

CONTRACT
by and between
SHELBY COUNTY GOVERNMENT
and
XEROX GOVERNMENT SYSTEMS, LLC

CONTRACT

This contract (the "Contract") entered into this 10th day of June, 2016, and between SHELBY COUNTY GOVERNMENT, CIRCUIT COURT, hereinafter referred to as "COUNTY" and XEROX GOVERNMENT SYSTEMS, LLC, a Delaware limited liability company with a place of business located at 2025 Leestown Rd., Suite A-1, Lexington KY 40511 (hereinafter "Consultant"), referred to individually as Party and collectively as Parties.

WITNESSETH

WHEREAS, the PARTIES are party to a Software License and Services Agreement dated on or about July 16, 1998 (as amended to date, the "License Agreement") pursuant to which CONSULTANT licensed to the COUNTY certain software products including CONSULTANT'S Component Systems known as Contexte 6.0 (previously known as the Banner Component Systems); and

WHEREAS, the COUNTY has the need for professional assistance for the provision of maintenance and support for such software; and

WHEREAS, the CONSULTANT has the knowledge and expertise to provide such services; and

WHEREAS, COUNTY has approved CONSULTANT'S single source designation by letter dated April 29, 2016; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONSULTANT will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. DEFINITIONS

1. "Baseline" means the general release version of a Component System as updated to the particular time in question through both the CONSULTANT'S warranty services and this Contract, but without any other modification whatsoever.
2. "Component System" means any one of the computer software programs which is identified in Exhibit "A" as a Component including all copies of Object Code and all related

- specifications, documentation, technical information, and all corrections, modifications, additions, improvements, and enhancements to and all Intellectual Property Rights for such Component Systems; provided, however, Consultant shall not provide Source Code under this Contract.
3. "CONSULTANT Confidential Information" means non-public information of CONSULTANT, including the Licensed Software and all software provided with the Licensed Software, and algorithms, methods, techniques and processes revealed by the Source Code of the Licensed Software and any software provided with the Licensed Software. CONSULTANT Confidential Information does not include information that (a) is or becomes known to the public without fault or breach of the COUNTY; (b) CONSULTANT regularly discloses to third parties without restrictions on disclosure; or (c) the COUNTY obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.
 4. "Contract Year" means, with respect to each Baseline Component System, each one (1) year period beginning and ending on the dates provided for in Exhibit "A" for such Baseline Component System.
 5. "Documented Defect" means a material deviation between the Baseline Component System and its documentation which relates to the use of such Baseline Component System, for which Documented Defect the CONSULTANT has confirmed that the COUNTY has given CONSULTANT enough information for CONSULTANT to replicate the deviation on a computer configuration which is both comparable to the equipment consisting of the hardware and systems software configuration for which CONSULTANT supports the Licensed Software and which is under CONSULTANT'S control.
 6. "Enhancements" means general release (as opposed to custom) changes to a Baseline Component System which increase the functionality of the Baseline Component System.
 7. "Improvements" means, collectively, Maintenance, Enhancements, and New Releases provided under this Contract.
 8. "Intellectual Property Rights" means all patents, patent rights, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks and Confidential Information.
 9. "Licensed Software" the Component Systems listed in Exhibit "A".
 10. "Maintenance" means using reasonable efforts to provide COUNTY with avoidance procedures for or corrections of Documented Defects.
 11. "New Releases" means the new edition of a Baseline Component System.
 12. "Object Code" means computer programs assemble, compiled, or converted to magnetic or electronic binary form on software media, which are readable and usable by computer equipment.

13. "Source Code" means computer programs written in higher-level programming languages, sometimes accompanied by English language comments and other programmer documentation.

II. SCOPE OF WORK

1. Types of Services. During the term of this Contract, Consultant will provide County with Maintenance for, Enhancements of, and New Releases of each Baseline Component System identified in Exhibit A (the "Services").
2. Limitations. All Improvements will be part of the applicable Baseline Component System and will be subject to all of the terms and conditions of the License Agreement and this Contract. Consultant's obligation to provide County with Improvements for Baseline Component Systems owned by parties other than Consultant is limited to providing County with the Improvements that the applicable third party owner provides to Consultant for that Baseline Component System. In this regard, to the extent that an agreement authorizing Consultant to resell or sublicense a third party's Baseline Component System is terminated or expires prior to the expiration of the Term, or prior to the expiration of any renewal term, for that Baseline Component System, then Consultant's obligation to provide Improvements to County for that Baseline Component System, and County's obligation to pay Consultant for such Improvements, shall automatically terminate simultaneously with the termination or expiration of the relevant agreement. County must provide Consultant with such facilities, equipment and support as are reasonably necessary for Consultant to perform its obligations under this Agreement.
3. The COUNTY agrees to adhere to CONSULTANT Software License policy as executed July 23, 1998.

TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon the Effective Date and will expire on June 30, 2017, with the option to renew for three (3) additional one-year periods beginning on July 1 of each year (each, a "Contract Year"), upon mutual written consent of both Parties, with the same terms and conditions. .
2. The COUNTY agrees to compensate the CONSULTANT for the provision of the Services by paying the fees ("Fees") as set forth in the fee schedule attached hereto as Exhibit "A" and incorporated herein by reference.

3. The CONSULTANT shall submit invoices to the COUNTY in accordance with Exhibit A. Invoices shall be submitted in duplicate to the address set forth in Paragraph 33 of this Contract, "Notices" to the attention of Van Sturdivant and Donna L. Russell. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and may withhold from payment, any amounts the COUNTY has in bona fide dispute with the CONSULTANT based on CONSULTANT'S material non-performance or negligent performance of any of the Services under this Contract, provided that prior to any such withholding, the COUNTY shall promptly notify CONSULTANT in writing and provide details of any such alleged material non-performance or negligent performance, and shall give CONSULTANT a reasonable opportunity to respond and cure such alleged material non-performance or negligent performance.
4. **CONSULTANT shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall CONSULTANT be entitled to receive payments for contract fees and expenses incurred in violation of this provision**

II. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONSULTANT will be performed in accordance with the requirements of this Contract, in a manner reasonably satisfactory to the COUNTY.

2. CONSULTANT'S PERSONNEL

The CONSULTANT certifies that it presently has and will continue to maintain adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONSULTANT. The CONSULTANT further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them.

Any employee of the CONSULTANT who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the CONSULTANT, or any of the CONSULTANT's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONSULTANT will be an independent CONSULTANT over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONSULTANT as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONSULTANT is solely for purposes of compliance with local, state and federal regulations and means that the CONSULTANT will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.
- b. It is further expressly agreed and understood by CONSULTANT that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONSULTANT has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONSULTANT for the Services performed shall be on the CONSULTANT's letterhead.

4. BASIS OF THE BARGAIN

THE COUNTY ACKNOWLEDGES THAT CONSULTANT HAS SET ITS FEES AND ENTERED INTO THIS CONTRACT IN RELIANCE UPON THE LIMITATIONS ON LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES AS SET FORTH IN PARAGRAPH 13 AND PARAGRAPH 35 OF THIS CONTRACT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the CONSULTANT or any of its principals,

partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

ii) CONSULTANT has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or

iii) CONSULTANT has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONSULTANT assets.

b. The COUNTY may terminate the Contract upon thirty (30) days written notice by the COUNTY to the CONSULTANT for CONSULTANT's failure to materially provide the Services specified under this Contract.

c. In the event of such termination for any reason, the CONSULTANT shall be paid for all Services rendered up to the effective date of termination, provided the CONSULTANT shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract and to which the COUNTY is entitled; however, CONSULTANT shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

d. Notwithstanding the above or any section herein to the contrary, but subject to the provisions of Sections 13f and 13g herein, CONSULTANT shall not be relieved of liability to the COUNTY for direct damages sustained by the COUNTY to and the extent of any material breach of the Contract by CONSULTANT, as finally determined by a court of competent jurisdiction.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONSULTANT pursuant to this Contract for any Services performed by CONSULTANT in connection with effecting of corrections to the Services, when such corrections are required as a direct result of negligence by the CONSULTANT to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party, such consent not to be unreasonably withheld. No subcontracting, assignment, delegation or transfer shall relieve the CONSULTANT from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONSULTANT's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT warrants that no part of the total Fees shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to

recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONSULTANT will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONSULTANT agrees to permit duly authorized agents (excluding any entities which may be CONSULTANT'S competitors) and employees of the COUNTY to enter CONSULTANT'S offices for the purpose of inspections, reviews and audits during normal working hours, provided COUNTY has given CONSULTANT reasonable prior notice. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fees paid under this Contract and, solely for the purpose of enabling COUNTY to verify the accuracy of CONSULTANT'S invoices, shall make such materials available at CONSULTANT'S offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request. Notwithstanding anything to the contrary, CONSULTANT shall not be required to disclose any proprietary or confidential information, including without limitation any internal costing data.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONSULTANT and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final. The Parties retain all rights and remedies available to them at law, in equity, by statute, or otherwise.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. CONSULTANT shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts, to the extent arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur directly in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the CONSULTANT, its subcontractors, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.
- b. CONSULTANT expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to CONSULTANT or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONSULTANT as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment against CONSULTANT or the settlement of any claims against CONSULTANT as a result of or relating to performance by CONSULTANT of the Services under this Contract.
- e. CONSULTANT shall immediately notify the COUNTY of any claim or suit made or filed against CONSULTANT or its subcontractors regarding any matter resulting from or relating to CONSULTANT's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.
- f. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT'S TOTAL, AGGREGATE, CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS CONTRACT, NOTWITHSTANDING THE FORM IN WHICH ANY ACT IS BROUGHT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED IN THE AGGREGATE TO THE TOTAL

FEES PAID UNDER THIS CONTRACT DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CLAIM AROSE.

- g. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE UNDER THIS CONTRACT FOR LOST PROFITS, LOST REVENUES, OR EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONSULTANT certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONSULTANT hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise

subjected to discrimination in the performance of this Contract or in the employment practices of the CONSULTANT on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONSULTANT shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and the terms and conditions contained in Exhibit A, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach

on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated and CONSULTANT shall have no further obligations to provide the Services. In the event of such termination, the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures, provided that the COUNTY first provides CONSULTANT with a written copy of such policy and procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the COUNTY.

23. NON-LIABILITY FOR CONSULTANT EMPLOYEE TAXES

Neither CONSULTANT nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONSULTANT's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONSULTANT's

payments;

- b. Making state or federal unemployment insurance contributions on behalf of CONSULTANT or its personnel;
- c. Withholding state and federal income tax from payment to CONSULTANT;
- d. Making disability insurance contributions on behalf of CONSULTANT;
- e. Obtaining workers' compensation insurance on behalf of CONSULTANT or CONSULTANT's personnel.

24. FORCE MAJEURE

Neither Party will be liable to the other for any failure for delay in performance under this Contract due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident labor disruption, acts, omissions, and defaults of third parties and officials, governmental and judicial action, which are not the fault of the Party failing or delaying in performance.

25. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONSULTANT shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

26. INTENTIONALLY DELETED.

27. RIGHT TO REQUEST REMOVAL OF CONSULTANT'S EMPLOYEES

The COUNTY may interview the personnel CONSULTANT assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONSULTANT, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONSULTANT shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

28. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

29. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONSULTANT, CONSULTANT understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONSULTANT due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

30. CONFIDENTIAL INFORMATION

- a. CONSULTANT acknowledges that, in dealing with individuals in the provision of the Services for COUNTY, any information gathered for the provision of the Services is confidential information. CONSULTANT agrees to hold all confidential information in strict confidence, and except as expressly set forth herein, will not disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual. CONSULTANT shall:
 - i) use the confidential information only in connection with the provision of the Services;
 - ii) disclose the confidential information only to its officers, directors, and employees, and auditors who need to know the confidential information to accomplish the preparation of the audits and/or auditing process; and
 - iii) safeguard the confidential information with the same or greater degree of care to avoid unauthorized disclosure as the CONSULTANT uses to protect its own confidential information.
- b. Confidential information does not include information that (i) is or becomes publicly available; (ii) became known to CONSULTANT prior to COUNTY's disclosure of such information to CONSULTANT; (iii) became known to CONSULTANT from a source other than COUNTY other than by breach of any obligation owed to County; or (iv) was independently developed by CONSULTANT.
- c. In the event that the CONSULTANT or anyone to whom it transmits confidential information becomes legally compelled to disclose any of the confidential information, the CONSULTANT will provide the COUNTY with prompt written notice before such confidential

information is disclosed so that the COUNTY can seek a protective order or other appropriate remedy. Unauthorized disclosure of confidential information by the CONSULTANT shall result in immediate termination of the Contract.

