

Contract/Agreement

Council Date 12/16/2013

Council Item #

Vendor Name ACS GOVERNMENT INC.

Project/Service 5 YR AGREEMENT FOR INTERNET HOSTING AND SUPPORT SERVICES

Comments

Clerk Office Date 12/3/2013

City Attorney Date 12/3/2013

Finance Date 2/3/55

City Manager Date

Deputy City Clerk Date

E-Mailed Date

***Please sign and return to
Jamie Fanconi ext. 6202
in the City Clerk's Office***

Clerk Review Date: APPROVED JAN 22 2014

City of Merced
TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ (# will be assigned by City Clerk's Office after all documentation has been obtained)
Distribution: Original Contract - Filed in the City Clerk's Office
Duplicate Originals - Returned to Originating Department

Date Submitted: 12/1/13 Council Meeting Date (if applicable): 12/16/13

Contact Name & Extension: Janet German/6982 Submitting Dept.: Fire (901)

Purpose of the Contract:

Five year agreement enabling the department to enter into information technology hosting and support services for our records management software.

Note: The following require City Council approval:

- Non-Public Works Contracts in Excess of \$26,000 or Public Work Contracts in Excess of \$58,575; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

New Contract: ☒ Amendment No.: _____ Change Order No.: _____

Contractor/Vendor Name: ACS Government Systems, Inc.

Contractor/Vendor E-mail: jim.brandariz@firehousesoftware.com

Verification of Business License: ☐ Business License No.: _____ Misc. Receivable Acct. No.: _____

Funds available in the Budget?: ☒ Yes ☐ No ☐ Does Not Require Budget Funds

If No: Dept. Prepared Budget Transfer Form **OR** Admin. Report Appropriating Funds (*attach copy*)

Account No(s): 001-0901-522.17-00

Original Contract

Amount: \$ \$39,791.90 1st Amendment: \$ _____

Date of Original Contract: 11/01/2013 2nd Amendment: \$ _____
(Council Meeting date if requires Council approval.)

3rd Amendment: \$ _____

Beginning Date: 11/01/2013 Expiration Date: 10/31/2018

Required Attachments:

☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☒ Admin. Report (if applicable)
Other: _____

Note: Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.

Department Head

Signature: _____ Date: 12/1/13

City Clerk's Office Checklist:

☐ Dept. Head Signature on Form	☐ Admin. Report Attached	☐ Applicable Bond(s)
☐ Contractor/Vendor Signature	☐ Finance Dept. Signature	☐ City Manager's Signature
☐ City Attorney's Dept. Signature	☐ Insurance Certificate(s)	☐ Deputy City Clerk Signature
☐ Logged into Databases	☐ Council Approval Verification	☐ Image & File Contract

Updated 7/31/12

City of Merced

TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ (# will be assigned by City Clerk's Office after all documentation has been obtained)
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Duplicate Originals - Returned to Originating Department

Date Submitted: 12/1/13 Council Meeting Date (if applicable): 12/16/13

Contact Name & Extension: Janet German/6982 Submitting Dept.: Fire (901)

Purpose of the Contract:

HIPAA Business Associate Agreement works in tandem with the information technology hosting and support services agreement and provides the department to be HIPAA compliant.

Note: The following require City Council approval:

- Non-Public Works Contracts in Excess of \$26,000 or Public Work Contracts in Excess of \$58,575; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

New Contract: ☒ Amendment No.: _____ Change Order No.: _____

Contractor/Vendor Name: ACS Government Systems, Inc.

Contractor/Vendor E-mail: jim.brandariz@firehousesoftware.com

Verification of Business License: ☐ Business License No.: _____ Misc. Receivable Acct. No.: _____

Funds available in the Budget?: ☐ Yes ☐ No ☒ Does Not Require Budget Funds

If No: Dept. Prepared Budget Transfer Form **OR** Admin. Report Appropriating Funds (*attach copy*)

Account No(s): _____

Original Contract

Amount: \$ _____ 1st Amendment: \$ _____

Date of Original Contract: _____ 2nd Amendment: \$ _____

(Council Meeting date if requires Council approval.)

3rd Amendment: \$ _____

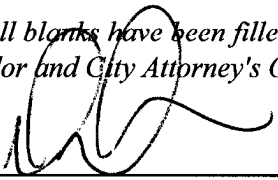
Beginning Date: _____ Expiration Date: _____

Required Attachments:

- | | | |
|---|--|--|
| ☐ Certificate of Insurance | ☐ Labor & Material Bond | ☐ Warranty Bond |
| ☐ W-9 (or substitution) | ☐ Faithful Performance Bond | ☒ Admin. Report (<i>if applicable</i>) |
| Other: _____ | | |

Note: Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.

