



**All plans are subject to the terms and conditions below.**

Power Business Technology, LLC (PBT) provides labor, travel, supplies that are necessary to maintain the device in working condition. Copiers (A3 device) include all maintenance parts including photoconductor drums, toner, developer, toner waste bags and all requested periodic preventative maintenance. Printers (A4 device) include only consumable parts including rollers, fusers, drums, PM kits and all requested periodic preventative maintenance. The following are not included and are at the customer's own expense: Cassettes, exit tray staples and paper. Sales tax will be charged upon invoicing of all items listed above per Board of Equalization (BOE) regulations.

**1. Term:** This Copier/Printer Maintenance Contract (Contract) shall be for the agreed upon term of service as stipulated on the sales invoice (effective date of installation/implementation). This Contract shall automatically be renewed for successive one-year terms unless terminated sooner by either party with 30 days prior written notice to the other party. Contract is subject to an annual rate increase. Any unused supply items such as toner, developer, toner waste bags, fusers, PM kits, and drums, become the property of Power Business Technology, LLC (PBT) and should be returned to avoid additional charges.

**2. Key Operator; Access to Copier:** Customer shall provide PBT with a "key operator" contact who will perform basic duties and responsibilities as described and instructed by PBT on an as needed basis. For example, but not by way of limitation, the key operator is responsible to notify PBT of the need for required periodic preventative maintenance inspections. Such inspections may be performed at the discretion of PBT at the time of an emergency call. Customer is responsible for providing meter reads for contract billing when requested by PBT. Customer's facility must meet PBT's and copier manufacturer's recommended electrical requirements and PBT shall have full access to the copier at any given time. For all copiers under maintenance contract, PBT reserves the right to have the copier automatically report the meter reads by fax and/or email. Upon request from customer, PBT will have a copy of the meter reads sent to the customer's email address on file. The Customer agrees to allow PBT to install data collection software for the purpose of automating the capture of device counts and other pertinent information used in managing the account. The information collected is limited to device serial number, IP address, meter, supply usage, notes, device location, and device alerts.

**3. Maintenance Service:** PBT agrees to provide maintenance service Monday through Friday, from 8:00 a.m. to 5:00 p.m. excluding holidays, and keep the covered devices in working order in accordance with PBT's specifications at no extra charge. PBT shall have no obligation to provide maintenance if it is commercially impracticable due to a cause beyond PBT's control. Parts may be new or used; however, all used parts shall meet or exceed manufacturer's specifications.

**4. Extra Charges:** All service calls made before or after PBT's service hours set forth in paragraph 3, on weekends or holidays and/or to locations other than the installation address, shall be invoiced to customer at PBT's then prevailing rates. These rates are subject to change without notice. Any third-party fees that PBT incurs as a result of this contract will be the responsibility of the customer. PBT will invoice the customer for these fees.

**5. Technological Enhancements to Device:** If customer implements any technological enhancements including but not limited to, connecting a copier/printer to personal computer(s), using the device as a network printer and scanner, customer agrees to strictly comply with all hardware and software specifications and any amendments which PBT furnishes. If customer does not comply with the specifications, PBT may immediately terminate this Contract. Customers who add any technological enhancements are solely responsible and liable for the maintenance of any computers, software and any computer network. Customer is also solely liable for any third party who performs services in connection with any technological enhancement. PBT shall not be responsible for any damage to computers, software or any other related technology when repairing or maintaining a copier/printer. Customer agrees to not reverse engineer or decompile any of the Licensed Software that is not in source code format or assist or otherwise facilitate others to do so, except as and only to the extent expressly permitted to do so by applicable law for the purposes of inter-operability, error correction, and security testing. In the event Customer intends to reverse engineer or reverse compile all or any portion of Licensed Software pursuant to statutory rights Customer may have, Customer must notify PBT and Manufacturer in writing prior to doing so.

**6. Exclusions:** Maintenance service is contingent upon proper use of the copier/printer. This Contract does not include:

- A. Electrical work.
- B. Repair, paying damages, overhauls or services resulting from; accident, transportation, negligence, fire, theft, water damage, flood damage, acts of God, misuse or other than ordinary use, failure of electrical power, failure of telecommunication line, unauthorized modification of equipment (including supplies not supplied or authorized by PBT), work performed by other than PBT representatives or malfunction of affiliated equipment not covered by this Contract.
- C. Repairs resulting from unauthorized relocation of the copier/printer by anyone other than PBT. PBT reserves the right to remove the damaged device from this contract based upon damage to the copier/printer, or charge Customer at prevailing rates to repair damages.
- D. Making specification changes or performing services connected with the relocation of equipment and adding or removing accessories, attachments or other devices.
- E. Service which PBT determines is impractical due to alterations in the copier/printer or the connection by mechanical or electrical means to another machine or device.
- F. Service on a device which PBT determines is in an unsuitable place of installation, in an unsafe or hazardous environment, or if the back of the device is inaccessible to prevent a technician from servicing the device. Further, service on a device where PBT determines that the service is due to adverse atmospheric conditions such as chemical vapors, excessive dust and airborne particles, excessive temperature (heat or cold) or excessive humidity.
- G. Any services resulting from a customer's failure in PBT's opinion to strictly comply within the specification referred to in paragraph 5 concerning technological enhancements.
- H. Relocations are not covered under the maintenance agreement. For relocations, please contact PBT for fees and additional charges, that may apply, and to schedule your move.

**7. Networking and Connectivity:** Network copier/printer related support after the initial installation/network charges will be included for all-inclusive service contracts. All other contract types will be charged for networking at PBT's current prevailing network rates. Networking is defined as any and all work related to data flow between the covered copier/printer and customer's computers, software or computer network. Any network service outside of this scope may be deemed billable.

**8. Overages and Cost Adjustments:** Customer agrees to any billing procedures designated by PBT, including notification of the meter reading at the end of each billing cycle. One page is equal to a single-sided 8.5" x 11" copy or print. Scans in excess of pages are subject to charge. If Customer has multiple devices at the installation address, which use the same supplies provided under this Contract, all devices using the same supplies must be covered under an active Contract. If Customer does not have all devices capable of using the same supplies covered under a Contract, PBT reserves the right to cancel the Contract or require the Customer to place the additional device(s) under Contract immediately. Color toner and developer supplies will be provided for production of pages, with an average 20%-page coverage. Supplies required for production in excess of 20%-page coverage will be invoiced separately.

**9. Freight Consumable Charges:** PBT offers two freight programs on consumable items, such as toner and toner waste bags. 1) Traditional Freight Program: Customer pays freight on a per item shipped basis to be billed by PBT at standard shipping rates. 2) Flat Rate Shipping Program: Customer to pay monthly freight service charge of \$1.00 per printer on all printers (A4 devices) and \$3.50 per copier on all copiers (A3 devices).

**10. Hard Drive Information:** All information processed and stored on the copier is the sole property and responsibility of the Customer. Additional data security services outside of the standard data security features on the copier are the responsibility of the customer.

**11. Refunds:** Charges relative to this Contract are not refundable either partially or fully. However, if cancellation is affected by PBT then any refund shall be prorated. Upon cancellation, all unused supplies, if not returned to PBT will be billed to customer and shall be immediately due and payable.

**12. Contract Transfer:** This Contract shall not be assignable or transferable by customer without PBT's prior written consent. PBT may terminate this Contract if copier/printer is sold or transferred to a third party. PBT reserves the right to adjust the Contract pricing, terminate this Contract, and/or assign the service of any copier/printer which has been relocated more than 60 miles from PBT's nearest Service Center. If copier/printer is no longer in customer's possession, the customer must submit a 30-day written cancellation notice prior to this Contract being cancelled.

**13. Limited Remedies:** In no event shall PBT be liable for special, consequential, exemplary, indirect or incidental damages beyond the cost to repair or replace a defective part and maintenance service. While PBT endeavors to promptly address any emergency and maintain the copier/printer which is the subject of this Contract, PBT shall not be liable for any damages for any alleged failure to make repairs and/or maintain the copier/printer including any claim that the repair or maintenance was not timely. For example, but not by way of limitation, PBT is not responsible for any damages for loss of use of the copier/printer. Such excluded damages would include a Customer paying a third party to make copies or if customer is unable to make copies because of a copier/printer breakdown.

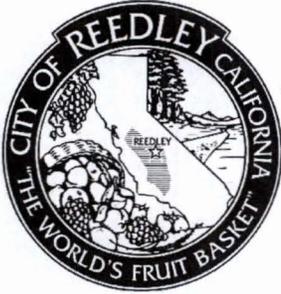
**14. Payment; Default:** Customer shall pay PBT within 10 days of the date of the invoice. If customer breaches this Contract including failing to timely pay PBT's invoice, PBT at its sole discretion may in addition to any other legal remedies (i) immediately terminate this Contract or (ii) suspend service until payment is made in full and PBT is assured to its satisfaction that (a) future payments will be made or (b) that the default is cured. In addition to the other remedies provided in this Contract, if the customer fails to pay PBT's invoice within 60 days from the date of the invoice and PBT has not terminated this Contract, PBT may require customer to authorize an electronic funds transfer to PBT. All remedies provided in this Contract are cumulative and PBT's failure to exercise any of the remedies shall not be deemed a waiver of such remedy for any future or continuing default. Upon receipt of the first payment, customer is agreeing to all terms & conditions stated herein.

**15. Forum Selection:** Any dispute that arises under or relates to this Contract (whether contract, tort or both) shall be resolved in the State courts of Placer County, California which shall be the exclusive venue for the resolution of any disputes. By signing this Contract, customer submits to the jurisdiction of the Placer County Courts. This is a material term of Contract.

**16. Managed Print Services (MPS):** Additional terms and conditions include the following:

- A. Customer is required to immediately notify PBT upon installation/removal of any equipment capable of being covered under this Contract.
- B. Customer is required to install the meter collection tool to prevent calling for meter reads. Customer is also responsible for insuring meters are reporting electronically monthly and are required to work with PBT to make sure all devices are reporting.
- C. If the MPS contract is cancelled, the printer supplies shipped to the Customer from service end date to 60 days prior may be deemed chargeable to the Customer at a pro-rated amount. Any excess MPS supplies at the customer site(s) must be returned to PBT stock or will be billed to the customer.
- D. If a printer reaches the end of useful life, either by years or prints, PBT will deem this machine excluded from the MPS program and will cease all supply and service requests.
- E. All supplies will be high-yield compatible, unless otherwise noted.

**17. Miscellaneous:** This Contract constitutes the final, complete and exclusive statement of the Terms of the Contract between the parties pertaining to maintenance of the copier and supersedes all prior and contemporaneous understandings or agreements of the parties. A signed facsimile or copy of this Contract shall be deemed as effective as an original. This Contract may be supplemented, amended or modified only by the mutual written agreement signed by both parties. Any delay or omission on the part of PBT in exercising any right shall not operate as a waiver of such right or any other right, and no prior waiver or any course of dealing shall constitute a waiver of PBT's right or customer's obligations as to any future transactions. PBT reserves the right to change the terms & conditions herein without notice. In any action to enforce any provision of this Contract, the losing party shall pay the prevailing party's attorney's fees (recovered as an item of cost) and any other costs. Further, customer shall be liable to pay PBT's pre-litigation attorney's fees such as demand letters and negotiations with respect to enforcing this Contract.



## REEDLEY CITY COUNCIL

- Consent
- Regular Item
- Workshop
- Closed Session
- Public Hearing

ITEM NO: 4

DATE: October 8, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE A COPIER MAINTENANCE AGREEMENT WITH POWER BUSINESS TECHNOLOGY, LLC FOR THE ONGOING MAINTENANCE OF ALL COPIERS AND COVERED DESKTOP PRINTERS

SUBMITTED: Paul A. Melikian, Assistant City Manager 

APPROVED: Nicole R. Zieba, City Manager 

### RECOMMENDATION

Request that the City Council approve and authorize the City Manager to execute a Copier Maintenance Agreement with Power Business Technology, LLC for the ongoing maintenance of all City copiers and two desktop printers.

### EXECUTIVE SUMMARY

The City recently received a proposal from Power Business Technology, LLC to transition all copier and desktop printer maintenance at a savings of \$2,463.72 per year, based on current usage. The City's copy machines and two desktop printers are currently maintained by Zoom Imaging Solutions, Inc. (Zoom). Zoom was acquired by the Xerox Corporation in 2012. Over the last six months, Xerox has made some drastic changes to the structure of the company which has negatively impacted the servicing of the equipment. Changes such as closing nearly all of Zoom's locations, including its headquarters and local parts warehouse, offshoring many of Zoom's administrative support roles, and merging Zoom into other sister Xerox companies. These actions have also caused many of the employees the City has worked with for years to leave the company, further impacting service.

Zoom was originally a locally founded and owned company. The former president of Zoom has started a new independently owned company, Power Business Technology, LLC with many of these employees transitioning over.

### FISCAL IMPACT

Based on current usage there is an estimated savings to the City of \$205.31 per month, or \$2,463.72 annually to change copier and covered printer maintenance to Power Business Technology, LLC. While not a significant savings, the primary driver to making this transition is to maintain the high level of local customer service and replacement parts availability that the City experienced prior to

the recent business changes at the current provider. Another advantage of the new maintenance agreement is that all 10 copiers in the City will now be billed at the same per page cost for copies, whereas the current situation has three different cost structures depending on when the lease was executed.

**ATTACHMENTS**

Letter from the President of Power Business Technology, LLC  
Monthly Cost Analysis for current situation vs. the proposed copier maintenance agreement  
Copier Maintenance Agreement