

**ADDENDUM TO LEWAN & ASSOCIATES, INC.'S  
CUSTOM PRINT PROGRAM AGREEMENT**

**THIS ADDENDUM** to Lewan & Associates, Inc.'s Custom Print Program Agreement is made and entered into this 24<sup>th</sup> day of June, 2015 by and between the County of Santa Fe, hereinafter referred to as the "County" or "Customer" and Lewan & Associates, Inc. PO Box 173704, Denver, Colorado 80217-3707, hereinafter referred to as "Contractor" or "Company."

**WHEREAS**, the County has procured as a small purchase from Contractor, one Sharp fax machine; and

**WHEREAS**, the County's pricing, use and maintenance of the equipment is governed by Terms and Conditions referenced in Contractor's Custom Print Program Agreement attached hereto; and

**WHEREAS**, certain Terms and Conditions of the Company's Custom Print Program Agreement are inapplicable or are unacceptable to the County because they are inconsistent or contrary to New Mexico law, procedures or policy of Santa Fe County; and

**WHEREAS**, the County and Company desire to enter into the Custom Print Program Agreement for the equipment subject to modified terms and conditions as provided in this Addendum; and

**NOW THEREFORE**, it is mutually agreed between the parties that the following provisions shall be incorporated into the Company's Custom Print Program Agreement for the equipment specified above and on the Custom Print Program Agreement, as if fully set forth therein.

Section **2.9 (CUSTOMER RESPONSIBILITY)** is modified to read:

**2.9** Charges are due by Customer no later than 30 days net from the date of Customer's receipt of invoice from Contractor. Company does not accept payment by credit card for invoices greater than \$10,000. In the event Customer fails to tender payment within 30 days Customer shall pay a late payment charge of 1.5% per month until the amount due is paid in full.

Section **2.10 (CUSTOMER RESPONSIBILITY)** is amended by deleting the second sentence in its entirety.

Section **4.0 (INDEMNIFICATION)** is deleted in its entirety and replaced with the following:

**4.0** No provision of the Custom Print Program Agreement, or the Custom Print Program Terms and Conditions, modifies or waives any sovereign immunity or limitation of liability enjoyed by the Customer Santa Fe County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

Section **6.3 (TERM)** is deleted in its entirety and replace with:

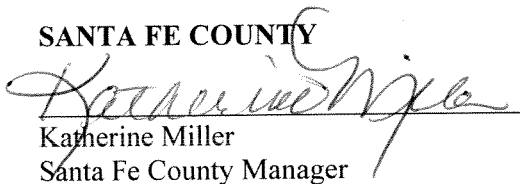
**6.3** The term of this Custom Print Program Agreement is from July 1, 2015 to June 30, 2016. There shall be no pre-payment of services and no automatic renewal of the

term of this Custom Print Program Agreement. Customer may terminate this Custom Print Program Agreement for the equipment for any reason including non-appropriation of funds upon ten days' notice to Company. In the event of termination, Customer shall pay costs for the 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.

Section 7.0 (**CONFIDENTIALITY**) is amended by inserting the clause "To the extent allowed by New Mexico law," to the beginning of the first sentence.

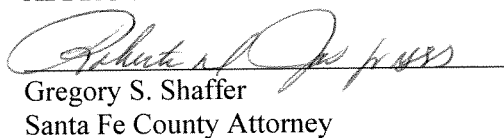
Section 8.0 (**GENERAL AND MISCELLANEOUS**) is amended by deleting the phrase "pursuant to Commercial Mediation Rules before resorting to arbitration" and deleting "Colorado" and replace it with "New Mexico."

**SANTA FE COUNTY**

  
Katherine Miller  
Santa Fe County Manager

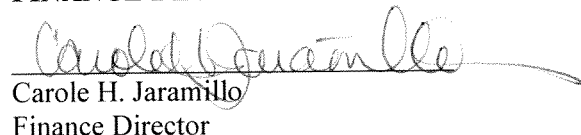
6.23.15  
Date

**APPROVED AS TO FORM:**

  
Gregory S. Shaffer  
Santa Fe County Attorney

6-9-15  
Date

**FINANCE DEPARTMENT:**

  
Carole H. Jaramillo  
Finance Director

6/9/15  
Date

**LEWAN & ASSOCIATES, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title




term of this Custom Print Program Agreement. Customer may terminate this Custom Print Program Agreement for the equipment for any reason including non-appropriation of funds upon ten days' notice to Company. In the event of termination, Customer shall pay costs for the 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.

