

CHATHAM COUNTY

THIS AGREEMENT FOR SERVICES (this "Agreement"), made and entered into this ___ day of _____, 2013 by and between Chatham County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as the "County" or "Customer"), and Toshiba Business Solutions, Inc., (hereinafter referred to as "Contractor" or "Toshiba Business Solutions").

WHEREAS, Contractor, has agreed to provide services in a professional manner in accordance with the standards of Contractor's industry and as hereinafter set forth; and

WHEREAS, the County wishes to enter into an Agreement with Contractor to provide the services specified in Appendix 1, Scope of Work, attached hereto and incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual agreements described below, the parties agree as follows:

1. Term of Agreement: The initial term of this Agreement will commence on **April 1, 2013** and shall end on or before **June 30, 2018**. This contract supersedes the earlier contract between the parties executed by the County on March 25, 2008. The County's Request for Proposals for Copier Cost-Per-Copy Program issued October 4, 2007, and the Contractor's response, attached hereto as Appendix 2, is incorporated herein and made an integral part of the Agreement, except that the cost per copy schedule rates as stated in this Agreement shall apply.

2. Scope of Service: The Contractor shall provide to the County the Services (the "Services") set forth in the "Scope of Work" attached hereto as Appendix 1, which is incorporated herein and made an integral part of the Agreement.

3. Compensation: As compensation for the services to be provided by Contractor, the County shall pay the Contractor on a cost per copy program at a rate of **\$0.0229 for black and white copies** and at a rate of **\$0.07 for color copies** as defined in the Scope of Work, with the amount payable within thirty (30) days from receipt of invoice, or as otherwise set forth in Appendix 1.

4. Insurance: Contractor shall maintain insurance policies at all times with minimum limits as follows:

Coverage

Worker's Compensation

Statutory Limits

General/Professional Liability

\$100,000 bodily injury per person (BI)

\$500,000 bodily injury per occurrence (BI)

\$100,000 property damage (PD)

Automobile Liability

\$250,000 bodily injury per person (BI)

\$100,000 property damage (PD) or

All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina and shall be rated not less than "A" by A.M. Best and Company. Contractor shall furnish Certificates of Insurance to the County, naming the County as an additional insured, prior to the commencement of operations. The certificates shall clearly indicate that Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Compliance with the foregoing requirements shall not relieve Contractor from any liability or obligations under this Agreement.

5. Confidentiality: All proprietary data and information, if any, furnished to Contractor by the County shall be regarded as confidential, shall remain the sole property of the County and shall be held in confidence and safekeeping by Contractor for the sole use of the County and Contractor under the terms of this Agreement. Contractor agrees that its officers, employees and agents will not disclose to any person, firm or entity other than the County or its designated legal counsel, accountants or practice management consultants any information about the County. Contractor agrees to carry out its obligations to the County in compliance with all privacy and security regulations required by law.

6. Status of Parties: Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between Contractor and the County. Contractor and its employees and representatives are independent contractors, solely responsible for its or their performance under this Agreement and shall have no legal authority to bind the County.

7. Assignment and Subcontracting: Neither this Agreement nor any rights or obligations hereunder shall be subcontracted, assigned, or delegated by Contractor without prior written consent of the County, which consent may be withheld in the County's sole discretion.

8. Binding Effect: This Agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns, if such assignment has been approved by the County.

9. Notices: Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Chatham County
Attn: Charlie Horne
Post Office Box 1809
Pittsboro, North Carolina 27312

Toshiba Business Solutions
Attn: Tom Woodruff, VP Sales & Marketing
400 North Main Street
PO Box 1299
Mount Gilead, North Carolina 27306

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this paragraph.

10. Governing Law: This Agreement and the rights and obligations to the parties hereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Chatham County, North Carolina.

11. Modifications: This Agreement may be amended or modified by the mutual written consent of the parties. A modification is not enforceable against the County unless it is signed by the County Manager, Purchasing Agent, or other duly authorized official.

12. Entire Agreement: This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

13. Waiver: A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

14. Termination: This Agreement may be terminated as follows:

- (i) **Cause:** If the services provided by the Contractor under this Agreement are determined to be unsatisfactory or unacceptable, as determined by the County Manager, this Agreement may be terminated by the County for default. Grounds for termination for default shall include, but not be limited to:
 - (a) Failure to respond to all reasonable requests from the County to provide services covered by this Agreement.
 - (b) Failure to maintain equipment in accordance with the requirements of the this Agreement and with all laws.
 - (c) Lack of proper insurance as required under this Agreement.
 - (d) Charging rates or fees in excess of those provided in this Agreement.
 - (e) Inefficient, or unsafe practices in providing services.
 - (f) Other actions which impact unfavorably on the faithful performance of this Agreement.

- (ii) **Convenience:** The County reserves the right to terminate this Agreement upon thirty (30) days written notice to Contractor for any reason deemed by the County to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provisions of this Agreement. In the event of such termination the County shall pay the Contractor those costs directly attributable to services received by the County in compliance with the Agreement prior termination. Provided, however, that no costs will be paid to the Contractor which are recoverable in the Contractor's normal course of doing business. The County is not liable for loss of any profits anticipated to be made hereunder, nor for any special, consequential or similar damage.

