

**ADDENDUM
TO LEWAN & ASSOCIATES CUSTOM PRINT
PROGRAM TERMS AND CONDITIONS**

THIS ADDENDUM to Lewan & Associates, Inc.'s Custom Print Program Terms and Conditions is made and entered into this 12th day of June, 2017 by and between Santa Fe County, a political subdivision of the state of New Mexico (the "County" or "Customer") and Lewan & Associates, Inc., whose principle address is PO Box 173704, Denver, Colorado, 80217-3704 ("Lewan & Associates" or "Company").

WHEREAS, in 2016 the County has procured as a small purchase one item of office equipment from Lewan & Associates: a Sharp fax machine, FODC635U, serial number 67101133; and

WHEREAS, the 2016 agreement is due to expire June 30, 2017, the County wishes to continue to benefit from the Company's maintenance services for the fax machine for another year (year two); and

WHEREAS, the Company's maintenance fee has increased for the term June 30, 2017 to June 30, 2018; and

WHEREAS, the County's pricing, use and maintenance of the equipment is governed by the terms and conditions of this Addendum and the Terms and Conditions in the Lewan Technology Custom Print Program Terms and Conditions attached hereto; and

WHEREAS, certain terms and conditions of the Custom Print Program Terms and Conditions are inapplicable or are unacceptable to the County because they are inconsistent with state law or procedures of Santa Fe County, a governmental entity; and

WHEREAS, the County and Lewan & Associates desire to enter into the Custom Print Program Terms and Conditions subject to the modified terms and conditions as provided by this Addendum; and

NOW THEREFORE, it is mutually agreed between the parties that the following provisions shall be incorporated into Lewan Technology Custom Print Program Terms and Conditions for the item of equipment specified above, as if fully set forth therein:

Paragraph 2.TERM AND PAYMENT, is deleted in its entirety and replaced with:

2. **TERM AND PAYMENT.** The term of this Agreement is July 1, 2017 to June 30, 2018. Payment for services is due no later than 30 days net from the date of certification by the Customer. Within 15 days of the Customer's receipt of the written request for payment from Company, Customer shall issue a written certification of complete or partial

acceptance or rejection of the items or services for which payment is sought. Company acknowledges and agrees that Customer may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 30 days of certification accepting items or services, Customer shall tender payment. Customer is responsible for any applicable tax. In the event Customer fails to tender payment within 30 days from certification, Customer shall pay late payment charges of one and one-half percent (1.5%) per month until the amount due is paid in full. In the event Customer defaults on its payments hereunder to Company, services and supplies provided by Company during the period covering the default shall not exceed the rates and prices stated on the Custom Print Program Agreement.

There shall be no pre-payment of services and no automatic renewal of the term of the Custom Print Program Agreement. Customer may terminate the Custom Print Program Agreement for each item of equipment for any reason including non-appropriation of funds upon 10 days' notice to Company. In the event of termination, Customer shall pay costs for equipment and services performed by Company prior to the date of termination but shall not be liable for any equipment costs or services performed after the effective date of termination.

Print/Copy is defined as a standard 8.5" X 11" copy (larger size copies register two meter clicks) with 5% toner coverage. No credit will be applied towards unused copies/prints. Company has the right to withhold services and supplies for any non-payment. Unless otherwise stated on the terms of this Agreement, Company may increase the Base Charge on an annual basis, in an amount not to exceed 15%.

Paragraph 6. **DEFAULT; REMEDIES**, the sentence "In the event of a dispute arising out of this Agreement or the covered Equipment, should it prevail, Company shall be entitled to collection of its reasonable costs and attorney's fees incurred in defending or enforcing this Agreement, whether or not litigation is commenced." is deleted in its entirety.

Paragraph 9. **INDEMNIFICATION** is deleted in its entirety.

The following provisions are inserted as Paragraphs 12 and 13:

12. APPROPRIATIONS AND AUTHORIZATION. This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by Customer to Company. Such termination shall be without penalty to Customer, and Customer shall have no duty to reimburse Company for expenditures made

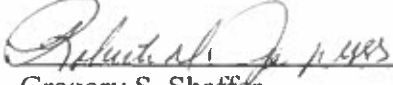
in the performance of this Agreement. Customer is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by Customer. The Customer's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by Company in any way or forum, including a lawsuit.

13. NM TORT CLAIMS ACT. No provision of the Lewan Technology Custom Print Program Terms and Conditions or the terms and conditions in this Addendum, modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or its public employees at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.


