty dry inks (e.g. clear, silver, gold), and specialty dry ink developers. Consumable Supplies are Xerox's property until used by Customer, and Customer will use Consumable Supplies only with the Equipment for which "Consumable Supplies" is included in the Maintenance Plan. If recycling information is furnished with Consumables Supplies, Customer agrees to return the used item, at Xerox's expense, for remanufacturing. Shipping information is available at Xerox.com/GWA. Upon the Contract's expiration, Customer will include any unused Consumable Supplies with the Equipment for return to Xerox at the time of removal. If Customer's use of Consumable Supplies exceeds Xerox's published yield by

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

more than 10%, Xerox will notify Customer of such excess usage. If such excess usage does not cease within 31-days after such notice, Xerox may charge Customer for such excess usage. For the avoidance of doubt, Xerox's yields are based on prints, impressions, linear fleet, or copies containing the normal mix of test and graphics to determine the expected yield of Consumable Supplies under normal operating conditions. Upon request, Customer will provide current meter reads and/or an inventory of Consumable Supplies in its possession.

9. **Meter Reads.** Customer will provide meter reads using the method and frequency identified by Xerox. If Customer does not provide a meter reading, Xerox may reasonably estimate the reading and bill Customer accordingly. If meter readings have been estimated, Xerox after receiving the actual meter readings for the equipment shall make an appropriate adjustment on the subsequent invoice.
10. **Replacement.** Xerox will, as Customer's exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical model or, at Xerox's option, another Xerox-branded model with comparable features and capabilities. There will be no additional charge for the replacement Equipment during the remainder of the Equipment's Agreement Term.
11. **Relocation.** All relocations must be arranged or approved in advance by Xerox if the Equipment is acquired under a Lease Order. The relocation will be at Customer's expense and Customer remains responsible to make all payments under the applicable Order while the Equipment is being relocated. Equipment cannot be relocated outside of the U.S.
12. **Remote Services.** Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter reads, supply levels, Equipment configuration and settings, software version, and problem/fault code data. All such data will be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view, or download any Customer data, documents, or other information residing on or passing through the Equipment or Customer's information management systems. If requested in writing Xerox will turn off and disable the Remote Services capability.
13. **Data Security.** Certain models of Equipment can be configured to include a variety of data security features. There may be an additional cost associated with certain data security features. The selection, suitability, and use of data security features are solely Customer's responsibility. Upon request, Xerox will provide additional information to Customer regarding the security features available for particular Equipment models.
14. **Warranty Disclaimer & Waivers.** XEROX DISCLAIMS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
15. **Intellectual Property Indemnity.** Xerox will defend, and pay any settlement agreed to by Xerox or any final judgment for, any claim that a Xerox-brand Product infringes a third party's U.S. intellectual property rights. Customer will promptly notify Xerox of any alleged infringement and permit Xerox to direct the defense. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox pre-approves them in writing. To avoid infringement, Xerox may modify or substitute an equivalent Xerox-brand Product and, if purchased, refund the price paid for the Xerox-brand Product, less a reasonable lease value for the period it was available to Customer, or obtain any necessary licenses. Xerox is not liable for any infringement based upon a Xerox-brand Product being modified to Customer's specifications, or being used or sold with products not provided by Xerox.
16. **Limitation of Liability.** Except for personal injury (including death), property damage, or intellectual property indemnity indemnification obligations set forth in the Contract, Xerox will not be liable to Customer for any direct damages relating to the Contract or any Order written hereunder in excess of the sum of the amounts paid and to be paid during the initial Term of the applicable Order. Neither party will be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to the Contract or any Order written hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory.
17. **Force Majeure.** Xerox will not be liable to Customer during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control. Xerox will notify Customer if such a circumstance occurs.

