

**CHARLES COUNTY,
MARYLAND AGREEMENT**

THIS AGREEMENT (the "Agreement") is made by and between **CHARLES COUNTY, MARYLAND**, a body corporate and politic, (the "County") and **XEROX STATE & LOCAL SOLUTIONS, INC.**, 8260 Willow Oaks Corporate Drive, Fairfax, Virginia 22031, (the "Contractor" or "Xerox").

WHEREAS, the said Contractor, in consideration of the payments hereinafter specified and agreed to be made by said County, hereby covenants and agrees to perform all services, in strict and entire conformity with Attachment A Services to be Performed, Attachment B Xerox Price Proposal, and Contract No. PA 53-2016 between Howard County and Xerox effective January 5, 2016 (including any amendments or revisions thereto), each of which is incorporated into the Agreement either by reference or attachment.

NOW THEREFORE, in consideration of the mutual promises and covenants, the parties hereto agree that the County shall pay the Contractor an amount as set forth herein, for services rendered in accordance with this Agreement. Notwithstanding any other terms or provisions of this Agreement, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the County Commissioners, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents), the County shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay. In addition the parties hereto agree as follows:

1. Contractor's Duties.

The Contractor shall be an independent Contractor and not an employee of the County and the Contractor's employees who are assigned to provide services to the County under this Agreement shall be employees of the Contractor and not the County. The Contractor shall be responsible for the reporting and remittance of all state and federal taxes, compensable workers' compensation claims and coverage of unemployment claims filed by its employees. The Contractor shall perform the services outlined in Attachment A hereto. The Contractor's services will be provided with due care and in accordance with all applicable standards. The Contractor shall perform the services for the Charles County Sheriff's Office, or its designee, who shall have authority to administer the Agreement.

2. Compensation.

2.1 In consideration of the services to be provided by the Contractor, the County shall pay the Contractor a flat monthly fee of \$11,553 per system, for a total monthly fee of \$46,212 for the four (4) portable photo speed enforcement systems.

2.2 The Contractor shall submit invoices to the County monthly. The Contractor's invoices shall reflect the following:

2.2.1 Contractor's name

2.2.2 Address

2.2.3 Federal tax identification number

2.2.4 Contract number

2.2.5 Purchase Order number

2.2.6 Contract line number

2.2.7 Unit price and extended price (the unit price must match a contract line)

2.2.8 Description of goods provided and/or services performed.

2.3 The proper form of County invoices requires that the information above be included.

2.4 All invoices shall be submitted to:

Charles County Sheriff's Office

Financial Services

P. O. Box 189

La Plata, MD 20646

2.5 Invoices in the proper form and approved by the County shall be paid by the County within 30 days of receipt thereof.

2.6 Invoices may be returned for correction. The County reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the County, in its discretion deems appropriate.

3. Term.

3.1 This Agreement shall be effective July 1, 2016 and shall continue through June 30, 2017 (hereinafter defined as the "Initial Term"), at which time the County may exercise its option to renew set forth in Paragraph 3.2 below, unless sooner terminated pursuant to Paragraphs 5 and 7 hereof.

3.2 The County reserves the right to renew this Agreement for seven one-year renewals on the same terms and conditions set forth herein. Unless set forth in a written amendment, the compensation and manner of payment set forth in Paragraph 2 shall remain as is. In the event any renewal changes the terms and conditions set forth herein, the approval of the County Commissioners may be required.

4. Contractor's Representations and Warranties. The Contractor hereby represents the following:

4.1 The Contractor is a corporation, duly formed and validly existing under the laws of the State of New York and is qualified to do business and is in good standing in the State of Maryland.

4.2 The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby, and have taken all necessary action to authorize the execution, delivery and performance required under this Agreement.

4.3 The person executing this Agreement for the Contractor warrants that he/she is duly authorized by the Contractor to execute this Agreement on the Contractor's behalf.

4.4 The services to be provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations and licensing requirements.

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to provide the services rendered under this Agreement, and shall present such licenses to the County upon its request for the same.

5. Termination:

5.1 Termination for Convenience: The County may terminate this Agreement for convenience, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. The County shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

5.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the Agreement and therefore is in default, the County may terminate the Agreement for default. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the Agreement. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in re-procuring and completing the work.

5.3 Notwithstanding, the preceding paragraph, the contractor shall first have the right to remedy the default(s) within sixty (60) calendar days (or within such other time period as the County and Contractor shall mutually agree, which shall not be unreasonably withheld or delayed) after receiving written notice setting forth in reasonable detail the events of the cause for termination.

6. Remedies for Default.

6.1 The County shall have the right upon the happening of any Default, without providing notice to the Contractor.

6.1.1 In addition to other available rights and remedies, to terminate this Agreement immediately in whole or in part;

6.1.2 To suspend the Contractor's authority to receive any undisbursed funds; and/or;

6.1.3 To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

6.2 Upon termination of this Agreement for default, the County may elect to pay the Contractor for services provided up to the date of termination, less the amount of damages caused by the default. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in re-procuring and completing the work.

6.3 Notwithstanding, the preceding paragraph, the contractor shall first have the right to remedy the default(s) within sixty (60) calendar days (or within such other time period as the County and Contractor shall mutually agree, which shall not be unreasonably withheld or delayed) after receiving written notice setting forth in reasonable detail the events of the cause for termination.

7. Remedies Cumulative and Concurrent.

No remedy herein conferred upon or reserved to the County is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the County shall be concurrent and may be pursued separately, successively or together against the Contractor, and every right, power and remedy given to the County may be exercised from time to time as often as may be deemed expedient by the County.

8. Insurance.

The Contractor shall be required to provide the following types of insurance and shall maintain such insurance throughout the contract period. The Contractor shall maintain the following required insurance coverages while this Agreement is in force, and provide documentation of such insurance on a standard ACORD form type certificates of insurance.

8.1 Commercial General Liability: with combined single limits for bodily injury and property damage in the amount of \$1 million per occurrence and \$2 million general aggregate.

8.2 Business Automobile Liability: with combined single limits for bodily injury and property damage in the amount of \$1 million per accident. Contractor shall provide Business Automobile Liability insurance for all vehicles used by Contractor under the RFP and shall name Charles County, Maryland, its elected and appointed officials, officers, employees as Additional Insured on the Business Automobile policies. Such additional insured requirement may be met through a blanket additional insured basis. Insurance provided under this Section 8.2 shall be primary and non-contributory and may be provided through commercial insurance or self-insurance. As for physical damages coverage, Contractor shall be responsible for physical damages coverage on its vehicles used for this agreement by Contractor either through commercial insurance or it may elect to self-insure for it.

8.3 Workers' Compensation: to meet the statutory requirements of the State of Maryland.

8.4 Property Insurance for all Property other than Vehicles: It is understood and agreed that physical damage coverage for the speed camera systems and all related property and equipment owned by Contractor and/or leased to County by Contractor shall be the sole responsibility of Contractor, unless damage results from the County's sole negligence or wrongful conduct. In such cases where the County is responsible for damages, the County's estimate for repair or replacement shall prevail. Contractor may elect to provide Property Insurance to cover the property and equipment or may self-insure the coverage at Contractor's discretion.

8.5 Additional Insured: Charles County, Maryland, its elected and appointed officials, officers, employees and authorized volunteers shall be included as additional insured on the commercial general liability policy. Such additional insured requirement may be met through a blanket additional insured basis.

9. Confidential Information.

The Contractor shall not disclose any documentation and information disclosed to the Contractor in the course of its performance of duties hereunder with respect to the past, present and future County business, services and clients without the express written consent of the County.

10. RESERVED

11. Assignment.

Neither the County nor the Contractor shall assign or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the County, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Agreement.

12. Delegation of Duties.

The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the County.

13. Indemnification.

13.1 The Contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all third party claims, suits, or demands including reasonable attorney fees which may be made against the County, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.

13.2 Any property or work to be provided by the Contractor under this Agreement will remain at the Contractor's risk until written acceptance by the County; and the Contractor will replace, at the Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

13.3 Except for the fees and amounts expressly due and payable to Contractor hereunder, in no event shall either party to this Agreement be liable to the other party hereunder for any claims, penalties or damages, whether in contract, tort, or by way of indemnification, in an amount exceeding the fees or other charges paid by County to the Contractor during the twelve (12) months preceding the claim. Under no circumstances will either party to this Agreement be liable for any incidental, consequential, indirect, punitive or special damages arising out of or in connection with this Agreement.

14. Integration and Modification.

This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of all parties to this Agreement.

15. Governing Law.

This Agreement shall be governed by and consumed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

16. Conflicting Terms.

16.1 The Contractor acknowledges that any Purchase Order issued on or after the effective

date of this Agreement is hereby integrated and made a part of this Agreement, provided, however that if a conflict arises between the provisions of this Agreement and the Purchase Order, the provisions of this Agreement shall prevail.

16.2 In the event of a conflict between the Proposal and this Agreement, the provisions of this Agreement (without the conflicting terms in the Proposal shall prevail.

17. Severability.

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

18. Time is of the Essence.

Time is of the essence with respect to performance of the terms and conditions of this Agreement. Neither party shall be liable in damages or have the right to terminate the Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions, including, but not limited to natural disasters, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected, as agreed to by the other.

19. Funding.

The contractual obligation of the County under this Agreement is contingent upon the availability of appropriated funds from which payment for this Agreement can be made. In such event that the County cannot provide funding, the Contractor shall not be required to perform.

20. Ownership of Goods.

All goods, including but not limited to hardware and software, that are the subject of this Agreement including any licenses or consents acquired by the Contractor for performance hereunder, shall be and shall remain the property of the Contractor. Notwithstanding the above, all images and paperwork or other documentation associated with any and all violations and/or citations shall remain the property of the County.

21. Notice.

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered, and there is written confirmation of delivery or refusal of receipt, to the following address and individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE COUNTY: Troy D. Berry, Sheriff of Charles County, Maryland,
915 Crain Hwy.
PO Box 189
La Plata, Md. 20646-0189
Telephone: 301-609-6400

AND

Lieutenant Reynal Aportadera, Program Manager
P.O. Box 189
La Plata, MD 20646
Telephone: 301 609-5956
Fax: 301 932-3517
Email: aportaderar@ccso.us.com

FOR XEROX: Xerox State & Local Solutions, Inc.
8620 Willow Oaks Corporate Drive
Fairfax, VA 22031
Contracts Department

22. No Waiver, Etc.

No failure or delay by the County to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the County from exercising any such right, power, or remedy at any later time or times.

23. Liquidated Damages.

23.1 Liquidated Damages shall be assessed for non-performance as follows:

23.1.1 Damages sustained as a result of failure to capture images or to process acceptable images in a timely fashion are not capable of being exactly ascertained. Liquidated damages are established for this Agreement using the dollar value of an issued citation, an estimated collection rate of 75%, and considering the intangible damage sustained by the program.

23.1.2 The County shall make reasonable efforts to issue citations as appropriate within the 14- day legal limit for Maryland registered vehicles, or 30-day legal limit for out of state registered

vehicles, to avoid the imposition of liquidated damages. However, for each citation that cannot be mailed within the legal limits defined in the previous sentence due to the Contractor failure (as determined by the County) the Contractor shall pay the County as liquidated damages, \$30.00.

23.1.3 For each day the Contractor fails to deliver images for a particular camera, the Contractor shall pay the County as liquidated damages \$30.00 (thirty dollars) multiplied by the average number of citations issued per day, for that camera, during the 30 days the camera was in operation immediately before the missed day.

23.1.4 If more than 5% of the potential violations submitted by a Contractor for review in a calendar year are erroneous violations per Maryland Transportation Code Section 21-809, the Contractor shall pay the County as liquidated damages \$30.00 (thirty dollars) plus any reimbursements paid by the County, not to exceed \$40.00 (forty dollars) per erroneous violation.

23.1.5 Contractor shall pay the County liquidated damages of \$100.00 (one hundred dollars) per hour for deployment delays when the Contractor fails to install the Portable Camera Unit (PCU) cabinet in accordance to the pre- determined schedule. Such damages shall not exceed \$500.00 (five hundred dollars) per day.

23.1.6 Contractor shall pay the County liquidated damages of \$100.00 (one hundred dollars) per hour for delayed deployments or deployment time shortened if the Contractor fails to change out the batteries in a timely manner to avoid such shutdown or delay. Such damages shall not exceed \$500.00 (five hundred dollars) per day.

23.1.7 Contractor shall pay the County liquidated damages of \$500.00 (five hundred dollars) per day for each day in excess of eight days of PCU shut down per year for maintenance reasons.

23.2 Liquidated damages may not be assessed in the following situations:

23.2.1 A traffic accident, vandalism, or weather that significantly damages the vehicle or camera equipment. In the event that a vehicle or camera system is damaged beyond repair, the Contractor agrees to provide a temporary replacement within 18 hours and provide a permanent replacement within three days after the County has made written notice to the Contractor via e-mail.

23.2.2 The cause of the camera failure to shoot photographs or capture images is beyond the Contractor's control.

23.2.3 Severe weather (i.e. heavy fog, heavy rain, or heavy snow, etc.) obliterating the image.

23.2.4 Image exposure is compromised due to sunrise/sunset.

23.3 Contractor and the County agree that any liquidated damages not set forth in this Section 23 shall not apply to this Agreement.

24. Monthly Prosecutable Issuance Rate

The 90% Monthly Prosecutable Issuance Rate required under the Agreement shall be calculated as the sum of all violation events recorded less uncontrollable exceptions divided into the number of violation events approved for issuance by the Regional Automated Enforcement Center (RAEC).

24.1 Contractor Controllable Exceptions include:

- 24.1.1 False Camera trigger events
- 24.1.2 Improperly lit or dark images
- 24.1.3 Washed out plates/reflect sheeting
- 24.1.4 Plates with plate blocker
- 24.1.5 Unfocused/unreadable plate images
- 24.1.6 Vehicles out of position in the first or second image
- 24.1.7 Images with unmatched or missing violation event data
- 24.1.8 Too old to issue notice (legal time expiration)
- 24.1.9 Wrong vehicle identified
- 24.1.10 Duplicate citation
- 24.1.11 Incorrect information in Data Bar

24.2 Contractor Uncontrollable Exceptions (outside Contractor's control) include:

- 24.2.1 Missing plate
- 24.2.2 Diplomatic rag
- 24.2.3 Rental vehicle
- 24.2.4 Obstructed plate
- 24.2.5 Paper/dealer plate
- 24.2.6 Funeral procession or other police waive through
- 24.2.7 No MVA record found
- 24.2.8 Stolen vehicle/tags

25. License: Reservation of Rights.

25.1 License. Subject to the terms and conditions of this Agreement, Contractor hereby grants the County, and the County hereby accepts from Contractor upon the terms and conditions herein specified, a limited, revocable, non-exclusive, non-transferable license during the term of this Agreement to solely within the County, access and use the hardware and software used for the sole purpose of providing services under this Agreement.

25.2 Reservation of Rights. The County hereby acknowledges and agrees that: (a) Contractor is the sole and exclusive owner of the Contractor's system, the Contractor's Marks, all Intellectual Property arising from or relating to the equipment provided under this Agreement; (b) the County neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement; and (c) by reason of the exercise of any such rights or interests of the County pursuant to this Agreement, the County shall gain no additional right, title or interest therein.

In WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above mentioned.

ATTEST:

XEROR STATE & LOCAL SOLUTIONS, INC.

 6/24/2016

Authorized Signature

Date

Lew Miller, Vice President

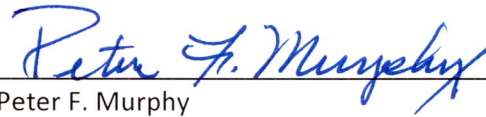
Printed Name and Title

ATTEST:

CHARLES COUNTY, MARYLAND

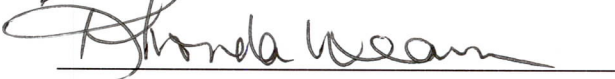


Michael D. Mallinoff
County Administrator



Peter F. Murphy
President, Charles County Commissioners

APPROVED FOR LEGAL SUFFICIENCY:



Rhonda L. Weaver
County Attorney – Charles County

APPROVED FOR THE SUFFICIENCY OF FUNDS:

 for DME

David M. Eicholtz
Director, Charles County Government Fiscal and Administrative Services

APPROVED FOR LEGAL SUFFICIENCY:



Christopher Welsh, General Counsel
Charles County Sheriff's Office

APPROVED:



Troy D. Berry - Sheriff
Charles County Sheriff's Office

ATTACHMENT A

SERVICES TO BE PERFORMED

The Contractor shall provide speed camera systems for the County. Services include furnishing all cameras and infrastructure including concrete pads to operate the camera system and providing regularly scheduled system maintenance. The camera system shall provide two high resolution color images of each violating vehicle and a third image of the registration plate.

In addition, the Contractor shall provide processing services at the Regional Automated Enforcement Center located at 9250 Bendix Road, Columbia, Maryland 21045. The Contractor shall provide the hardware and software to operate the citation processing system. The software shall be web-based to allow personnel full remote access. The system shall allow violators to view and pay violations online. The Contractor shall provide a full-time on-site manager, provide staff to review potential violations, process and mail citations and provide all equipment to operate the citation processing system.

The above are in addition to any other services set forth in the Agreement.

Attachment B Xerox Pricing Proposal



Charles County Sheriff's Office
Attn: Lieutenant Reynal Aportadera
P.O. Box 189
LaPlata, MD 20646

Sean Collins
Program Manager
Mid Atlantic Region
Photo Enhancement

Xerox South West
Systems, Inc.
9,300-Broadway, Suite 8700
Columbia, MD 21046

Sean.Collins@xerox.com
914.419.3111 x.3111

Lieutenant Reynal Aportadera,

Thank you for the opportunity to present a new pricing proposal for your photo speed camera program. Charles County has been a valued partner of Xerox for several years and we hope to further extend our relationship.

Charles County currently operates 3 speed camera systems. The current contract billing structure is comprised of a flat fee of \$2,999 per system per month plus a variable processing fee depending on volume year to date. During 2015 Charles County averaged a monthly fee for 3 camera of \$14,941 per month or \$537,876 per year. We are proposing an all-inclusive flat fee billing structure to comply with the new Maryland law. We have provided two prices below, one for 3 systems and one for 4. Both prices reflect a discount compared to the average monthly billing of 2015.

To continue operating 3 systems Xerox submits a price of \$13,800 per unit per month which equates to \$496,800 per year. To upgrade to 4 systems Xerox submits a price of \$11,553 per unit per month which totals \$554,544 per year. Please find a chart below that shows how these prices compare to 2015.

The Following assumptions have been made regarding the proposed price. Any changes to these assumptions will require an adjustment of the proposed prices:

- County agrees to terminate current contract for convenience
- County agrees to a MBE spend goal of 5%
- County agrees that initial contact term will be 1 year with 7 renewable option years. New contract will start July 1st 2016
- Xerox will deploy existing Vitronic equipment through Dec 31st 2016. Starting January 2017 Xerox will provide all new camera systems, enclosures and batteries

	System per month	Total Per Month	Full year cost
3 systems	\$13,800	\$41,400	\$496,800
4 systems	\$11,553	\$46,212	\$554,544
2015 (3 systems)	\$14,941	\$44,823	\$537,876

Xerox greatly appreciates the opportunity to present this pricing proposal. We look forward to continuing our partnership well into the future.

Sincerely,


Sean Collins