

PARTICIPATING ADDENDUM
for
Copiers and Printers under Omnia Partners Cooperative Program

Participating Entity:
CONTRA COSTA COUNTY

Contractor: Xerox Corporation (Contract #R191104)

This Participating Addendum (“Agreement”) is made and entered into as of April 24, 2024 (“Effective Date”), by and between Contra Costa County, a political subdivision of the State of California, (“County”) and Xerox Corporation, a New York corporation (“Contractor”). The County and the Contractor are sometimes referred to herein together as the “Parties,” and each as a “Party.”

Whereas, the Contractor leases copiers and printers, and provides related software licenses, supplies, and equipment, under Contract No. R191104 (“Master Contract”), which was awarded by Region 4 Education Service Center, a Texas public agency, after a competitive bid process, and which is made available to public agencies nationally through the OMNIA Partners cooperative purchasing program. Xerox’s proposal (“Proposal”) in response to that competitive bid process is attached to and made a part of the Master Contract. A true and correct copy of the Master Contract, and all documents incorporated therein, are attached together as Exhibit A and incorporated herein by this reference.

Whereas, the Print and Mail Services Division of the County’s Public Works Department has determined that entering into a Participating Addendum to participate in the Master will provide a benefit to the County, but that certain terms and conditions of the Master Contract must be modified to meet legal requirements that apply to the County as a California public agency. In order to lease copiers and printers under the terms of the Master Contract, the County and Xerox will execute the Lease Agreement (“Lease”) in the form of Exhibit B attached hereto and incorporated herein by this reference.

Now, therefore, the County and the Contractor agree as follows:

1. Term. The term of this Agreement begins on the Effective Date, and it expires upon the expiration of the Lease. If the Master Contract is terminated prior to the expiration of the term of this Agreement, the Contractor shall continue to perform under this Agreement through the term of this Agreement.
2. Payment Limit. The County’s total payments to the Contractor under this Agreement shall not exceed \$1,200,000 (“Payment Limit”). Notwithstanding anything to the contrary herein or in the Master Contract, nothing in this Agreement obligates the County to make any purchases, or any particular volume of purchases, under this Agreement.
3. Order of Precedence. Notwithstanding anything to the contrary in the Master Contract or the Lease, the order of precedence of the documents shall be as follows: this Agreement; the Master Contract; Xerox’s best and final offer; Xerox’s proposal; the request for proposals and any addenda; and the Lease. The Parties agree that, upon the execution of the Lease, the Lease shall be deemed to incorporate and be governed by all of the foregoing documents in the aforementioned order of precedence.
4. No Public Work/No Public Project. The Contractor shall not perform any work under this Agreement that would qualify as a public work under the California Public Contract Code, or that would require the payment of prevailing wages under the California Labor Code. The Contractor shall be solely responsible for complying with all applicable prevailing wage laws, wage and hour laws, and other laws that apply to Contractor’s performance under this Agreement.

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5. Changes to Master Contract. For the purposes of this Agreement, the terms of the Master Contract are incorporated in and made a part of this Agreement, except for those terms of the Master Contract that are modified by this Agreement, as follows:
- a. Parties. Each reference to “Region 4 ESC” or other defined term meaning Region 4 ESC in the Master Contract is replaced with “Contra Costa County.”
 - b. Audit Rights. The third sentence in Section 18 (Audit Rights) of the Master Contract is deleted and replaced with the following:

“The audit right shall survive for three years following termination or expiration of the Master Contract or any Lease issued hereunder, whichever is later.”
 - c. Indemnity. Section 29 (Indemnity) of the Master Contract is deleted in its entirety and replaced with new Section 29, to read:

“29. Indemnity. The Contractor shall indemnify, defend, and hold harmless Contra Costa County, its officers, employees, agents, and representatives (collectively, “County Parties”) from and against all claims, demands, damages, losses, expenses, judgments, costs, penalties fees, including attorney’s fees and attorney’s fee awards, (collectively, “Liabilities”) arising out of or resulting from the negligence or willful misconduct of the Contractor, or any of the Contractor’s officers, employees, agents, or representatives, while performing services under this Contract. Provided, however, that nothing herein requires the Contractor to indemnify any County Parties from the proportion of any Liabilities that arise from the negligence or willful misconduct of the County. This section shall survive the termination or expiration of this Agreement and the Master Contract.”
 - d. Legal Obligations. Section 32 (Legal Obligations) of the Master Contract is amended by adding the following sentences:

“Notwithstanding anything to the contrary in the Master Contract, this Agreement and the Lease, and all records produced or exchanged between the County and the Contractor under this Agreement and the Lease, will be considered disclosable public records under the California Public Records Act, Contra Costa County’s Better Government Ordinance, and other applicable laws, unless Contra Costa County, in its sole discretion, determines that any record is exempt from disclosure. All references in the Master Contract to the Contractor’s obligation to comply with all state laws shall include the laws of the State of California.”
6. Changes to Appendix C of the Proposal. For purposes of this Agreement, the following portions of the Proposal are deleted and are of no force or effect: Appendix C, Document #1, Acknowledgment and Acceptance of Region 4 ESC’s Open Records Policy; Appendix C, Document #2, Antitrust Certification Statements; Appendix C, Document #3, Implementation of House Bill 1295 Certificate of Interested Parties; and Appendix C, Document #4, Texas Government Code Section 2270 Verification Form.