Department Head

Signature:  Date: 12/1/13

City Clerk's Office Checklist:

- | | | |
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| ☐ Dept. Head Signature on Form | ☐ Admin. Report Attached | ☐ Applicable Bond(s) |
| ☐ Contractor/Vendor Signature | ☐ Finance Dept. Signature | ☐ City Manager's Signature |
| ☐ City Attorney's Dept. Signature | ☐ Insurance Certificate(s) | ☐ Deputy City Clerk Signature |
| ☐ Logged into Databases | ☐ Council Approval Verification | ☐ Image & File Contract |

Updated 7/31/12

AGREEMENT FOR APPLICATION HOSTING AND TECHNOLOGY SUPPORT SERVICES

This Agreement for Application Hosting and Technology Support Services (hereinafter the “Agreement”) is entered into by and between City Of Merced Fire Department with offices located at 99 E 16th Street Merced, CA 95340 (hereinafter “Customer”), and Xerox Government Systems, LLC, with offices located at 8260 Willow Oaks Corporate Drive, Fairfax, VA 22031 (hereinafter “Xerox”), referred to individually as Party and collectively as Parties.

1.0 BACKGROUND AND OBJECTIVES

This Agreement is entered into in connection with Customer’s decision to engage Xerox to provide certain information technology hosting and support services related to Customer’s business operations. This Agreement and the Exhibits set forth all terms and conditions governing the relationship between Xerox and Customer.

2.0 TERM

The term of this Agreement (the “Term”) will be for 5 years, from 3/1/2014 to 2/28/2019, unless earlier terminated or renewed in accordance with the provisions of this Agreement.

3.0 SERVICES

Xerox shall provide all services, personnel, materials, equipment, and tools (hereinafter jointly referred to as the “Services”) as set forth in Exhibit A – Statement of Work, attached hereto and made a part hereof. The Statement of Work constitutes the minimum quantity and level of services and deliverables to be provided in connection with this Agreement. Supplemental services may be procured by Customer in accordance with 4.0 hereof.

4.0 SUPPLEMENTAL SERVICES

Any effort, which does not fall within the Statement of Work set forth in Exhibit A, will be subject to the change order process. Xerox will be responsible for assisting Customer in defining, documenting and quantifying the change order. A detailed change order proposal will be prepared by Xerox and submitted to Customer for its review and approval. Customer will be responsible for timely turnaround of a decision on the approval of the change order request. All terms and conditions of the change order proposal (including any applicable payment terms) will be incorporated into a Supplemental Service Agreement (“SSA”). Xerox will not be required to perform activities that are not specifically stated in the Statement of Work without a fully executed SSA signed by both Parties.

5.0 CONFIDENTIALITY

5.1 Customer Confidential Information

With respect to information relating to Customer’s business which is confidential and clearly so designated (“Customer Confidential Information”), Xerox will instruct its personnel to keep such information confidential by using the same degree of care and discretion that they use with similar information of Xerox which Xerox regards as confidential. However, Xerox shall not be required to

keep confidential any information which: (i) is or becomes publicly available; (ii) is already in Xerox's possession; (iii) is independently developed by Xerox outside the scope of this Agreement; or (iv) is rightfully obtained from third parties. In addition, Xerox shall not be required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how or techniques developed by Xerox in the course of its services hereunder.

5.2 Xerox Confidential Information

Customer agrees that Xerox's methodologies, tools, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, proprietary data and software programs, and any other information identified as proprietary or confidential by Xerox, which may be disclosed to the Customer, are confidential and proprietary information ("Xerox Confidential Information"). With respect to Xerox Confidential Information, the Customer shall keep such information confidential by using the same degree of care and discretion that it uses with similar information of its own which Customer regards as confidential. However, Customer shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already in Customer's possession; (iii) is independently developed by the Customer outside the scope of this Agreement and without any reliance on Xerox Confidential Information; or (iv) is rightfully obtained from third parties.

5.3 Use of Confidential Information

Xerox and Customer shall use each other's confidential information only for the purposes of this Agreement and shall not disclose such confidential information to any third party, other than as set forth herein, or to each other's employees, Xerox permitted subcontractors, or Customer's permitted consultants on a need-to-know basis, without the other Party's prior written consent.

6.0 INTELLECTUAL PROPERTY RIGHTS

6.1 Customer Content

All data created or transmitted by Customer and stored on Xerox servers as part of the Services ("Customer Data") shall at all times be owned by Customer. Xerox shall not own or have any interest rights in the Customer Data. Except as instructed by Customer directly or indirectly through instructions provided to the servers through Customer's use of the Xerox Software, Xerox shall treat Customer Data as Customer Confidential Information. Xerox will upon (i) request of Customer at any time, and (ii) the cessation of all Termination/Expiration Assistance, promptly return to Customer, in the format and on the media in use as of the date of the request, all or any requested portion of the Customer Data. Archival tapes containing any Customer Data will be used by Xerox solely for back-up purposes. Any conversion of data for porting to other applications will not be provided under this contract. All Customer Data on servers will be destroyed on Termination/Expiration of contract.

6.2 Proprietary Rights of Xerox

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Xerox or its suppliers under this Agreement, and any know-how, methodologies, equipment, or processes used by Xerox to provide the Services to Customer, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other

proprietary rights inherent therein and appurtenant thereto (collectively “Xerox Materials”) shall remain the sole and exclusive property of Xerox or its suppliers. Customer acknowledges and agrees that Xerox is in the business of designing and hosting Web-based applications and Xerox shall have the right to provide services to third parties which are the same or similar to the Services and to use any Xerox Materials providing such services.

6.3 License Grant

Xerox grants Customer a non-exclusive license throughout the Term to perform, display, transmit, participate in the transfer of Customer Data and otherwise use the Xerox Materials for the purposes of performing this Agreement. Customer shall have no residual rights to the Xerox Materials beyond the term of this Agreement. Customer grants Xerox the right to maintain administrative access to the Customer Data during the Term for purposes of performing this Agreement.

7.0 INSURANCE; RISK OF LOSS

7.1 Required Insurance Coverage

Throughout the Term, Xerox shall, at its own expense, carry and maintain at least the kinds and minimum amounts of insurance listed below.

1. **Workers’ Compensation Insurance:** As required by law.
2. **Commercial General Liability Insurance:** with a combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate.

Upon request Xerox will furnish proof of coverage, in the form of a standard certificate of insurance, to the Customer’s Procurement Officer within ten (10) days of contract execution. If any material policy changes occur during the life of contract, Xerox shall provide updated proof of coverage, in the form of standard certificates of insurance, to Customer in a timely manner.

7.2 Risk of Loss

As of the effective date, each Party will be responsible for risk of loss of, and damage to, any equipment, software or other materials in its possession or under its control.

8.0 CHARGES

8.1 Charges

Subject to the other provisions of this Agreement, Customer will pay to Xerox the amounts set forth in Exhibit B – Applicable Charges, attached hereto and made a part hereof. Services performed in connection with an authorized SSA may be performed either on a time and material (T&M) or fixed fee basis as specified in the SSA. The charges applicable during each renewal term will be mutually agreed to by the Parties and incorporated to this Agreement as an SSA.



8.2 Taxes

- (a) Xerox will pay any sales, use, excise, value-added, services, consumption, and other taxes and duties imposed on any goods and services acquired, used or consumed by Xerox in connection with the Services if applicable.
- (b) Customer will pay when due any sales, use, excise, value-added, services, consumption, or other tax imposed by any taxing jurisdiction as of the effective date on the provision of the Services or any component thereof, as the rate of such tax may change from time to time during the applicable Term. If applicable, such taxes will be in addition to the Applicable Charges listed in Exhibit B.
- (c) If any taxing jurisdiction imposes after the effective date a new sales, use, excise, value-added, services, consumption, or other tax on the provision of the Services or any component thereof, the Parties will cooperate in attempting to reduce the amount of such tax to the maximum extent feasible. Customer will be liable for any such new tax, which is imposed on the Charges for the provision of the Services, or any component thereof.

9.0 INVOICES AND PAYMENT

9.1 Invoices and Payment

Xerox will issue to Customer, on an annual basis, one (1) invoice for all amounts due with respect to services to be rendered and products to be delivered in the following calendar year. Payment terms for materials and services will be as specified in Exhibit B. Each invoice will separately state all applicable charges, reimbursable expenses and taxes payable. Invoices delivered pursuant to this Section 9.1 will be due and payable within thirty (30) days after invoice issuance, unless other payment terms are mutually agreed to. All periodic charges for any partial year under this Agreement and any applicable authorized SSA shall be prorated.

Invoices shall be submitted to:

City Of Merced Fire Department
99 E 16th Street
Merced, CA 95340

Attn: Janet German

10.0 WARRANTIES

10.1 Xerox Warranties

Xerox warrants that all services will be provided in a good and workmanlike manner and in accordance with generally applicable industry standards. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, Xerox DOES NOT MAKE AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ARISING BY LAW OR OTHERWISE,

REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

10.2 Disclaimed Warranties

Xerox exercises no control over, and accepts no responsibility for, the content of the information passing through Xerox host computers, servers, network hubs and points of presence, or the Internet. As a convenience for Customer, Xerox shall perform regular daily backup of all Customer Data. Xerox shall use commercially reasonable efforts to recover any lost or corrupted data resulting from Xerox negligence. Should Xerox be unable to recover such lost or corrupted data, Xerox' responsibility and liability for the loss of Customer Data shall be limited to restoring the data to the last required daily back up. Further, Xerox and its suppliers are not liable for any temporary delay, outages or interruptions of the Services.

10.3 Customer Warranties

Customer warrants, represent and covenants to Xerox that: (a) Customer will use the Services only for lawful purposes and in accordance with this Agreement; (b) all Customer content, including the Customer Data, does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

11.0 INDEMNIFICATION

Xerox will protect, defend, indemnify, and save whole and harmless the Customer and all of its officers, agents, and employees from and against:

- (a) Any third party claim brought against Customer relating to the death or bodily injury, or the damage, loss or destruction of real or tangible personal property, to the extent caused by the tortious acts or omissions of Xerox, its employees, contractors or agents in connection with the performance of the Services;
- (b) Any third party claim brought against Customer relating to the willful or fraudulent misconduct of Xerox, its employees, contractors or agents in connection with the performance of the Services;
- (c) Any third party claim brought against Customer relating to an actual infringement of any United States patent, copyright, or any actual trade secret disclosure, by Xerox, its employees, contractors or agents in connection with the performance of the Services.

Xerox will have a right of contribution from Customer with respect to any claim to the extent Customer is responsible for contributing to the alleged injury.

12.0 LIMITATION OF LIABILITY



12.1 Limit on Types of Damages Recoverable

NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 Limit on Amount of Direct Damages Recoverable

EACH PARTY'S TOTAL CUMULATIVE, AGGREGATE LIABILITY TO THE OTHER FOR ANY AND ALL ACTIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED AN AMOUNT EQUAL TO THE U.S. DOLLAR EQUIVALENT OF THE TOTAL AMOUNT OF SERVICES PURCHASED BY THE CUSTOMER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE EITHER PARTY IS NOTIFIED BY THE OTHER OF ANY CLAIM. THIS LIMITATION WILL NOT APPLY TO ANY FEES OR CHARGES PAYABLE BY CUSTOMER UNDER THE AGREEMENT.

12.3 Force Majeure

- (a) Neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement, if any, to the extent such failure is caused, directly or indirectly, without fault by such Party, by: fire, flood, earthquake, elements of nature or acts of God; labor disruptions or strikes; acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other cause beyond the reasonable control of such Party. Events meeting the criteria set forth above are referred to collectively as "Force Majeure Events."
- (b) Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail and such Party continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the other by telephone or by the most timely means otherwise available (to be confirmed in writing within five (5) Business Days of the inception of such delay) and describe in reasonable detail the circumstances causing such delay.

12.4 Actions of Other Party or Third Parties

Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that Party's reasonable control and occurring without its fault or negligence, including, without limitation, failures caused by the other Party or by third party suppliers, subcontractors, and carriers. The Party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.

13.0 TERMINATION



13.1 Termination for Cause

- (a) Customer will have the option, but not the obligation, to terminate this Agreement for Cause for any material breach of the Agreement by Xerox that is not cured by Xerox within thirty (30) days of the date on which Xerox receives Customer's written notice of such breach, or if a cure cannot reasonably be fully completed within 30 days, a later date, provided Xerox has provided a plan acceptable to Customer for such cure. Customer will exercise its termination option by delivering to Xerox written notice of such termination identifying the scope of the termination and the termination date.
- (b) Xerox will have the option, but not the obligation, to terminate this Agreement if Customer fails to pay when due undisputed amounts owed to Xerox, and Customer fails to cure such failure within sixty (60) days after receipt from Xerox of written notice from Xerox.

13.2 Effect of Termination

Termination of this Agreement for any reason under this Section 13.0 will not affect (i) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination, or (ii) any damages or other remedies to which a Party may be entitled under this Agreement, at law or in equity, arising from any breaches of such liabilities or obligations.

14.0 APPLICABLE LAW, JURISDICTION, VENUE, AND REMEDIES

14.1 Applicable Law

All questions concerning the validity, interpretation and performance of this Agreement will be governed by and decided in accordance with the laws of the State of California.

14.2 Jurisdiction and Venue

The Parties hereby submit and consent to the exclusive jurisdiction of any state or federal court located in State of California and irrevocably agree that all actions or proceedings relating to this Agreement, will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

14.3 Equitable Remedies

The Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning (i) Confidential Information, or (ii) other matters for which equitable rights may be granted, money damages would be an inadequate remedy. Accordingly, such provisions may be enforced by the preliminary or permanent, mandatory or prohibitory injunction or other order of a court of competent jurisdiction.

15.0 MISCELLANEOUS



15.1 Customer Provided Resources and Technical Working Environment

Customer shall provide Xerox resources with reasonable access to Customer facilities, as well as secure storage areas for materials, equipment and tools. Other specific resource needs may be identified following contract award and will be commensurate with the level of effort required under the Statement of Work.

15.2 Binding Nature and Assignment

Neither Party may assign, voluntarily or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that either may assign its rights and obligations under this Agreement to an affiliate, or to an entity which acquires all or substantially all of the assets or voting stock of that Party if such Affiliate or entity can demonstrate to the reasonable satisfaction of the other Party that it has the ability to fulfill the obligations of the assigning Party under this Agreement (and in the case of assignment by Customer, such third party agrees to pay any charges imposed by third parties relating to such assignments). No assignment by a Party will relieve such Party of its rights and obligations under this Agreement. Subject to the foregoing, this Agreement will be binding on the Parties and their respective successors and assigns.

15.3 Amendment and Waiver

No supplement, modification, amendment or waiver of this Agreement will be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, amendment or waiver is sought. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

15.4 Further Assurances; Consents and Approvals

Each Party will provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. Whenever this Agreement requires or contemplates any action, consent or approval, such Party will act reasonably and in good faith and (unless the Agreement expressly allows exercise of a Party's sole discretion) will not unreasonably withhold or delay such action, consent or approval.

15.5 Severability

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

15.6 Entire Agreement

This Agreement, including the Exhibits thereto, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements,

understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

15.7 Notices

Any notice, demand or other communication required or permitted to be given under this Agreement will be in writing and will be deemed delivered to a Party (i) when delivered by hand or courier, (ii) when sent by confirmed facsimile with a copy sent by another means specified in this Section 15.7, or (iii) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such Party set forth below (or at such other address as the Party may from time to time specify by notice delivered in the foregoing manner):

If to Customer, to:

City Of Merced Fire Department
99 E 16th Street
Merced, CA 95340

Attn: Janet German

If to Xerox, to:

Xerox Government Systems, LLC.
2900 100th Street, Suite 309
Urbandale, IA 50322

Attn: Accounts Manager

15.8 Survival

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, will survive expiration or termination of this Agreement.

15.9 Independent Contractors & Use of Subcontractors

Xerox will perform its obligations under this Agreement as an independent contractor of Customer. Nothing in this Agreement will be deemed to constitute Xerox and Customer as partners, joint ventures, or principal and agent. Xerox has no authority to represent Customer as to any matters, except as expressly authorized in this Agreement or in an authorized Supplemental Service Agreement. Xerox has the right to use, if appropriate, qualified third party vendors.

15.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.



IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

City Of Merced Fire Department

By: John M. Bramble

Name: JOHN M. BRAMBLE

Title: CITY MANAGER

Date: 02-19-14

XEROX GOVERNMENT SYSTEMS, LLC

By: [Signature]

Name: SANDY KALISA

Title: VP

Date: 3/12/14

APPROVED AS TO FORM:

Kelly C. Fincher

KELLY C. FINCHER

Chief Deputy City Attorney

**ATTEST:
CITY CLERK**

BY: [Signature] 2-19-14
Assistant Deputy City Clerk

v-17104 2/4/14 PO#: 112927
FUND/ACCOUNTS VERIFIED
[Signature] 2-4-14
FINANCE OFFICE DATE
Funds Available. m- 2/4/14
061-0926-522-17-00
\$9,458.38 W



Exhibit A
Statement of Work

This Statement of Work describes the application hosting services that Xerox will provide to Customer in connection with this Agreement. Should additional services be required beyond or not defined in the scope of this Agreement, Customer and Xerox may enter into a Supplemental Services Agreement as further described in Section 4.0 of the Agreement, subject to required Customer approvals.

1.0 Application Software and Related Services

A key element of this Statement of Work is to provide Customer during the term of the Agreement with licensed access to web version of FIREHOUSE Software Version 7 or above for use in the daily operation of their agency.

1.1 FIREHOUSE Software Application

Xerox will provide Customer with access to the Applications and modules set forth in Exhibit B during the term of the Agreement, including FIREHOUSE Software Web Version 7 or above. Pricing established in Exhibit B includes professional service to convert the existing customer FIREHOUSE Software data to the cloud environment.

1.2 Key Assumptions Concerning Software

- Xerox Software, subject matter experts and network services staff are available on a daily basis from 7:00 am to 6:00 pm (CST), Monday through Friday (except Xerox holidays) via a toll-free support number.
- Access to these applications will be provided during the Term of the Agreement, and via a browser based secure connectivity to a Xerox Data Center facility where all programs and data will be securely stored and accessible.
- All access to the Services shall be controlled by user names and passwords issued by Xerox to Customer from time to time upon request by Customer. Each user name and password will be unique to each staff member that Customer designates is authorized to access the Services. Customer is solely responsible for the security of the user names and passwords issued to Customer's staff members. Any access to the Services using such user names and passwords will be deemed access by Customer.
- All standard software upgrades will be provided to Customer at no additional charge during the term of the Agreement. Upgrades are implemented at Xerox' discretion in accordance with Xerox' standard general release schedule for upgrades.
- Subject to the clarification contained in the following sentence, Software will be modified for "mandated" State & Federal functional requirements that must be handled by or within the Xerox FIREHOUSE Software Application. These mandated modifications / enhancements will be provided by Xerox as long as they can reasonably be integrated into the base system architecture. At Xerox' discretion, if the requirements are such that they cause major

modification to either data structure or the systems base process flow architecture, then Xerox will inform the Customer of options, which may include additional cost, over and above the costs associated with this agreement.

- XEROX data center personnel will physically handle and coordinate all software upgrades for any Xerox directed base application enhancements or upgrades.
- In certain circumstances and/or to provide specific functionality, Xerox may utilize third party application software in conjunction with its own Xerox created software. In these instances, Xerox will inform the Customer of this third party relationship. Xerox will secure all necessary third party software licenses required to ensure proper and legal use by Customer during the Term in accordance with the Agreement.
- Unless otherwise specifically set forth in this Agreement, Xerox shall have no responsibility for the correctness, performance or underlying program code relating to third party software (not developed by Xerox) used in connection with the Services. However, the Xerox Account Manager, as part of this Agreement, will act as a liaison to the appropriate third party vendor/s when problems or concerns arise.

2.0 Hardware & Systems Accessibility

Xerox Owned Equipment & Software

- Customer understands that all software applications identified in Section 3 above will be hosted on Xerox-owned remote data center computers. Xerox will maintain a remote and highly secure data center where appropriate computer processing and wide-area network capabilities are located to serve Customer applications listed in this Agreement. Response times experienced by authorized users within Customer site will be maintained at commercially reasonable levels to accomplish the application and functional tasks set forth herein. Response time will be monitored and tuned by Xerox data center operations staff on Xerox controlled network links as needed. Xerox is not responsible for network performance on network segments outside of Xerox control.
- If specific hardware is provided to the customer to connect Customer Local Area Network to Xerox data center, it will be properly maintained by Xerox. Any maintenance or upgrade needed to this equipment, to meet the deliverables of this agreement, will be the responsibility of Xerox.
- Customer will provide a safe, secure, and adequate environment to house necessary Xerox owned equipment. Customer will inform Xerox if/when these items are damaged or not operating properly.
- Xerox will be responsible for the repair or replacement of Xerox owned equipment if/when it is deemed not operating properly. Xerox owned equipment that is deemed not operating properly, will be repaired or replaced within two (2) business days of Xerox being notified of failure.
- The following equipment and software, if any, will be provided to the Customer for use as part of this Agreement. The equipment and software will be owned by Xerox, but will be located at a Customer facility. Customer will be responsible for the risk of loss or damage to the equipment and software located at its facility for as long as such equipment and software is



within its care, custody or control. Xerox will be responsible for providing standard manufacturer maintenance coverage for all equipment supplied as part of this paragraph. Xerox will also be responsible for all shipment costs (both at the time of installation and at the time of retrieval). Xerox will have no obligation to refresh the equipment or software in the absence of a contract amendment.

DESCRIPTION	MODEL	QUANTITY	MAINTENANCE
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Not Applicable

Customer Owned Equipment

- All required hardware, communication infrastructure, and related software will be the responsibility of the Customer.
- Customer will be responsible for maintaining or renewing any hardware maintenance agreements for their own equipment and at their own discretion.
- It is understood and agreed by Xerox and Customer that the Xerox services and equipment will integrate and connect to Customer equipment and/or network backbone, as a part of Customer's internal infrastructure.
- During the term of this Agreement, any upgrades, changes or additions to Customer owned equipment, or network environment that directly affects the connectivity, with Xerox equipment or communication infrastructure, must be reviewed and approved by Xerox. These upgrades, if approved, will be at Customer's expense unless otherwise mutually decided. If the Customer changes inhibit Xerox ability to provide the services of this Agreement, Xerox will work with the Customer on a best effort basis to resolve the underlying technical issues. However, if through these efforts a correction is not available, the Customer will be responsible to restore their environment to previous levels of service delivery.
- During the term of this Agreement, any expenses for maintenance, replacement, or repair, of Customer owned equipment or software will be at expense of Customer.

3.0 Customer Data

- All data collected on tape or hard copy, or residing on Xerox data center computers supplied by Customer to be utilized by Xerox in the computer system data base to provide services herein, will remain the property of Customer, and no use will be made thereof beyond that listed in the Agreement, without written permission of Customer.
- Once per calendar year or upon expiration or termination of this Agreement, Xerox will upon written request of Customer return to Customer all Customer Data in a MS SQL Server database in MDF format. Any additional conversion of Customer Data to MS SQL Server database in MDF format shall be provided for the additional cost set forth in Exhibit B,

Applicable Charges, under “Data Transfer.” Any conversion of data for porting to other applications, including conversion to spreadsheet format, will not be provided under this Agreement.

- All Customer data located on Xerox computers in Xerox Data Center/s will be backed up routinely, professionally and daily and stored in secure off-site locations; retrievable by Xerox for Customer for any contingencies.
- Xerox shall be authorized to view and use all reports, data, or other material prepared by it for the Customer under this Agreement, but shall not disclose, nor permit disclosure of, any information designated by Customer as confidential, except authorized recipients as specifically and in writing designated by Customer.

4.0 Professional Support Services

- Xerox Software, subject matter expert and Network Services staff will be available daily from 7:00 am to 6:00 pm (CST), Monday through Friday (other than Xerox holidays) via toll free 800 support number. Call-back time from Xerox support will average at or under 1 hour.
- All monitoring of the XeroxWide Area Network communications environment and continuous operations, Xerox remote data Center operations and security, and secure back-ups and remote storage of Customer Data will be responsibility of Xerox.
- There will be no on-site visits by Xerox staff on Customer locations. Should Customer request such visits for any reason, Xerox will be entitled to compensation for the hours worked (as well as reasonable travel time), as well as reimbursement for travel and living expenses. Services will be billable at the then current Xerox labor rate, but not initiated without the written consent of Customer.
- Troubleshooting, repair, and replacement of Xerox provided equipment listed in section 2.0 above. Note: The removal of Spyware, Adware, Data Mining, and other infections are outside the scope of these support services and may incur standard time/material support charges. Customer will not incur any additional charges without prior written approval.

5.0 Customer Responsibilities

While Xerox will provide the account management, staffing, and computer hardware and software resources to provide the required services, Customer agrees to provide the following resources to support this effort:

- Identify the Customer Contract Administrator who will be the main contact for the Xerox Account Manager, for all service delivery issues.
- Identify Customer personnel in each department that can be the key contacts for the Xerox support team with regard to the specific software applications and functions related to the Xerox services.

- Customer is responsible for and controls all security on its internal Local Area Network/s, central computing, and desktop computing environments.
- Customer is responsible for all support services (technical and user) on its owned and internal LAN, other WAN connections outside of Xerox WAN, Central Computing, and desktop computing environments.
- Customer will provide, and is responsible for, the internal infrastructure necessary to allow Xerox to establish secure electronic communications and access to and from the Xerox remote data center.
- Customer is responsible for all Customer owned or purchased equipment set-up and integration into their own desktop or network environment.
- Customer shall, at its sole expense, at all times during the term of this Agreement, protect Xerox owned materials and/or equipment, which are located on Customer site, from deterioration other than normal wear and tear. Customer shall not use the Xerox owned items located on Customer premises for any purposes other than those for which they were designed hereunder. Customer shall bear the risk of loss or damage from fire, the elements, theft or otherwise from the time of and after the delivery of the items to the Customer's delivery address.
- Customer will not move any Xerox owned items or permit them to be moved from the original installation address without Xerox' prior written consent. Upon the request of Xerox, Customer shall make the materials available to Xerox during regular business hours for inspection at the place where it is normally located and shall make Customer's records pertaining to the materials available to Xerox for inspection.
- Except where the Parties mutually agree to extend the term of the Agreement past the initial term or any successive renewal period, upon termination (by expiration or otherwise) of this Agreement, Customer shall, pursuant to Xerox' instructions and at Customer's expense, return the materials and any documentation or other tangible manifestation of the materials to Xerox in the same operating order, repair, condition and appearance as when received, except for normal wear and tear. Customer shall return the materials to Xerox at its address set forth herein or at such other address within the United States as directed by Xerox.
- Customer shall not, without the prior written consent of Xerox, affix or install any accessory, equipment or device to any Xerox owned items which are located on the Customer site, which may either impair the originally intended function or that cannot be readily removed without causing material damages. The Customer will not, without the prior written consent of Xerox and subject to such conditions as Xerox may impose for its protection, affix these items to any real property if, as a result thereof, such materials will become a permanent fixture under applicable law.

Exhibit B
Applicable Charges

1.0 Based Yearly Fee

Customer shall pay Xerox an annual fee as outlined below for 5 years for services starting on 3/1/2014 and ending on 2/28/2019. Services will be invoiced in advance at the start of the service year, and payments are due on a net 30 day basis.

Payment Schedule:

	Yearly Fee
Year 1	\$9,458.38
Year 2	\$9,458.38
Year 3	\$9,458.38
Year 4	\$9,458.38
Year 5	\$9,458.38

Modules and Concurrent Users

The following Firehouse Modules and licenses will be available to the customer:

MODULES	Yes or No	# of Licenses
Incident Module	Yes	12
EMS Module	Yes	12
Staff, Training and Certifications	Yes	12
Occupancy Management	Yes	12
Inventory Management	Yes	12
Hydrant Module	Yes	12
Staff Scheduling	Yes	12
Accounts Receivable	No	0
Sketch	No	0
Analytics	Yes	1
CAD Monitor – Vendor	Yes	N/A
VPN connection required for CAD data transfers	No	N/A
Local Data Transfer	No	N/A

2.0 Other Xerox Services

Services provided to Customer by Xerox, that are beyond the scope of this Agreement, or are in addition to or supplemental to the scope of this Agreement, will be provided at the then current Xerox labor rate during the Term. The Xerox Account Manager will always obtain prior approval from Customer on the nature of the services, personnel assigned and estimated time and expenses to be incurred. All such services will be performed in accordance with a fully executed Supplemental Service Agreement.

Pricing Assumptions:

- Except as otherwise set forth herein, travel, lodging, meals and incidental expenses for Xerox staff that are directly related to performing the specific deliverables of this Agreement will be the responsibility of Xerox.
- Any other “expenses” that fall outside the deliverables of this Agreement will be the responsibility of Customer. The Xerox Account Manager will establish an approval process by Customer prior to incurring the expense.



HIPAA Business Associate Agreement Xerox Government Systems, LLC

Xerox Government Systems, LLC ("Xerox") shall carry out its obligations to City of Merced

(“Client”) under this Business Associate Agreement (“Agreement”) in compliance with the privacy regulations under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (August 21, 1996), as amended (collectively “HIPAA”), to protect the privacy of any personally identifiable Protected Health Information (“PHI”), as defined in 45 CFR 164.501, that is collected, processed, or learned as part of or in connection with the services provided by Xerox for the Client {“Services”}.

This Agreement is incorporated by reference in the separate agreement for Services between the parties (“Services Agreement”) and, except as otherwise provide under the terms of this Agreement and HIPAA, shall be subordinate to and subject to the terms and conditions of that Services Agreement.

The effective date of this Agreement is **March 1, 2014** (“Effective Date”).

This Agreement shall terminate when Xerox is no longer performing any Services for the Client that involve the use or disclosure of PHI or as otherwise provided under this Agreement or HIPAA

In order to comply with the requirements of HIPAA and the HIPAA regulations, Xerox will do all of the following:

1. Xerox will not use or further disclose PHI except as permitted under this Agreement or required by law (including compliance with the HIPAA minimum necessary standard) and Xerox will use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this Agreement.
2. Xerox will mitigate, to the extent practicable, any harmful effect that is known to Xerox of a use or disclosure of PHI by Xerox in violation of this Agreement.
3. Xerox will report to Client any use or disclosure of PHI of which Xerox becomes aware that is not allowed under this Agreement.
4. Xerox will ensure that any agents or subcontractors under the Services Agreement to which Xerox provides PHI (or which have access to PHI covered by this Agreement) agree to the same restrictions and conditions that apply to Xerox with respect to that PHI.
5. Xerox will make PHI available to Client, in accordance with applicable HIPAA requirements, within thirty (30) days after receipt of a written request from the Client.
6. Xerox will make PHI available to an individual who has a right of access to PHI, in accordance with applicable HIPAA requirements, within thirty (30) days after receipt of a written request from that individual.
7. If Xerox inadvertently comes in contact with or possession of any PHI subject to this Agreement, Xerox will not use or further disclose that PHI to anyone.
8. Xerox will incorporate any amendments or modifications of the PHI when notified to do so by the Client, in accordance with the applicable HIPAA requirements.
9. Xerox will provide an accounting of all uses or disclosures of PHI by Xerox, in accordance with 45 CFR §164.528 and any other applicable HIPAA requirements, within sixty (60) days after receipt of a written request from the Client.
10. Xerox will make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services, in accordance with applicable HIPAA requirements, for purposes of determining Xerox compliance with HIPAA.
11. Upon termination or expiration of this Agreement, Xerox will return or destroy all PHI received from Client or created or received by Xerox on behalf of the Client. The protections provided to the PHI under this Agreement will continue until the PHI has been returned or destroyed in accordance with the requirements of HIPAA.

HIPAA Business Associate Agreement



12. Xerox will maintain a strong confidentiality policy applicable to all of its personnel who may be assigned to perform Services that are subject to the provisions of this Agreement. Further, Xerox will educate those Xerox personnel about the importance of confidentiality with respect to HIPAA and the performance of this Agreement.
13. Xerox will not sell or receive remuneration (financial or otherwise), directly or indirectly, from or on behalf of the recipient in exchange for PHI, except as authorized by the individual requesting the PHI or otherwise allowed under HIPAA.
14. If Xerox personnel (or the agents or subcontractors of Xerox) are providing Services on Client premises, Xerox will take steps to ensure that those persons remain only in authorized areas of Client and that they will not open any files, desks, boxes, disk storage cases, or any other containers or electronic files that may potentially contain confidential and proprietary information.
15. When used in this Agreement or used to interpret or apply HIPAA to this Agreement and the parties to this Agreement, the following terms have the meaning set forth:
 - (a) Business Associate - Xerox, including all successors and assigns, affiliates, subsidiaries, and related companies of Xerox.
 - (b) EDI Rule - the Standards for Electronic Transactions as set forth at 45 CFR §160, Subpart A and 45 CFR §162, Subpart A and Subparts I through R.
 - (c) Individual - In addition to 45 CFR §164.501, this term includes a person who qualifies as a personal representative under 45 CFR §164.502(g).
 - (d) Privacy Rule - the standards for privacy of PHI set forth in 45 CFR §§ 160 and 164.
 - (e) Security Rule - the security rule set forth in 45 CFR §§160, 162, and 164.
 - (f) Other terms used (but not defined) in this Agreement shall have the same meaning as those terms under 45 CFR §§160, 162, and 164.
16. Except as otherwise limited under this Agreement, Xerox may use or disclose PHI to perform the Services for or on behalf of Client that are or have been or may be agreed to by the parties under a one or more separate contractual agreement(s), as long as that use or disclosure would not violate the Privacy Rule or HIPAA other requirement. Xerox may also use or disclose PHI as required for the proper management of Xerox as a Business Associate and for other purposes or activities that are permitted under the HIPAA Privacy Rule.

IN WITNESS WHEREOF the authorized representatives of the parties execute this Agreement:

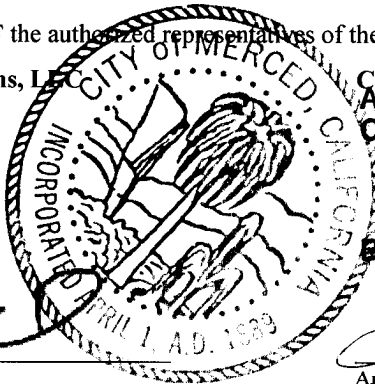
Xerox Government Systems, LLC

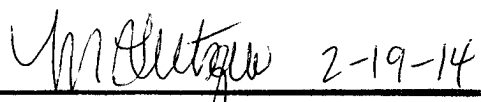
Client: City of Merced Fire Department

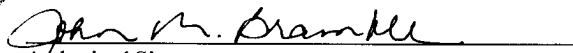
ATTEST:
CITY CLERK


Authorized Signature

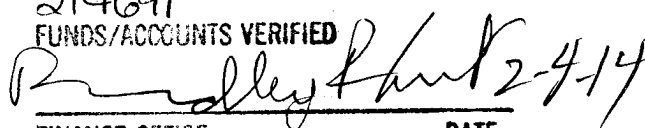
Sanjay S. Kalasa, Vice President
Name and Title (Type/Print)



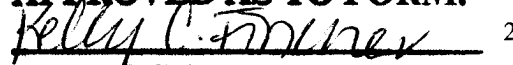
BY  2-19-14
Assistant/Deputy City Clerk


Authorized Signature

JOHN M. DRAMPLE - CITY MANAGER
Name and Title (Type/Print)

214691
FUNDS/ACCOUNTS VERIFIED
 2-4-14
FINANCE OFFICE DATE
No funds to encumber. me
2/4/14
W

APPROVED AS TO FORM:

 2
KELLY C. FINCHER
Chief Deputy City Attorney