- d. Except as otherwise permitted under this Contract or unless otherwise required under Tennessee law, the COUNTY will not knowingly disclose to any third party, or make any use of, CONSULTANT Confidential Information. The COUNTY will use at least the same standard of care to maintain the confidentiality of its own confidential information for a period of five (5) years after the COUNTY'S receipt of that item. However, the COUNTY'S obligations to maintain bot the Licensed Software and any software provided with the Licensed Software as confidential will survive in perpetuity.

31. ORGANIZATION STATUS AND AUTHORITY

- a. CONSULTANT represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary to fulfill its obligations under this Contract.
- b. The execution, delivery and performance of this Contract by the CONSULTANT has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONSULTANT, any provision of any indenture, agreement or other instrument to which CONSULTANT is a party, or by which CONSULTANT'S respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien , charge or encumbrance of any nature whatsoever upon any of the properties or assets.

32. INSURANCE REQUIREMENTS

- a. The CONSULTANT shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from

claims which may arise out of or result from the CONSULTANT's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONSULTANT or subcontractor may be liable. Consultant shall require that its subcontractors also carry and maintain insurance as outlined by this section at subcontractors' expense.

- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be included as additional insured for commercial general liability, which may be met through a blanket additional insured provision endorsement. The CONSULTANT will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements. CONSULTANT shall provide for thirty (30) days written notice to COUNTY of cancellation in coverage provided. If current policy terms and conditions do not allow for notice to County, CONSULTANT will immediately notify County and provide evidence of replacement coverage with no lapse.
- i) Professional Liability Insurance - \$1,000,000.00 per claim/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence or claims-made.
- ii) Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:
- a. Premises/Operation;
 - b. XCU coverage, where applicable;
 - c. Products/Completed Operations;
 - d. Contractual Liability;
 - e. Independent Contractors;
 - f. Broad Form Property Coverage;
 - g. Personal Injury.

- iii) Workers Compensation and Employers' Liability Insurance - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident.
 - iv) Business Automobile Liability Insurance - \$1,000,000.00 each accident for bodily injury and property damage. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.
- c. CONSULTANT shall provide County with a current copy of the standard ACORD form type Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:
- Shelby County Government
Purchasing Department
160 N. Main, 9th Floor
Memphis, TN 38103
- e. Upon termination or cancellation of any claims-made insurance currently in effect under this Contract, the CONSULTANT shall purchase an extended reporting endorsement and furnish evidence of same to the County.
- f. Any Commercial General Liability and Business Automobile liability insurance coverage required by this Contract will apply as primary and non-contributory regardless of any insurance or self-insurance maintained by the County.

33. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by overnight carrier to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government
140 Adams Ave, Rm 324
Memphis, Tennessee 38103
Attn.: Van Sturdivant
Attn.: Donna L. Russell

and

Shelby County Government
Contract Administration
160 N. Main Street, Suite 950
Memphis, Tennessee 38103

CONSULTANT:

Xerox Government Systems, LLC
2025 Leestown Rd., Suite A-1
Lexington, KY 40511
Attn: Shayne Boyd

With copies to:
Xerox Government Systems, LLC.
8260 Willow Oaks Corporate Dr.
Fairfax, VA 22031
Attn: Contracts (LGS/Justice Solutions)

34. DISCLAIMER OF WARRANTIES

TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY IMPROVEMENTS AND/OR ANY OTHER MATTER RELATING TO THIS CONTRACT, AND THAT CONSULTANT EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT TO THE EXTENT THAT APPLICABLE LAW MAY RESTRICT SUCH EXCLUSIONS. FURTHER, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM OR ANY IMPROVEMENTS WILL BE USABLE BY THE COUNTY IF THE COMPONENT SYSTEM HAS BEEN MODIFIED BY ANYONE OTHER THAN CONSULTANT, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION, OR WILL BE COMPATIBLE WITH ANY OTHER HARDWARE OR SOFTWARE NOT PROVIDED OR APPROVED BY CONSULTANT.