15. **Annual Appropriations and Funding.** This Agreement is subject to the annual appropriation of funds by the Chatham County Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, the County shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment for all service satisfactorily provided under this Agreement up to and through the Contractor's receipt of notice of termination.

16. **Hold Harmless:** Contractor agrees to indemnify and hold harmless the County, its agents, servants and employees from any and all claims, actions, lawsuits, damages, judgments or liabilities of any kind whatsoever arising out of the provision of service under this Agreement.

17. **County Policy:** The County opposes discrimination on the basis of race and sex and requires all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under County contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement in their official capacities with legal authority to do so.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Vicki McConnell

Vicki McConnell, Finance Director

Chatham County:

By: *Charlie Horne*

Charlie Horne, County Manager

Contractor

By: *T. Woodruff* 3-6-13

Tom Woodruff
 Toshiba Business Solutions, Inc.
 400 North Main Street
 PO Box 1299
 Mount Gilead, North Carolina 27306
 Phone: 800-768-4349
 Email: tomw@tbscarolinas.com

APPENDIX 1
SCOPE OF WORK

Toshiba Business Solutions
Program

A CMGroup

CUSTOMER INFORMATION

<i>Full Legal Name of Customer:</i> Chatham County Government		<i>Street Address:</i> P O Box 608 12 East Street		
<i>City:</i> Pittsboro	<i>State:</i> North Carolina	<i>Zip:</i> 27312	<i>Telephone:</i> 919-545-8364	<i>Fax:</i> 919-545-2417
<i>Service Locations and Equipment: See Attachment A</i>				

TERM SCHEDULE

Program Beginning Date April 1, 2013	Program Completion Date June 30, 2018
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COST PER COPY SCHEDULE

Toshiba CPC: \$0.0229	Toshiba Color CPC: \$0.07
The Toshiba CPC includes equipment, accessories, fax equipment, service and supplies (excludes paper, sorter staples, fax supplies and NC sales tax).	The Toshiba Color CPC includes equipment, accessories, service and supplies (excludes paper, sorter staples and NC sales tax).

INVOICE SCHEDULE

Months invoices mailed	Payments due by	Invoices include all copies made during	Estimated Program Copies <i>Toshiba</i>	Estimated Program Copies Toshiba Color
April 1, 2013	April 30, 2013	New program beginning thru April 2013	180,000	22,500
May 1, 2013	May 30, 2013	May 2013	180,000	22,500
June 1, 2013	June 30, 2013	June 2013	180,000	22,500
July 1, 2013	July 30, 2013	July 2013	180,000	22,500
		All Subsequent Months	180,000	22,500

TERMS AND CONDITIONS

- COPY MANAGEMENT PROGRAM:** Toshiba Business Solutions shall provide to customer the equipment and accessories described on Attachment "A" (the "Equipment"). The copy charges and program copy charges set by this agreement include payment for the use of the equipment, maintenance (during normal business hours), routine inspection, adjustment, parts replacement, drums and cleaning materials required for the proper operation. Paper and sorter staples are not included in the cost per copy as specified within the cost per copy schedule above.
- COPY MANAGEMENT PROGRAM BILLING:** For each invoice period during which customer participates in the copy management program, TBS shall invoice customer for copy charges, determined by multiplying the actual number of copies made by Customer during such invoice period using the equipment by the applicable cost per copy described in the cost per copy schedule above. The program copy charges for an annual period shall be the dollar amount determined by the number of invoice periods within a 12 month period multiplied by the applicable cost per copy. The annual period shall be the period that begins on the program beginning date (or the day following the preceding annual period, as applicable) and ends on the next anniversary of the program beginning date (or, if earlier, on the program completion date or other date of termination of this agreement). Customer shall pay, no later than the due date shown in the invoice schedule above, the monthly invoices submitted to customer by TBS. Any payment not made within 10 days after such due date may be assessed a late charge of 5% of the delinquent amount.
- CUSTOMER'S REPRESENTATIONS AND AGREEMENTS:** Customer represents and warrants that: (1) it has, in accordance with all legal requirements, fully budgeted and appropriated sufficient funds for the current budget year to pay copy charges and meet all other obligations under this agreement and such funds have not been expended for other purposes; (2) no action, proceeding or investigation is pending or threatened in any court or other tribunal or before any public body, which in any way would restrict or prohibit customer's performance of its obligations under this agreement or its ability to pay copy charges or other payments hereunder, nor is there any basis for any such action, proceeding or investigation; (3) the equipment will be operated by customer and will be used for essential county government purposes during the term of this agreement; and (4) customer has not previously terminated any agreement for non-appropriation, except as described in a letter attached hereto.
- SIGNATURE:** The person signing this agreement on behalf of customer personally represents and warrants that he/she is fully familiar with the applicable legal and regulatory provisions pertaining to this agreement and has full authorization to sign this agreement. Such signer further warrants the governing body of customer has taken the necessary steps, including any legal bid requirements, under applicable law to approve this copy management program; the approval and execution of this agreement have complied with all applicable open meeting laws; and the authorization of the governing body of customer for the execution and delivery of this agreement remains in full force and effect.

Toshiba: T-woody 3-6-13
Chatham Co. Gov: