

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** AUGUST 21, 2017

**RE: Agreement for Managed Print Services with Boring Business Systems**

Attached hereto for your consideration is a proposed Service Level Agreement for managed print services between the City and Boring Business Systems (Boring) to centralize the purchase and billing for toner cartridges used by all laser printers in the City of Lakeland. This Agreement will enable the City to centralize, standardize and consolidate the City's purchase of toner cartridges, while establishing brands and models compatible with the current uses of various City departments. Boring's services were procured pursuant to State of Florida Contract #600-000-11-1, which will enable the City to take advantage of state contract pricing for toner cartridges.

Upon execution of the Managed Print Services Agreement with Boring, the City will be able to provide accurate, detailed billing reports to City departments and management. This information will be useful in eliminating waste in many different forms, including unnecessary printing, color printing control and consumable management. Currently, there is no accurate mechanism for centralized billing or tracking the cost of laser cartridges. In addition, departments are not currently taking advantage of state contract pricing for the purchase of toner cartridges. Responsibly reducing the City's printing environment can reduce costs and create efficiencies where there is currently a shortage. Pursuant to this Agreement, Boring will also collect and recycle the City's used toner cartridges.

The initial term of the Agreement, effective October 2, 2017 upon City Commission approval, will be effective for a period of thirty-six (36) months. Upon expiration of the initial term, the Agreement may be renewed for successive one (1) year periods unless the City provides written notice of its intent not to renew sixty (60) days prior to the end of a one (1) year term. Either party may terminate the Agreement for any reason upon sixty (60) days prior written notice. The City's current estimated yearly cost for toner cartridges is \$90,528.01. However, the yearly cost is expected to decrease to \$47,127.02 under the proposed Agreement. This is based on the page count collected from each laser printer. This is an anticipated cost savings of \$43,400.99 a year.

It is recommended that the appropriate City officials be authorized to execute this Service Level Agreement for managed print services with Boring.

# Managed Print Services Agreement

# **BORING BUSINESS SYSTEMS**

## **MANAGED PRINT SERVICE AGREEMENT**

This Managed Print Service Agreement, any Schedules and Addendum attached hereto (this "Agreement"), is entered into as of the date set forth below by and between BORING BUSINESS SYSTEMS, whose principal office is located at 950 E Main St, Lakeland, FL 33801 ("Boring Business Systems"), and City of Lakeland ("Client") whose principal office is located at 228 South Massachusetts Ave, Lakeland FL 33801 (Client Site").

WHEREAS, Client wishes to have Boring Business Systems provide Services as described in further detail in Section IV. of this Agreement with respect to the Equipment; WHEREAS, Boring Business Systems is willing to provide such Services to Client pursuant to the terms and conditions set forth herein; and WHEREAS, Boring Business Systems and Client have entered into this Agreement pursuant to which Client is obligated to pay for the services rendered pursuant herein; NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- I. **PROGRAM RATE:** Pursuant to the Agreement, Client agrees to pay services on the basis of **\$0** per month which includes **0 quarterly** base pages\* for monochrome prints and **0 quarterly** base pages\* for color prints. Prints in excess of the quarterly base will be billed quarterly at a rate of **.014** per page\* for monochrome prints and **.085** per page\* for color prints \*One-sided, standard letter size page.
- II. **TERM:** This Agreement shall commence on October 2nd, 2017 and continue uninterrupted for thirty (36) months.
- III. **TERMINATION:** Upon expiration of the initial term of this Agreement, this Agreement will automatically renew for successive one (1) year term unless the Client provides written notice of non-renewal at least sixty (60) days before the end of the term. This Agreement may be cancelled by either party for any reason with sixty (60) days written notice of desire to end services.
- IV. **SERVICES:**
  - A. **Definition of Services Provided:**
    1. Boring Business Systems, (a) to supply Client with all toner cartridges required to operate the Equipment (except as may be modified by the Agreement (attached hereto) (collectively, the "Services")
    2. Items not included in this Agreement: additional paper cassettes, paper, and staples.
  - B. **Equipment Eligible for Coverage:** This Agreement covers the Existing Equipment set forth in the Agreement Schedule A\*, all of which shall be located at the Client Site. If the Equipment is moved to another location, Boring Business Systems may terminate this Agreement. Client represents and warrants that other than as set forth on the Agreement, there is no other equipment located at Client's Site that is capable of using Boring Business Systems toner. \*Schedule A may be amended as needed to include devices that are requested to be added or removed through the course of the agreement.
  - C. **Addition of Equipment to Agreement and Right of Inspection:** Client shall notify Boring Business Systems immediately upon installing any additional printing equipment ("Additional Equipment") at Client's Site capable of using Boring Business Systems toner cartridges. Upon installation of any such Additional Equipment, if the Additional Equipment is of the same model series as any of the Equipment services by Boring Business Systems as of the date of this Agreement (whether for Client or any other client), then such Additional Equipment shall automatically be covered by this Agreement (and shall be considered Equipment for all purposes under this Agreement). Boring Business Systems will assume an initial meter reading of zero unless otherwise notified.
  - D. **Removal of Equipment to Agreement and Notification:** Client shall notify Boring Business Systems immediately upon removing any covered Existing Equipment set forth in this Agreement. Client agrees to print and submit to Boring Business Systems a copy of the printer's self-test page