Section 7.0 (CONFIDENTIALITY) is amended by inserting the clause "To the extent allowed by New Mexico law," to the beginning of the first sentence.


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**SANTA FE COUNTY**

  
Katherine Miller  
Santa Fe County Manager

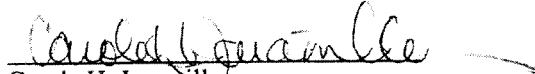
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Date

**FINANCE DEPARTMENT:**

  
Carole H. Jaramillo  
Finance Director

6/9/15  
Date

**LEWAN & ASSOCIATES, INC.**

  
Signature

6/22/15  
Date

VICKI MARKS, DIRECTOR OF  
Print Name and Title CORPORATE  
OPERATIONS

LEWAN & ASSOCIATES, INC.  
PO Box 173704  
Denver, CO 80217-3704  
www.LEWAN.COM  
1.888.LEWAN11

LEWAN

# CUSTOM PRINT PROGRAM

MONTHLY/eQUARTERLY

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

CUSTOMER NAME Santa Fe County Region III			SHIP TO CUSTOMER		BILL TO CUSTOMER		AGREEMENT NUMBER		
SERVICE ADDRESS 1204 Mercantile			BILLING ADDRESS					INTERNAL USE ONLY	
CITY Santa Fe		STATE NM	ZIP CODE 87502	CITY		STATE	ZIP CODE	BRANCH	DN
CUSTOMER KEY CONTACT PRINTED NAME Diana Lovato			CUSTOMER PHONE 505 473 7020		TERMS NET 30 DAYS WAC		RECEIVED DATE		
CUSTOMER KEY CONTACT eMAIL ADDRESS dlovato@santafecountynm.gov			CUSTOMER PURCHASE ORDER NUMBER				ENTERED EEN		
LEWAN REPRESENTATIVE 1			NO.		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 OVERAGE CHARGE
1		Sharp FODC635U	67101133		\$17.82	0	0.00000	\$17.82	
2								\$0.00	
3								\$0.00	
SALES TAX				BASE SUBTOTAL: \$17.82		SUBTOTAL: \$17.82			
CODE: <input type="text"/>						SALES TAX TOTAL: 1.16			
RATE: <input type="text"/>						ESTIMATED TOTAL MINIMUM BILLING / BILLING CYCLE: \$17.82		PLUS EXCESS PER COPY/PRINT CHARGES	

AGREEMENT TERM:	
EFFECTIVE START DATE OF THIS AGREEMENT: 7/1/15-6/30/16	
TERM OF THIS AGREEMENT: <input checked="" type="checkbox"/> 12 MOS <input type="checkbox"/> 24 MOS <input type="checkbox"/> 36 MOS <input type="checkbox"/> 48 MOS <input type="checkbox"/> 60 MOS	

METER SUBMISSION METHOD:	
<input type="checkbox"/> 360MANAGER <input checked="" type="checkbox"/> eMAIL TO METER CONTACT: _____	


INVOICE OPTION: (CHOOSE ONLY ONE)	
<input checked="" type="checkbox"/> BY INVOICE MAILED TO BILLING ADDRESS (ABOVE)	
<input type="checkbox"/> BY SPREADSHEET eMAILED TO AP DEPT AT _____	

## NO HASSLE eMETERING NOTICE

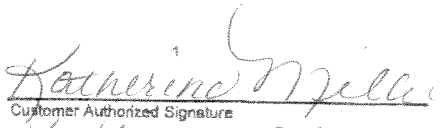
This Agreement offers monthly base billing and quarterly overage billing based on data collected on my network by eMetering Application. As new devices are discovered on my network they will be automatically included under this Agreement.