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

18. **Payment.** All payments are due within 31-days of the invoice date. Restrictive covenants on payment instruments will not reduce Customer's obligations.
19. **Late Charges & Default.**
- A. **Late Charge.** If a payment is not received by Xerox within 10-days after the due date (40 days after the invoice date), Xerox may charge, and Customer will pay, a late interest charge as allowed under California law.
- B. **Default.** Customer will be in default under an Order if Xerox does not receive any payment within 15 days after the date it is due (45-days after the invoice date) or Customer breaches any other obligation under the Contract, any Order, or any other Contract with Xerox. Customer will pay all reasonable costs, including attorneys' fees, incurred by Xerox to enforce the Contract or any Order.
20. **Assignment.** Except for assignment to a Xerox parent, subsidiary, or affiliate of Xerox, or to securitize the Contract as part of a financing transaction ("Permitted Assignment"), neither party will assign any of its rights or obligations under the Contract without prior written consent of the other party. In the event of a Permitted Assignment: (i) Customer will remit all payments to Xerox; (ii) Xerox may, without Customer's prior written consent, release to a proposed assignee information Xerox has about Customer related to the Contract; (iii) the assignee will have all of the rights but none of Xerox's obligations under the Contract; (iv) Customer will continue to look to Xerox for performance of Xerox's obligations under the Contract; (v) Customer waives and releases the assignee from any claims relating to or arising from the performance of Xerox's obligations hereunder; and (v) Customer will not assert any defense, counterclaim, or setoff Customer may have against an assignee.
21. **Non-Cancelable Agreement.** LEASE ORDERS CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN. CUSTOMER'S OBLIGATION TO MAKE ALL PAYMENTS, AND TO PAY ANY OTHER AMOUNTS DUE OR TO BECOME DUE, IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF XEROX'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. ANY CLAIM AGAINST XEROX MUST BE ASSERTED IN A SEPARATE ACTION AND SOLELY AGAINST XEROX.
22. **Title and Risk of Loss.** Title to the Equipment remains with Xerox until Customer exercises its Purchase Option. Risk of loss or damage to the Products passes to Customer upon delivery. Customer will insure Products against loss or damage and the policy will name Xerox as Loss Payee. You agree that: (a) the Equipment will remain personal property; (b) you will not attach the Equipment as a fixture to any real estate; (c) you will not pledge, sub-lease, or part with possession of the Equipment or file, or permit to be filed, any lien against the Equipment; and, (d) you will not make any permanent alterations to the Equipment.
23. **Lease Order Taking Term.** The initial term for any Lease Order will be the number of full calendar months stated in the individual Lease Agreement. The Minimum Lease Payment for any partial month following the equipment installation date will be billed on a pro rata basis, based on a 31-day month.
24. **Lease Order Commencement and Term.** The Term for each unit of Equipment will commence upon the delivery of customer-installable Equipment; or the installation of Xerox-installable Equipment and will expire on the last day of the final full calendar month of the contracted term indicated in the Equipment Order. Unless either party provides notice of termination at least 31-days before the expiration of the initial Term, it will renew on a month-to-month basis at the same prices, and the same terms and conditions. During the renewal period, either party may terminate the Equipment upon at least 31-days notice. Upon termination, Customer will make the Equipment available for removal by Xerox. At the time of removal, the Equipment will be in the same condition as when delivered, reasonable wear and tear accepted.
25. **Price Structure and Billing.** The Minimum Lease Payment, which may include a monthly copy allowance (guaranteed number of copies), plus any additional Print Charges covers the cost of (i) the use of the equipment; (ii) the equipment's maintenance; and (iii) consumable supplies, if applicable. The Minimum Lease Payment will commence following the Equipment's installation and is billed monthly. Charges for excess prints will be reconciled and billed monthly or quarterly, as applicable in arrears.

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

26. **Fixed Pricing.** Except as otherwise set forth herein, The Minimum Payment will not increase during the initial Equipment Order Term. Thereafter, Xerox may annually increase the maintenance/supply Monthly Minimum Charge and the Print Charge under an Individual Lease Order.
27. **Lease End of Term Customer Options.** The following options are available for Equipment under an Individual Lease Agreement.
- A. **FMV Option.** Provide you are not in default, you may purchase the Equipment, "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE, at the end of the initial Term for the "Purchase Option" indicated on the face of the Contract (i.e., either a set dollar amount or the fair market value of the Equipment at the expiration of the initial Term), plus all applicable Taxes.
  - B. **Renewal Option.** Unless either party provides notice of termination at least 31-days before the end of the initial Term of an Order, the Order will automatically renew on a month-to-month basis at the same price, and the same terms and conditions. During the renewal period, either party may terminate an Individual Lease Agreement upon at least 31-days notice.
  - C. **Equipment Return.** Upon termination, Customer will make the Equipment available for removal by Xerox. At the time of removal, the Equipment will be in the same condition as when delivered, reasonable wear and tear accepted.
28. **Customer Default & Xerox Remedies.** If Customer defaults under the Contract or any Order, Xerox may, in addition to its other remedies (including cessation of Maintenance Services), remove the Equipment at Customer's expense and require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (a) all amounts then due, plus interest from the due date until paid as allowed under California law; (b) the Minimum Lease Payments (less the Maintenance Services and Consumable Supplies components thereof, as reflected on Xerox's books and records) remaining in the Equipment Order Term, discounted at 4% per annum; and (c) the applicable fair market value / fixed purchase amount Purchase Option; and (d) all applicable Taxes. You will pay all reasonable costs, including attorneys' fees, incurred by Xerox to enforce the Contract. If Customer makes the Equipment available for removal by Xerox within 31-days after the notice of default, in the same condition as when delivered, reasonable wear and tear accepted, upon recovery of the Equipment Customer will receive a credit for the fair market value / fixed purchase amount of the Equipment as determined by Xerox, less any costs incurred by Xerox.
29. **Finance Lease.** A lease order under the contract is a "finance lease" under Article 2A of the Uniform Commercial Code and, except to the extent expressly provided under the Contract, and to the extent permitted by California law, Customer waives all rights and remedies conferred upon a lessee by Article 2A.

**Software**

30. **Software License.** Xerox grants Customer a non-exclusive, non-transferable license to use (a) the software and accompanying documentation provided with the Xerox-brand Equipment ("Base Software") in the U.S.: only with the Xerox-brand Equipment with which it was delivered; and (b) software and accompanying documentation identified in an Order as "Application Software" only on any single unit of equipment for as long as Customer is current in the payment of all fees. "Base Software" and "Application Software" are referred to collectively as "Software".
- A. Customer has no other rights and may not: (a) copy, distribute, modify, create derivatives of, decompile, or reverse engineer Software; (b) activate Software delivered with the Equipment in an inactivated state; or (c) allow others to engage in same.
  - B. Title to, and all intellectual property rights in, Software will reside solely with Xerox and/or its licensors, who will be considered third-party beneficiaries of this subsection.
  - C. The Base Software license will terminate (a) upon the expiration of any individual Agreement under which Customer has rented or leased the Equipment, unless Customer has exercised an option to purchase the Equipment or if (b) if Customer is a lessor of the Equipment and its first lessee no longer uses or possesses the Equipment; or (c) if Customer no longer uses or possesses the Equipment.
  - D. Neither Xerox nor its licensors warrant that Software will be free from errors or that its operation will be uninterrupted.

**Xerox Clarifications to  
City of Garden Grove  
Request for Proposal #  
S-1207**

- E. Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (i) Xerox is denied access to periodically reset such code; (ii) you are notified of a default under this Agreement; or (iii) your license is terminated or expires
  - F. The foregoing terms do not apply to Diagnostic Software or to software/documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement.
31. **Software Support.** Xerox (or a designated servicer) will provide the software support set forth below ("Software Support"). For Base Software, Software Support will be provided during the initial Term of the applicable Order and any renewal period but in no event longer than 5 years after Xerox stops taking customer orders for the subject model of Equipment. For Application Software, Software Support will be provided as long as Customer is current in the payment of all applicable fees.
- A. Xerox will maintain a web-based or toll-free hotline during Xerox's standard working hours to report Software problems and answer Software-related questions.
  - B. Xerox, either directly or with its vendors, will make reasonable efforts to: (a) assure that Software performs in material conformity with its user documentation; (b) provide available workarounds or patches to resolve Software performance problems; and (c) resolve coding errors for (i) the current Release and (ii) the previous Release for a period of six (6) months after the current Release is made available to Customer. Xerox will not be required to provide Software Support if Customer has modified the Software.
  - C. New releases of Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates". Maintenance Releases or Updates that Xerox may make available will be provided at no charge and must be implemented within 6 months. New releases of Software that include new content or functionality ("Feature Releases") will be subject to additional license fees at Xerox's then-current pricing. Maintenance Releases, Updates, and Feature Releases are collectively referred to as "Releases". Each Release will be considered Software governed by the Software License and Software Support provisions of the Contract, unless otherwise noted. Implementation of a Release may require Customer to procure, at Customer's expense, additional hardware, and/or software from Xerox or another entity. Upon installation of a Release, Customer will return or destroy all prior Releases. Xerox may annually increase the Annual Renewal and Support-Only Fees for Application Software. This adjustment will take place at the commencement of each government Customer's annual contract cycle.
32. **Diagnostic Software.** Software used to maintain the Equipment and/or diagnose its failure or substandard performance (collectively "Diagnostic Software") is embedded in, resides in, or may be loaded on the Equipment. Title to Diagnostic Software will remain with Xerox or its licensors. Customer agrees that Customer's acquisition of the Equipment does not grant Customer a license or right to use Diagnostic Software for any purpose, or allow third parties to do so. Customer agrees at all times to allow Xerox reasonable access to the Equipment to access, monitor, and otherwise takes steps to prevent unauthorized use or reproduction of Diagnostic Software, provided that such access to Customer's facility will be during normal business hours.

\*\*\* Last Clarification \*\*\*

+++++