from date of removal. If printer's self-test page is not submitted, then an estimated billing based on equipment usage history will be paid by Client.

**V. REMITTANCE:**

- A. **Payment:** The Agreement base changes are payable in advance on the first day of the coverage period. Boring Business Systems has no obligation to provide any of the services described herein unless the Client is current in all payments to be made to Boring Business Systems under this Agreement and the equipment lease, if any, relating to the equipment to be serviced.
- B. **Failure to remit payment:** If any part of a payment is not paid when due the Client agrees to pay a late charge of 1.0% per month on the unpaid balance in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act. The Client also agrees to pay \$25.00 for each check returned for insufficient funds and a \$5.00 processing fee for billings other than those paid annually.
- C. **Cost Adjustments:** At the end of the first year of this Agreement and once each successive twelve (12) month period, the base rate, the coverage rate and the cost per print rate is subject to increase. However, in no event shall such increase exceed 2% in a twelve (12) month period.

- VI. **LIMITATION OF LIABILITY:** Except for its obligations of indemnification and confidentially set forth herein: (a) Boring Business Systems shall have no responsibility to the client or any other person or entity with respect to consequential or incidental liability caused by any equipment or replacement parts or units, or Service provided by Boring Business Systems, including, but not limited to, any interruption of service, loss of business or anticipatory profits, or consequential damages resulting from the use or operating of the Equipment, even if Boring Business Systems has been advised in advance of the possibility or likelihood of such damages, (b) in no event shall Boring Business Systems be liable for loss of profits or any indirect, special or consequential damages arising out of any breach of this Agreement by Boring Business Systems, even if Boring Business Systems has been advised in advance of the possibility or likelihood of such damages, and (c) without limiting the application of the foregoing limitations on damages, in no case shall the total damages payable by Boring Business Systems under or in connection with this Agreement exceed the dollar value of this Agreement.

**VII. INDEMNIFICATION:**

- A. **Client's Indemnification:** To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute §768.28, Client shall indemnify, defend and hold harmless Boring Business Systems (and its officers, directors, employees, agents and representatives) from and against any and all claims, losses, damages or expenses (including, but not limited to, court costs, reasonable fees and expenses of counsel and in-house counsel) relating to or arising from the Equipment, any services or materials provided by Boring Business Systems under this Agreement, Boring Business Systems' ownership of any Boring Business Systems-owned Equipment or the existence of this Agreement or any breach by Client of the terms of this Agreement or resulting from the death or bodily injury to any person, or damage to any property to the extent caused by the negligence, willful misconduct, tortious or otherwise unlawful act, or error or omission of Client, except to the extent any such claim, loss or damage is the direct result of Services performed by or on behalf of Boring Business Systems that are discovered to have been performed in a negligent manner.
- B. **Boring Business Systems' Indemnification:** Boring Business Systems shall indemnify, defend and hold harmless Client (and its officers, directors, employees, agents and representatives) from and against any and all claims, losses, damages or expenses (including, but not limited to, court costs, reasonable fees and expenses of counsel and in-house counsel) to the extent any such claim, loss, damage, or expense is the direct result of Services performed by or on behalf of Boring Business Systems that are discovered to have been performed in a negligent manner or any breach by Boring Business Systems of the terms of this Agreement or resulting from the death or bodily injury to any person, or damage to any property to the extent caused by the negligence, willful misconduct, tortious or otherwise unlawful act, or error or omission of Boring Business Systems.

**VIII. TRACKING SOFTWARE:**

- A. **Permission to Install and Maintain Tracking Software:** Boring Business Systems owns software

("Tracking Software") which enables Boring Business Systems to monitor the usage of, and the copy count produced on, the Equipment. Client agrees that Boring Business Systems shall have the right, at any time during the term of this Agreement, to install the Tracking Software on one or more of Client's computer servers. Client agrees to provide Boring Business Systems, during normal business hours, access to Client's computer servers to enable Boring Business Systems to upgrade, modify or maintain the Tracking Software or to install new releases or additions to the Tracking Software. Client agrees to not delete or remove the Tracking Software or to alter, modify or otherwise render it unusable during the term of this Agreement without the prior written consent of Boring Business Systems. Boring Business Systems will assume an initial meter reading of zero unless a starting meter reading can be obtained.

- B. **Warranty, Liability:** Client acknowledges that the Tracking Software will be installed at Client "as is" without warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Boring Business Systems does not warrant that the Tracking Software will be error free or will operate without interruption. Boring Business Systems shall in no event be liable to Client or any third party for any special, consequential, incidental or indirect damages in connection with the Tracking Software.

**IX. MISCELLANEOUS:**

- A. **Ownership and Control of Toner Cartridges:** All toner cartridge supplies provided under this Agreement are and shall at all times remain the property of Boring Business Systems. Client may use the toner cartridges pursuant to the terms of this Agreement, but at no time shall Client have any ownership rights in or to the toner cartridges. Client shall promptly return to Boring Business Systems, or make available to a Boring Business Systems representative, all empty cartridges supplied by Boring Business Systems under this Agreement. Failure of Client to return to Boring Business Systems the number of empty cartridges equal to those delivered during the Term of this Agreement will result in a lost cartridge surcharge equal to the current replacement value of a lost cartridge. In the event this Agreement is terminated or suspended pursuant to Article III of this Agreement, Client shall make available all toner and ink cartridges for pick-up by Boring Business Systems from Client within seven (7) business days after the date this Agreement is terminated or suspended. An accounting shall be performed by Boring Business Systems to determine if any toner cartridges delivered to Client were not returned by Client. Any toner cartridges not returned shall be billed by Boring Business Systems to Client at the prevailing cartridge retail purchase price.
- B. **Excessive Toner Cartridge Delivery:** Requests for toner cartridges may not exceed quantities required to print monthly page volume. An accounting may be performed by Boring Business Systems to determine if toner cartridge delivered for the current month exceeds billable page volume. If more toner cartridges have been delivered than necessary, client may provide whereabouts of toner cartridges delivered, or client agrees to cover the retail value of additional toner cartridges that have been delivered to the customer.
- C. **Jurisdiction and Venue:** This Agreement shall be governed by and be construed in accordance with the internal, substantive laws (and not the law of conflicts) of the State of Florida. Venue shall be in the courts of Polk County, Florida.
- D. **Entire Agreement:** The provisions hereof, including the Schedules attached hereto, constitute the entire Agreement between the parties with respect to the subject matter hereof and supersede the provisions of any previous agreement or understanding whether or not in writing. Any provisions of this Agreement which are found upon judicial interpretation or construction to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining portions herein.
- E. **Amendment of Agreement:** This Agreement may not be amended or supplemented except by the mutual written consent of Boring Business Systems and Client.
- F. **Assignment:** This Agreement may not be assigned by Client or by Boring Business Systems without prior written notice.

G. Public Records:

**IF THE BORING BUSINESS SYSTEMS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BORING BUSINESS SYSTEM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.**

In accordance with Florida Statute §119.0701, Boring Business Systems shall keep and maintain public records required by the Client in performance of services pursuant to the contract. Upon request from the Client's custodian of public records, Boring Business Systems shall provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Boring Business Systems shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Boring Business Systems does not transfer the records to the Client. Boring Business Systems shall, upon completion of the contract, transfer, at no cost, to the Client all public records in possession of Boring Business Systems or keep and maintain public records required by the Client to perform services pursuant to the contract. If Boring Business Systems transfers all public records to the Client upon completion of the contract, Boring Business Systems shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Boring Business Systems keeps and maintains public records upon completion of the contract, Boring Business Systems shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client.

IX. INSURANCE: (Please refer to Attachment A).

**\*\*Please refer to the attached Schedule A for list of Devices\*\***

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**City of Lakeland**

**Boring Business Systems**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: R. Howard Wiggs \_\_\_\_\_

Name: \_\_\_\_\_

Title: Mayor \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: \_\_\_\_\_  
Timothy J. McCausland, City Attorney

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