SANTA FE COUNTY:

San,  6.12.17
Katherine Miller Date
Santa Fe County Manager

Approved as to form:

 5/25/17
Gregory S. Shaffer Date
Santa Fe County Attorney

Finance Department approval:

 5-31-17
Don D. Moya Date
Finance Director

LEWAN & ASSOCIATES, INC.

(Signature) Date

By: _____
(Print Name)

Its: _____
(Print Title)

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LEWAN & ASSOCIATES, INC.

(Signature) Date

By: _____
(Print Name)

Its: _____
(Print Title)

LEWAN & ASSOCIATES, INC.
POBox 173704
Denver, CO 80217-3704
WWW.LEWAN.COM
1.888.LEWAN11

LEWAN

CUSTOM PRINT PROGRAM

MONTHLY POLARTE

ALBUQUERQUE SANTA FE BOULDER COLORADO SPRINGS DENVER FORT COLLINS GLENWOOD SPRINGS PUEBLO SILVERTHORNE CHEYENNE

CUSTOMER NAME Santa Fe County Region III			SHIP TO CUSTOMER ABQ74		BILL TO CUSTOMER		AGREEMENT NUMBER	
SERVICE ADDRESS 1204 Mercantile Rd			BILLING ADDRESS					
CITY Santa Fe		STATE NM	ZIP CODE 87502	CITY		STATE	ZIP CODE	INTERNAL USE ONLY BRANCH _____ DIV _____
CUSTOMER KEY CONTACT PRINTED NAME Diana Lovato			CUSTOMER PHONE 505 473 7020		TERMS NET 30 DAYS WAC		PROGRAM TYPE	
CUSTOMER KEY CONTACT EMAIL ADDRESS dlovato@santafecountynm.gov			CUSTOMER PURCHASE ORDER NUMBER					
LEWAN REPRESENTATIVE 1 NO 338			LEWAN REPRESENTATIVE 2 NO					
			PROOF DATE					

AGREEMENT PRICING:

PRODUCT CODE / DESCRIPTION	SERIAL NUMBER / LOCATION	BEGINNING METER	MONTH BASE	MINIMUM COPIES / MONTH	IMAGE RATE	MINIMUM BILLING / MONTH	QTRLY / IMAGE COVERAGE CHARGE
1 Sharp F0DC635U	67101133		\$20.49			\$20.49	
2						\$0.00	
3						\$0.00	

SALES TAX

BASE SUBTOTAL: \$20.49

SUBTOTAL: \$20.49

CODE: _____

RATE: 0.00%

SALES TAX TOTAL: \$0.00

ESTIMATED TOTAL MINIMUM BILLING / BILLING CYCLE: \$20.49

PLUS EXCESS
PER COPY/PRINT
CHARGES

AGREEMENT TERM:

EFFECTIVE START DATE OF THIS AGREEMENT: July 1, 2017-June 30, 2018

TERM OF THIS AGREEMENT: ☒ 12 MOS ☐ 24 MOS ☐ 36 MOS ☐ 48 MOS ☐ 60 MOS

OEM TONER:

☐ CHECK IF THIS CONTRACT INCLUDES OEM TONER

INVOICE OPTION: (CHOOSE ONLY ONE)

☒ BY INVOICE MAILED TO BILLING ADDRESS (Above)

☐ BY SPREADSHEET eMAILED TO AP DEPT AT _____

☐ BY .PDF of INVOICE eMAILED to AP DEPT

SPECIAL INSTRUCTIONS:

Parts and service labor contract. Does not include toner.

LEWAN IS COMMITTED TO PROVIDING EXCEPTIONAL CUSTOMER SUPPORT DURING THE TERM OF THIS CUSTOM PRINT PROGRAM. OBTAINING REAL-TIME AND ACCURATE DEVICE INFORMATION IS VITAL TO PROVIDING THIS LEVEL OF SUPPORT. INSTALLATION OF THE LEWAN 360MANAGER WILL ALSO ALLOW AUTOMATED METER ACQUISITION, RESULTING IN IMPROVED BILLING INTEGRITY.

METER SUBMISSION METHOD (Select One):

YES please install

☐ 360Manager automated

NO, I agree to the PER

☐ DEVICE manual meter collection fee

☐ I understand that a manual meter collection fee will only be charged if I do not timely eMail my meters.

TERMS AND CONDITIONS:

Under this Custom Print Agreement (the "Agreement"), Lewan & Associates (the "Company") will provide Service and Supplies for all Products listed on this cover page and/or on Schedule A and/or on Schedule B (if attached and signed by both parties). A mutually executed Statement of Work may also be associated with this Agreement and, if so, is also hereby incorporated by reference. This Agreement bills base amounts each month and overages quarterly. This Agreement is two pages; this first page is referred to as the "Cover Page." The Terms and Conditions continue on a second page, the "Back Page," and are an integral part of this Agreement, which Customer, named above, hereby acknowledges.

ACCEPTANCE:

Lewan & Associates, Inc.

Sales Printed Name

Date

Lewan & Associates, Inc.

CPP Manager Printed Name

Date

Customer Authorized Signature

Customer Printed Name

Title

Date

NOTE: COST PER PRINT AGREEMENT BECOMES EFFECTIVE ONLY AFTER SIGNED ACCEPTANCE BY CUSTOMER AND CPP MANAGER.

LEWAN & ASSOCIATES, INC.
POBox 173704
Denver, CO 80217-3704
WWW.LEWAN.COM
1.888.LEWAN11



CUSTOM PRINT PROGRAM

MONTHLY/QUARTERLY

ALBUQUERQUE SANTA FE BOULDER COLORADO SPRINGS DENVER FORT COLLINS GLENWOOD SPRINGS PUEBLO SILVERTHORNE CHEYENNE

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SERVICE ADDRESS 1204 Mercantile Rd			BILLING ADDRESS					
CITY Santa Fe	STATE NM	ZIP CODE 87502	CITY	STATE	ZIP CODE	INTERNAL USE ONLY		
CUSTOMER KEY CONTACT PRINTED NAME Diana Lovato			CUSTOMER PHONE 505 473 7020		TERMS NET 30 DAYS WAC		BRANCH _____ ON _____	
CUSTOMER KEY CONTACT eMAIL ADDRESS dlovato@santafecountynm.gov			CUSTOMER PURCHASE ORDER NUMBER				PROGRAM TYPE _____	
LEWAN REPRESENTATIVE 1 NO. 338			LEWAN REPRESENTATIVE 2 NO.				RECEIVED DATE _____	
							ENTERED DATE _____	
							ENTERED DATE _____	
							PROOF DATE _____	

AGREEMENT PRICING:

PRODUCT CODE / DESCRIPTION	SERIAL NUMBER / LOCATION	BEGINNING METER	MONTH BASE + (MINIMUM COPIES / MONTH X IMAGE RATE) =	MINIMUM BILLING / MONTH	QTRLY / IMAGE OVERAGE CHARGE
1 Sharp FODC635U	67101133		\$20.49	\$20.49	
2				\$0.00	
3				\$0.00	

SALES TAX
CODE: _____
RATE: 0.00%

BASE SUBTOTAL: \$20.49

SUBTOTAL: \$20.49

SALES TAX TOTAL: \$0.00

ESTIMATED TOTAL MINIMUM BILLING / BILLING CYCLE: \$22.49

PLUS EXCESS PER COPY/PRINT CHARGES

AGREEMENT TERM:

EFFECTIVE START DATE OF THIS AGREEMENT: July 1, 2017-June 30, 2018

TERM OF THIS AGREEMENT: ☒ 12 MOS ☐ 24 MOS ☐ 36 MOS ☐ 48 MOS ☐ 60 MOS

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☐ CHECK IF THIS CONTRACT INCLUDES OEM TONER

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- ☒ BY INVOICE MAILED TO BILLING ADDRESS (Above)
☐ BY SPREADSHEET eMAILED TO AP DEPT AT _____
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METER SUBMISSION METHOD (Select One):

- ☐ YES, please install 360Manager automated ☐ NO, I agree to the PER DEVICE manual meter collection fee
☐ I understand that a manual meter collection fee will only be charged if I do not timely submit my meters.

TERMS AND CONDITIONS:

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ACCEPTANCE:

Lewan & Associates, Inc.

Lewan & Associates, Inc.

Customer Authorized Signature

Sales Printed Name

CPP Manager Printed Name

Customer Printed Name

Date

Date

Title

Date

NOTE: COST PER PRINT AGREEMENT BECOMES EFFECTIVE ONLY AFTER SIGNED ACCEPTANCE BY CUSTOMER AND CPP MANAGER.