## 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 having read and accepted.

ACCEPTANCE  
  
Lewan & Associates, Inc.  
Sales Printed Name  
7-1-2015  
Date

Lewan & Associates, Inc.  
CPP Manager Printed Name  
Date

  
Customer Authorized Signature  
Katherine Miller  
Customer Printed Name  
SF County Manager  
6-23-2015  
Date


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

Approved as to form

Santa Fe County Attorney

By: 

Date: 6-9-15





# Custom Print Program Terms and Conditions

**CPP#**

This page is referred to as the "Back Page" of this Agreement. The Terms and Conditions printed on this Back Page as well as on the Cover Page are an integral part of this Agreement, which Customer hereby acknowledges having read and accepted. This Agreement is subject to these Terms and Conditions:

## 1.0 SERVICE AND SUPPLIES

- 1.1 Products must be used only in operating conditions and environments that are usual and customary for products of this type and will only be serviced at Customer's location as detailed in this Agreement. It is understood that the term "Products" does not include: (a) computer related equipment, including but not limited to, CPUs, hubs, routers, switches, and/or accessories to Products; (b) network or non-network cabling; (c) costs to install options or peripherals that are added during the term of this Agreement; (d) ink jet devices; or (e) any other circuit, network component, or item not specifically set forth on the Cover Page or on any Schedule to this Agreement.
- 1.2 Service SHALL INCLUDE the labor, parts, toner, developer, drums and materials which become necessary through the usual and customary use of the Products as Company deems appropriate in order to maintain in good operating condition those Products which are listed above and/or on a signed Schedule ("Product"). Service shall also include the diagnosis and correction of Product malfunctions and failures, as well as preventive maintenance, from time-to-time, as deemed necessary by the Company. Service shall be performed during the normal business hours of Monday through Friday, 8:00AM to 5:00PM, local observed holidays excluded ("Normal Business Hours").
- 1.3 Service does NOT INCLUDE: (a) software, software restoration, or software training (unless software is bundled with Product and purchased from Company); (b) repairs for damage resulting from a Product being relocated by any party other than Company; (c) repairs for damage resulting from any failure of Customer's obligations under the Product lease (including, but not limited to, failing to have at all times a properly installed, Company-provided surge protector attached to Product; (d) removal of Product's hardware at agreement term; and, (e) diagnosis or repair or replacement parts for failures caused by viruses, accident, misuse, abuse, theft, vandalism, fire, water, flooding, air-borne contaminants, physical shock, electrical shock, stress, acts of God, or the use of supplies or attachments not approved in writing by Company.
- 1.4 Before Service can be provided (and Product covered under the Agreement), Product may be subject to inspection by Company.
- 1.5 Customer agrees to the use of manufacturer compatible, non-OEM parts and supplies when available. Request for OEM supplies when non-OEM are available will result in a supply upcharge to Customer.
- 1.6 Replaced parts, materials and Product covered under this Agreement are furnished on an exchange basis. Replacement parts, materials and Product, at the sole discretion of Company, will be new or refurbished, of equal or better quality. Upon exchange, replaced parts, materials and Product become the property of Company.
- 1.7 Unless otherwise agreed in writing, any and all Services performed outside Normal Business Hours and/or outside the service area will be billed at Company's prevailing time-and-material rates. Similarly, charges for non-covered services requested by Customer shall be billed to Customer at Company's prevailing non-contract time-and-material rates.
- 1.8 Customer acknowledges that this is not an equipment financing agreement and that this Agreement is only for the Service and Supplies described herein and is solely between Customer and Company.
- 1.9 Additional charges for incidental expenses such as shipping charges, excess baggage, and technician parking permits (if any) will apply.

## 2.0 CUSTOMER RESPONSIBILITY

- 2.1 DURING, AND/OR AFTER THE TERM OF THIS AGREEMENT: (a) CUSTOMER IS SOLELY RESPONSIBLE FOR THE MAINTENANCE OF ITS OWN DATA, FOR ASSURING THE EXISTENCE OF A VIABLE BACKUP OF ALL DATA, AND FOR RECONSTRUCTION OF LOST OR ALTERED FILES, DATA OR PROGRAMS; and, (b) CUSTOMER IS RESPONSIBLE (AND COMPANY ASSUMES NO LIABILITY) FOR THE SECURITY OF CUSTOMER'S PROPRIETARY, CONFIDENTIAL, AND CLASSIFIED INFORMATION, INCLUDING WITHOUT LIMITATION, LATENT DOCUMENT AND IMAGE DATA STORED ON HARDDRIVES.
- 2.2 For Service to be performed, Customer shall assure adequate consumables are at the Product site at the expected time of Service. Shipments of Supplies shall be limited to Customer's thirty (30) day need, as determined by Customer volume and manufacturer yields. It is agreed that Supplies furnished under this Agreement will be used only in eligible, contracted Products.
- 2.3 Customer is responsible, at the request of the Company, for providing a dedicated electrical circuit to the Products which is suitable to the Products' proper operation. Failure to use a dedicated electrical circuit, when so requested by the Company, shall void any product warranty.
- 2.4 Customer is responsible for the compatibility with Products of Customer-installed accessories, software or equipment not covered by this Agreement. Customer, upon request by the Company for the purpose of providing Service, is solely responsible for the disconnection (and re-attachment) of accessories not covered by this Agreement from (to) Products.
- 2.5 Customer is responsible for providing timely, accurate meter information on Product(s). Customer agrees to designate and make available a Key Operator who will be responsible for properly operating Products and fulfilling the responsibilities of the Key Operator as set forth in the operator guide. Customer is responsible for providing prompt access to Products and maintaining a Customer representative present at all times while Service is being performed. Failure to provide timely access to Products may result in additional charges.
- 2.6 Customer agrees to the installation on their network of an interfacing application to be used for the automatic collection of image meter counts on each of their image Products. It is agreed that images created by Company personnel are necessary for Customer training and the proper Service of Product and are included in the total meter counts as Customer images. CONTRACTS WHICH DO NOT INCLUDE AN INTERFACING APPLICATION WILL BE SUBJECT TO A MANUAL METER FEE (billed with overages).
- 2.7 Lewin's interfacing application is required in order for Customer to participate in the Auto Toner Delivery ("ATD") program. Participation in ATD is contingent on the completion of the ATD enrollment process which will confirm each eligible Product is reporting accurate and continuous toner level information.
- 2.8 Unless Agreement is renewed for a subsequent period, Customer agrees to pay for or return all unopened, non-charged Supplies received under this CPP at Agreement term.
- 2.9 Customer agrees to pay invoices when due. Invoice terms are Net30. Company does not accept payment by credit card for invoices greater than \$10,000. Upon termination of associated Product financing agreement (if any), Customer shall remain responsible for all finalizing meter billings.
- 2.10 In the event that Customer is more than thirty (30) days past due on any non-disputed invoice, Service and Supplies may be suspended until such time as all past due balances and current invoices are paid. Customer agrees to pay all collection fees, reasonable attorney's fees, and court costs, permitted by law, incurred by Company in enforcing the terms of this Agreement.
- 2.11 Customer agrees to Company's on-site validation of Product inventory.
- 2.12 Not less than quarterly, Customer and Company agree to review the MONTH BASE and/or IMAGE RATE relative to changes in Product inventory counts, Product manufacturers, Supply volume, and/or Service experience. Customer and Company agree that MONTH BASE and/or IMAGE RATE under this Agreement may increase or decrease as a result of such review, not more than once each year while this Agreement is in effect, by an amount not to exceed fifteen percent (15%) of the MONTH BASE and/or IMAGE RATE in effect at the end of the prior period. With ninety (90) days' notice, Customer or Company may, at any time, request a proposed change of greater than fifteen percent (15%) of the MONTH BASE and/or IMAGE RATE and terminate this Agreement.
- 2.13 Customer agrees to notify the Company, as soon as is reasonably possible, of any Product which should be deleted from Agreement and/or, of any new/additional equipment placed in service by the Customer, which is capable of using Company-provided Supplies under this Agreement. As qualifying devices are added or discovered on Customer's network they will be included under this Agreement. Company reserves the right to review MONTHLY BASE and/or IMAGE RATE, and/or perform an on-site inventory, should Product inventory or volumes reflect unusual or extreme increases/decrease over originally contracted amounts.
- 2.14 Company reserves the right to suspend or cancel this Agreement in the event Customer is in default on any item in Section 2.0.

## 3.0 WARRANTIES AND LIMITATION OF LIABILITY

- 3.1 COMPANY WARRANTS THAT ALL SERVICES AND SUPPLIES WILL BE FREE FROM DEFECTS IN WORKMANSHIP AT THE TIME OF PERFORMANCE. COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OF ANY NATURE OR SOURCE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 3.2 CUSTOMER'S TOTAL LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE WHETHER SOLE OR CONCURRENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE FURNISHING OR FAILURE TO FURNISH ANY SERVICES OR SUPPLIES HEREUNDER, SHALL NOT EXCEED THE COST PAID BY THE CUSTOMER FOR THE SERVICES OR SUPPLIES WHICH GIVES RISE TO THE CLAIM. THE REMEDIES SET FORTH IN THIS SECTION 3 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.
- 3.3 IN NO EVENT SHALL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES INCURRED BY CUSTOMER OR ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOSS OF ANTICIPATED PROFITS, COSTS OF DOWNTIME, FAILURE TO REALIZE SAVINGS, OR FOR SUBSTITUTE EQUIPMENT, AND ANY CLAIMS OF CUSTOMER'S CLIENTELE FOR SERVICE INTERRUPTIONS, UNAUTHORIZED ACCESS TO LATENT IMAGE DATA, OR FAILURE OF SUPPLY. THIS EXCLUSION SHALL APPLY EVEN IF CUSTOMER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FAILS FOR ANY REASON.