35. Data Security.

Consultant shall apply all vendor-issued security updates for system software components maintained by the Consultant within 30 days of issuance.

Upon notification by the COUNTY, the Consultant shall assure that all vulnerabilities specific to the systems maintained and identified by the COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise

modified to assure they meet said compliance requirements. COUNTY must assign proper security to case information that is considered to be secure to prevent the sensitive information from being displayed in the public facing component as well as for internal users at the Court.

The Consultant shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

i) HIPAA (If Health Related) - Consultant warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. Consultant warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. Consultant will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

ii) Personally Identifiable Information (PII) - Consultant warrants to the COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. COUNTY must assign proper security to personally identifiable information to prevent the sensitive information from being displayed in the public facing component as well as for internal users at the Court.

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IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED AS TO FORM
AND LEGALITY:

SHELBY COUNTY GOVERNMENT

Contract Administrator/
Assistant County Attorney

Mark H. Luttrell, Jr., Mayor

VENDOR
XEROX GOVERNMENT SYSTEMS, LLC



BY: Shayne Boyd
Vice President, Global Client Operations

ACKNOWLEDGMENT

STATE OF Ky
COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Shayne Boyd, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate action and/or resolution to execute the preceding instrument of the _____, the within named bargainer, a limited liability company, and that he as such V.P., executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself/herself as V.P..

WITNESS my hand and official seal at office this 13th day of June, 2016

Betsy J. Chapley
Notary Public
My Commission Expires: _____

Betsy J. Chapley
Notary Public
~~Kentucky - State at Large~~
My Commission expires Mar. 7, 2018

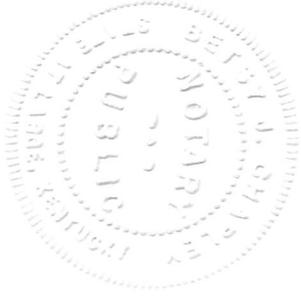


EXHIBIT A

FEES

1. Fees and Payment Terms

1. Xerox will invoice Client on a fixed fee basis in the amount of **\$109,060.00** for Improvement Fees for the term of **July 1, 2016 – June 30, 2017**.

CPI BASED ANNUAL ADJUSTMENT:

With respect to the below Baseline Component Systems, for each Contract Year beginning in Contract Year 2, the Payment Amount shall not increase by more than the C-CPI-U, Percent Change from Previous December, with an increase of not less than 2% and not greater than 5% on a year-over-year basis, multiplied by the Payment Amount for the applicable Baseline Component System in the immediately preceding Contract Year, rounded up to the next ten dollars (\$10.00)

Baseline Component System	Contract Year Begins/Ends	Payment Amount
Xerox Justice Information System :		
Xerox Civil	July 1, 2016 – June 30, 2017	\$79,960.00
Xerox Extended Case Information System	July 1, 2016 – June 30, 2017	
Xerox Accounting Management System	July 1, 2016 – June 30, 2017	
Xerox CourtConnect	July 1, 2016 – June 30, 2017	
Xerox Active Archive	July 1, 2016 – June 30, 2017	
Total Xerox Justice Information System Fee		\$ 79,960.00
Third Party Baseline Component System		
Oracle Database Software	July 1, 2016 – June 30, 2017	\$ 29,100.00
Total Third Party Baseline Component System		\$ 29,100.00
SYSTEM TOTAL:		\$ 109,060.00
Travel Expenses (Maximum for the Contract Year)		\$5,000
CONTRACT YEAR TOTAL:		\$ 114,060.00

2. Invoices are due on the last day of the first month of the contract year for that Baseline Component System.

2. Professional Fees and Conditions:

Fees will be invoiced and paid in U.S. Dollars.

3. Travel Expenses

Xerox shall be entitled to reimbursement from County for documented travel and lodging expenses that are reasonably incurred and necessary for Xerox'S performance of the Services. All expenses for reimbursement will be subject to County's prior written approval. County shall pay all undisputed amounts within 30 days of receipt of Xerox's invoice.

4. Taxes

Federal, state and local sales, use and excise taxes and all similar taxes and duties, (excluding taxes based on Xerox' income, assets or net worth), are the sole responsibility of Client and will be separately itemized on the invoice. County may provide Xerox a tax exemption certificate, which will be subject to review and acceptance by Xerox.