REV 112015

Approved as to form
Santa Fe County Attorney

By: *[Signature]*
Date: 5-28-17

**LEWAN TECHNOLOGY
CUSTOM PRINT PROGRAM TERMS AND CONDITIONS**

1. **SERVICES.** Throughout this Agreement the words "We," "Our," and "Us" refer to Company. The words "You" and "Your" refer to the Customer indicated on the reverse. This Agreement covers both the labor and materials for adjustments, repairs, and replacement of parts necessitated by normal use of the Equipment listed on the Schedule(s) incorporated by this Agreement ("Services"). Services do not include the following: (a) repairs due to (i) misuse, neglect, or abuse (including, without limitation, improper voltage or use of supplies that do not conform to the manufacturers' specifications), (ii) use of options, accessories, products, supplies not provided by Company; (iii) non-Company alterations, relocation, or service; (iv) loss or damage resulting from accidents, fire, water, or theft; (b) maintenance requested outside Company's normal business hours or this Agreement, (c) relocation, (d) software or connected hardware, (e) hard drive replacement, (f) Thermal heads, process units, and fuser units for Facsimile Machines, (g) Thermal Heads and MICR Toner for Laser Printers, and parts and labor for all non-laser printers, and/or (h) parts for Scanners. Replacement parts may be new, reprocessed, or recovered. Supplies provided by Company are in accordance with the copy volumes set forth on the face of this Agreement and within the manufacturer's stated yields and do not include staples. Supplies are to be used exclusively for the Equipment and remain Company property until consumed. You will return, or allow Company to retrieve, any unused supplies at the termination/expiration of this Agreement. You are responsible for the cost of excess supplies. You authorize Equipment to be connected to automatic meter reading software and/or device or, if we otherwise request, you will provide us with accurate meter readings for each item of Equipment when and by such means as we request. If you do not permit the Company to use automatic meter reading software and/or devices, Company may charge a monthly fee for manually performing meter reads. If you do not provide meter reads as required, Company may estimate the reading and bill accordingly. You shall provide adequate space and electrical service for the operation of the Equipment in accordance with UL and/or manufacturer's specifications. Supplies will be sent via Ground. All expedited shipping methods, including, but not limited to, Overnight, and/or Messenger Service, will be billed to the Customer. Additional fees may be charged for incidental expenses such as shipping charges, access badges, and technician parking permits (when deemed necessary) as well as for Services provided outside Company's normal business hours or outside the scope of this Agreement. If, at any time during the Term of this Agreement, Customer upgrades, modifies, or adds equipment, Customer shall promptly notify Company and provide Company right of first refusal to provide Services for added equipment. Company maintains the right to inspect any upgrades and modifications to Equipment and/or additional equipment and, in its sole discretion, determine whether equipment is eligible for Service. If approved, the Agreement will be amended to include such changes, including pricing modifications. Unless otherwise agreed to in writing, Customer remains solely responsible for any and all Customer data stored within the Equipment and the removal of such data upon removal of Equipment or termination of this Agreement.

2. **TERM AND PAYMENT.** Payment terms are Net30. Company does not accept payment by credit card for invoices greater than \$10,000. Except as otherwise provided for herein, this Agreement is non-cancelable and will commence on the start date indicated on the face of this Agreement and remain in effect throughout the Term. In the event the fees herein are included in your lease payment, the Term shall begin on the start date and continue through the expiration/termination of the Lease Agreement. Unless for Flat Rate Equipment, the meter count at installation or, in the case of owned printers, at assessment, will be used for overages calculations. Flat Rate printers will invoice separate from devices with overages. Unless notified in writing ninety (90) days prior to its expiration, this Agreement shall automatically renew for additional one (1) year periods. You agree to pay Company the Minimum Monthly Payment and all other sums when due and payable. The Minimum Monthly Payment entitles you to Services for a specific number and type (i.e. black & white, color, scan) of Prints/Copies as identified on the face of this Agreement and will be billed in advance. In addition, You agree to pay the Overage Rate for each Print/Copy that exceeds the applicable number and type of Prints/Copies provided in the Minimum Monthly Payment which amount shall be billed in arrears and is payable as indicated on the face of this Agreement. A Print/Copy is defined as standard 8.5"x11" copy (larger size copies may register two meter clicks) with 5% toner coverage. No credit will be applied towards unused copies/prints. Your obligation to pay all sums when due shall be absolute and unconditional and is not subject to any abatement, offset, defense or counterclaim. If any payment is not paid within 10 days of its due date, you will pay a late charge not to exceed 7% of each late payment (or such lesser rate as is the maximum allowable by law). Company has the right to withhold service and supplies, without recourse, for any non-payment. Unless otherwise stated on the face of this Agreement, Company may increase the Base Charge and/or the Overage Rates on an annual basis, in an amount not to exceed 15%. Company retains the right to have all or some of the amounts due hereunder billed and/or collected by third parties. If Customer requires any specialized billing procedure or invoicing, Company reserves the right to bill an administrative fee not to exceed \$100 per invoice.

3. **TAXES.** Payments are exclusive of all state and local sales, use, excise, privilege and similar taxes. You will pay when due, either directly or to Us upon demand, all taxes, fines and penalties relating to

this Agreement that are now or in the future assessed or levied.

4. **WARRANTY:** You acknowledge that the Equipment covered by this Agreement was selected by You based upon your own judgment. COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF NON-INFRINGEMENT; IMPLIED WARRANTIES OF MERCHANTABILITY; OR, FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY AND UNRESERVEDLY EXCLUDED. IN PARTICULAR, BUT WITHOUT LIMITATION, NO WARRANTY IS GIVEN THAT EQUIPMENT IS SUITABLE FOR PURPOSES INTENDED BY CUSTOMER.

5. **LIMITATION OF LIABILITY.** In no event shall Company be liable for any indirect, special, incidental or consequential damages (including loss profits) whether based in contract, tort, or any other legal theory and irrespective of whether Company has notice of the possibility of such damages.

6. **DEFAULT; REMEDIES:** Any of the following events or conditions shall constitute an Event of Default under this Agreement: (a) failure to make payment when due of any indebtedness to Company, whether or not arising under this Agreement, without notice or demand by Company; (b) breach by you of any obligation herein; or, (c) if you cease doing business as a going concern. If you default, Company may: (1) require future Services, including supplies, to be paid in advance, (2) require you to immediately pay the amount of the remaining unpaid balance of the Agreement, (3) terminate any and all agreements with you, and/or, (4) pursue any other remedy permitted at law or in equity. In the Event of Default, remaining payment amounts due will be calculated using the average of [up to] the last six months' billing periods or the face value of the Agreement, whichever is greater, multiplied by the remaining months of the Agreement. You agree that any delay or failure of Company to enforce its rights under this Agreement does not prevent Company from enforcing any such right at a later time. All of Company's rights and remedies survive termination of this Agreement. In the event of a dispute arising out of Agreement or the covered Equipment, should it prevail, Company shall be entitled to collection of its reasonable costs and attorneys' fees incurred in defending or enforcing this Agreement, whether or not litigation is commenced.

7. **ASSIGNMENT:** You may not sell, transfer, or assign this Agreement without the prior written consent of Company. Company may sell, assign or transfer this Agreement.

8. **NOTICES:** All notices required or permitted under this Agreement shall be by registered mail to such party at the address set forth in this Agreement, or at such other address as such party may designate in writing from time to time. Any notice from Company to you shall be effective three days after it has been deposited in the mail, duly addressed. All such notices to Company from you shall be effective after it has been received via registered U.S. Mail.

9. **INDEMNIFICATION.** You are responsible for and agree to indemnify and hold Us harmless from, any and all (a) losses, damages, penalties, claims, suits and actions (collectively, "Claims"), whether based on a theory of contract, tort, strict liability of otherwise caused by or related to Your use or possession of the Equipment, and (b) all costs and attorneys' fees incurred by Us relating to such claim.

10. **FAX EXECUTION.** A faxed or electronically transmitted version of this Agreement may be considered the original and you will not have the right to challenge in court the binding effect of any faxed or scanned signature thereon. This Agreement may be signed in counterparts and all counterparts will be considered and constitute the same Agreement.

11. **MISCELLANEOUS.** (a) Choice of Law. This Agreement shall be governed by the laws of the state of New Mexico without regard to the conflict of laws or principles of such states; (b) Jury Trial. YOU EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS AGREEMENT; (c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with regards to the subject matter herein and supersedes all prior agreements, proposals or negotiations, whether oral or written; (d) Enforceability. If any provision of this Agreement is unenforceable, illegal or invalid, the remaining provisions will remain in full force and effect; (e) Amendments. This Agreement may not be amended or modified except by a writing signed by the parties; provided you agree that we are authorized, without notice to you, to supply missing information or correct obvious errors provided that such change does not materially alter your obligations; (f) Force Majeure. Company shall not be responsible for delays or inability to service caused directly or indirectly by strikes, accidents, climate conditions, parts availability, unsafe travel conditions, or other reasons beyond our control; (g) Company has the right to modify/correct any clerical errors.

Initial _____

Date _____