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7. Governing Law. Notwithstanding anything to the contrary in the Master Contract or the Lease, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws principles. Any litigation to enforce or interpret this Agreement or the Lease shall be filed and prosecuted in a state or federal court in California where venue is proper and that has jurisdiction over the parties and the subject matter of the litigation. During the term of this Agreement, the Contractor shall remain registered in good standing with the California Secretary of State and maintain an agent for service of process in California.
8. No Joint Venture. At all times during the term of this Agreement, neither party will function as or represent itself to be the other party or its agent, and no officer, employee, or agent of one party shall hold himself or herself out to be an officer, employee, or agent of the other party. This Agreement does not create any rights or obligations between the parties other than those expressly set forth herein. Nothing in this Agreement shall be construed as conferring any rights upon any third parties or any person other than the County and the Contractor.
9. Amendment. This Agreement may be amended or modified at any time by mutual written agreement of the parties.
10. Termination.
 - a. Notwithstanding anything to the contrary in the Master Contract, either party may terminate this Agreement at any time upon sixty (60) days written notice to the other party at the other party's address specified in paragraph 12 (Notices). Provided, however, that, following the execution of the Lease, this Agreement shall survive and remain enforceable until the Lease expires or is separately terminated.
 - b. Notwithstanding anything to the contrary in the Master Contract or the Lease, or otherwise, the County may terminate the Lease when, in any future fiscal year, the County's governing body does not appropriate funds sufficient to make payments required under the Lease, as determined by the County in its sole discretion. In any such non-appropriation event, the County must provide the Contractor written notice of termination of the Lease for non-appropriation at least 60 days before the start of that fiscal year, and the Lease shall be deemed terminated as of the last day of the fiscal year in which the notice is given. Notwithstanding anything to the contrary in the Master Contract or the Lease, the Parties' rights and obligations in the event of any non-appropriation event shall be governed exclusively by this Section 10(b).
11. Performance. The Contractor affirms that there are no encumbrances or obstacles that will prohibit its performance pursuant to the terms of this Agreement. The Contractor shall be solely responsible for guaranteeing any of its dealers, distributors, or subcontractors perform in accordance with the requirements of the Master Contract, as modified by this Agreement. If the County issues any purchase orders to acquire goods or services under this Agreement, to the extent that there is any conflict between the terms of the purchase order and a term in this Agreement, which incorporates the terms of the Master Contract subject to the changes specified herein, the term of this Agreement shall govern and prevail over the conflicting term in the purchase order.

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12. Notices. All notices to the parties shall be provided to:

Contractor

CCCFPD

Contra Costa County – Purchasing Services
40 Muir Road, 2nd Floor
Martinez, CA 94553
Telephone: (925) 957-2495
Contact: Cynthia Shehorn, Procurement Services Manager
Email: cindy.shehorn@pw.cccounty.us

All notices shall be in writing and personally delivered, delivered by overnight carrier with delivery charges for next day delivery prepaid by the sending party, or sent by First Class certified (return receipt required) U.S. Mail, with postage prepared by the sending party. A courtesy copy of a notice may be given by email, but giving a courtesy copy of a notice by email does not relieve the sending party of its obligation to give notice to the receiving party in the manner required by this section. A notice given in accordance with this section shall be deemed received by the receiving party on (a) the same day, if personally delivered, (b) the next business day if timely deposited with an overnight carrier and with delivery charges prepaid to ensure next day delivery, and (c) on the fifth day after mailing if mailed by First Class certified (return receipt required) U.S. Mail with postage prepaid. Either party's designated representative may change the party's address listed above by providing written notice to the other party in accordance with this section.

13. Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Notwithstanding anything to the contrary in the Master Contract, this Agreement may not be assigned by either party without the express written permission of the other party, which shall be within that party's sole discretion to provide.

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IN WITNESS, WHEREOF, the parties have executed this Participating Addendum as of the Effective Date first written above.

Participating Entity: Contra Costa County	Contractor: Xerox Corporation
Signature:	Signature:
Name:	Name:
Title:	Title:
	Signature:
	Name:
	Title:

Approved as to form:

Thomas L. Geiger, County Counsel

By: _____

Stephen M. Siptroth
Assistant County Counsel

Attachments:

Exhibit A – Master Contract and all attachments thereto

Exhibit B – Lease Agreement