## 4.0 INDEMNIFICATION

Except to the extent of negligence or action directly attributable to the other party, each party (the "Indemnifying Party") shall be responsible for, and shall indemnify, defend and hold the other party, and each other party's officers, directors, employees, and agents (collectively, "Indemnified Party") harmless from all losses, damages, penalties, claims, suits, and actions (collectively "Claims") whether based on a theory of contract, tort, strict liability, or otherwise caused by, or related in any manner to the acts or omissions of Indemnifying Party or any of Indemnifying Party's employees, agents or subcontractors in the performance of services under this Agreement. The party's obligations under this Section 4.0 shall survive termination of this Agreement.

## 5.0 COMPANY EMPLOYEES

Customer understands that all employees who participate in the provision of Service are employed by the Company and represent a substantial investment to Company. Customer, on behalf of itself and all Customer affiliates, agrees during the term of this Agreement and for ninety (90) days thereafter not to contact or solicit any employee of the Company for the purpose of causing, luring, or encouraging any such employee to terminate employment with the Company.

## 6.0 TERM

- 6.1 The term of this Agreement is set forth on the Cover Page of this Agreement.
- 6.2 Either party may terminate this Agreement if the other party defaults in any of its obligations hereunder, or in connection with the performance of any obligation herein, and such default is not cured within ten (10) business days following written notice to the party of such default.
- 6.3 Except for termination in accordance with §§2.12 or 6.2, THIS AGREEMENT IS NON-CANCELABLE. At the end of Term, this Agreement shall be automatically renewed for successive one year terms unless written notice of non-renewal is received not less than ninety (90) days prior to the end of the current term.
- 6.4 In the event of non-renewal or cancellation, Customer's responsibility to pay any current or accrued charges at the time of termination shall survive termination of this Agreement.

## 7.0 CONFIDENTIALITY

The parties, their affiliates and respective employees, agree to maintain as confidential each of the other party's written, pre-printed, and/or electronic documents and materials ("Information") which is disclosed to them. All documents shall be considered confidential even if not so marked. The parties shall not, directly or indirectly, disclose any information to any third party without the disclosing party's prior written consent. The dissemination of information by either party shall be within its own organization and shall be limited to those employees of that party whose duties justify the need to know such information.

## 8.0 GENERAL AND MISCELLANEOUS

This Agreement contains the entire agreement between Customer and Company with respect to the subject matter hereof. Scanned images shall be of the same effect as their originals. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provisions. Any representations, inducements, promises, negotiations or otherwise, not contained herein, shall not be of any force or effect, unless attached, in writing, to this document and signed by both parties. The headings contained in this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement is not transferable or assignable by the Customer without the prior written consent of the Company. Neither party shall be determined to be in default of any provision herein or be liable for any delay, failure in performance or interruption resulting from acts of God, civil or military catastrophe, strikes, embargoes, transportation delays, and inability to obtain materials from suppliers, product deficiencies or any other situation beyond the reasonable control of the party. The parties shall attempt in good faith to resolve any controversy, claim or dispute, of whatever nature arising between the parties, by mediation pursuant to Commercial Mediation Rules before resorting to arbitration, litigation or any other dispute resolution procedure. The relationship of the parties established under this Agreement is that of independent contractor and neither party is a partner, employee, an agent, or joint venturer of or with the other. The waiver of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach. The failure of either party to exercise any right arising from any default of the other party hereunder shall not be deemed to be a waiver of such right. The laws of the State of Colorado shall govern the validity, performance, and all matters relating to the interpretation and effect of this agreement, and any amendment hereof. Notice shall be provided to Lewin & Associates, Inc., 1400 South Colorado Boulevard, Denver, Colorado 80222. Sections 2.1, 3.0, 4.0, 5.0, and 7.0 shall survive termination of this Agreement.

CUSTOMER SIGNATURE

DATE

REV 06/20/14

Approved as to form  
Santa Fe County Attorney

By:

Date:

