



## SERVICE/SUPPLY AGREEMENT TERMS AND CONDITIONS

As consideration for Customer's payment as set forth on the front of the Contract, Pacific Office Automation ("POA") agrees to provide the listed supplies, parts and labor service for the covered equipment pursuant to the terms and conditions contained herein.

- Replacement of all parts found defective or worn as a result of normal equipment use.
- Labor to repair and properly maintain the equipment.
- All preventative maintenance done at intervals specified by the manufacturer.
- Loaner equipment in the event the equipment requires shop work to repair.
- Replacement of photoconductors and heater rollers found defective or worn as a result of normal use.
- Replacement of black and color toner, black developer, brushes, and filters.
- Factory recommended retrofits and improvements in the equipment.

If color toner is included in the Service/Supply Agreement, the color toner will be supplied within the cost per copy charge based upon the standard manufacturer's yield. Excess toner will be billed at standard manufacturer's retail price. Not included in the Service/Supply Agreement are paper, staples, and network support. Service calls by POA covered under the Service/Supply Agreement will only be made during the hours of 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Service billed at any other time will be billed at standard overtime rates. For products or services acquired hereunder, the terms of payment are net ten (10) days.

Customer agrees to pay POA the base and overage charges agreed to on the front of the Contract and agrees that excess images over the allotted base amount during the billing cycle will be billed to Customer at the agreed to rate for overages. If not noted, overages will be charged at POA's book rates. If the Service/Supply Agreement combines two or more pieces of equipment of different operating costs, POA reserves the right to adjust image allocation and pricing to fairly reflect actual usage should the actual usage rate of the equipment vary by more than 10% from the expected usage rates. Customer agrees that POA may increase the per image charge each year during any term of the Service/Supply Agreement by an amount not to exceed 10% of such charge. Service may include reasonable use of Customer's image allotments and materials. Customer's failure to abide by all payment obligations may result in termination of service.

This Service/Supply Agreement shall continue for the term stated on the front of the Contract. The Service/Supply Agreement shall automatically renew for successive one (1) year terms, unless either party provides written notice to the other party of their intent to terminate prior to thirty (30) days before the expiration of the original term or any subsequent renewal term.

## GUARANTEES

POA extends to Customer the following express limited guarantees under the Service/Supply Agreement.

1. **STANDARD LIMITED WARRANTY:** POA warrants New equipment to be free of defect in materials and workmanship for a period of 90 days from installation. This warranty does not extend to replacement of supply items or consumables, including, but not limited to photo conductors, heater rollers, fuser, cleaning kits, toner, developer, or paper. For purposes of this paragraph, New equipment shall be defined as equipment with usage up to 5,000 copies. Used equipment will receive a 30-day warranty.
2. **LIFETIME POWER PROTECTION GUARANTEE:** If a POA Power Filter is included in the Service/Supply Agreement, repairs of damage to covered equipment caused by power surges and/or lightning will be covered.
3. **RESPONSE TIME WARRANTY:** POA guarantees four hour average response time for emergency services for equipment that is within fifty miles of POA branch offices. If POA does not perform guaranteed response time for a period of one year, upon written request, Customer will receive a 5% credit towards Customer's next service or supply purchase from POA.
4. **UPGRADE, TRADE-IN LIMITED GUARANTEE:** For all New equipment purchased hereunder continuously covered under a POA Service/Supply Agreement, POA will guarantee a trade-in value on New equipment sold by POA up to 90% during the first 36 months after acquisition and a minimum guaranteed trade-in value of 10% thereafter.

## GENERAL TERMS & CONDITIONS

- (1) Unless provided, the terms of sale are ten (10) days net. POA agrees to provide reasonable assistance to Customer in its efforts to finance the purchase or lease of the equipment and/or Service/Supply Agreement; however, Customer understands and acknowledges such financing cannot be guaranteed by POA. Customer shall be ultimately responsible for payment of the purchase price of equipment sold or leased. If not provided, the purchase price is the Manufacturer's Suggested Retail Price of the equipment and/or solutions plus the cost of any lease buyouts, delivery charges, installation charges, and the total Service/Supply Agreement.
- (2) If equipment is delivered to Customer before final payment, Customer shall grant to POA a security interest in the equipment and agrees to execute and deliver all documentation necessary to perfect such interest.
- (3) If customer defaults in the payment of the purchase price or any other obligation as provided herein, Customer agrees to pay to POA a service charge of 1.5% per month and all of POA's related attorney's fees and collection costs, even if no suit or action is filed.
- (4) The sales price herein includes the initial installation of the manufacturer's software onto Customer's computers. Prior to such installation, Customer shall perform and complete a system backup. POA shall not be liable for loss or damage of any kind to data or equipment as a result of the installation of the manufacturer's software. Customer shall be solely responsible for the cost of any cables or additional hardware required to connect equipment to a network. POA shall not be responsible for any updates or problems arising after the initial installation due to a change in the Customer's computers and/or Network.
- (5) POA MFP Network Service solely provides coverage for services related to the connectivity between the covered equipment and the Customer's Network. MFP Network Service does not provide coverage for services for the Customer's Network itself.
- (6) **DISCLAIMER:** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, POA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EQUIPMENT IS SUBJECT TO A MANUFACTURER'S WARRANTY. UNDER NO CIRCUMSTANCES WILL POA BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES.
- (7) Customer shall make arrangements to protect or remove sensitive and private data that may become stored on Customer's equipment. While POA may provide options for data removal and protection, Customer is solely responsible for selecting an appropriate data removal standard that meets Customer's business needs. POA is not recommending any particular option, and POA is not liable for damages arising from Customer's failure to fully remove and protect its data. Please note that regardless of which standard Customer chooses, Customer must return leased equipment in full working order at the end of any lease term.

**ADDENDUM TO EQUIPMENT CONTRACT  
AND  
SERVICE/SUPPLY AGREEMENT WITH  
PACIFIC OFFICE AUTOMATION, INC.  
REGARDING KONICA MINOLTA C364 PRINTER**

**THIS ADDENDUM TO POA EQUIPMENT CONTRACT AND SERVICE/SUPPLY AGREEMENT** is made and entered into this 7th day of Sept., 2014 by and between the County of Santa Fe, hereinafter referred to as the "County", and **Pacific Office Automation, Inc.**, whose principal address is 1400 South St. Francis Drive, Santa Fe, NM 87505, hereinafter referred to as the "Contractor" or "POA."

WHEREAS, pursuant to NMSA 1978, Section 13-1-125, this is a small purchase, for the provision of equipment maintenance services;

WHEREAS, Contractor has technicians who are approved to conduct supply and provide maintenances services on the Konica Minolta printer;

WHEREAS, Contractor has proposed a Service/Supply Agreement and Equipment Contract with terms and conditions which are acceptable in part but require the removal of certain terms and the addition of other terms; and

NOW THEREFORE, it is mutually agreed between the parties that the following provisions shall supersede any related provisions in the POA Service/Supply Agreement and Equipment Contract and are incorporated into the Equipment Contract and Service/Supply Agreement as if fully set forth therein.

**1. TERM**

The Service/Supply Equipment Contract shall have a term of two (2) years unless terminated or canceled earlier pursuant to Paragraph 3 below. The Equipment Contract, Service/Supply Agreement including this Addendum shall begin on the date stated above and continue in full force and effect for a period of two (2) years with an option to renew in one (1) year increments not to exceed a total term of four (4) years. The POA Service/Supply Agreement shall not automatically renew. The County may extend the term of the Equipment Contract and Service/Supply Agreement by providing sixty (60) days written notice to POA that the County wishes to extend the term. There shall be no pre-payment of services. POA's services shall be paid for in accordance with Section 2 Compensation, Invoicing and Set-Off. This Addendum shall be signed and is in conjunction with the POA Equipment Contract and Service/Supply Agreement.

**2. COMPENSATION, INVOICING AND SET-OFF**

A. The monthly fee for maintenance of the Konica Minolta C364 printer for the term of this Agreement shall be \$95.10 per month, exclusive of gross receipts tax. Rather than adopting the payment terms set forth in the Service/Supply Agreement, Contractor shall submit a written request for payment to County at the conclusion of each month of service. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, County shall tender payment for the accepted

items or services. In the event County fails to tender payment within thirty (30) days of the written certification County shall pay late payment charges of one and one-half (1.5%) per month, until the amount due is paid in full. County shall not be obligated to pay Contractor's attorneys fees or collection costs.

B. In the event Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as County determines the exact amount of damages it suffered as a result of the breach.

C. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

### 3. TERMINATION OR CANCELLATION

A. The County may terminate or cancel the Equipment Contract and Service/Supply Agreement including this Addendum based upon any material breach of the Equipment Contract, Service/Supply Agreement or this Addendum by the Contractor. The County shall give Contractor written notice of termination specifying the grounds for the termination or cancelation and the date of termination or cancelation. The Contractor shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within seven (7) days, Contractor shall have a reasonable time to cure the breach, provided that, within seven (7) days of its receipt of the written notice of termination or cancelation, Contractor (i) began to cure the breach and (ii) advised the County in writing that it intends to cure.

B. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Equipment Contract, Service/Supply Agreement including this Addendum by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the County from the Contractor is determined.

C. County may, in its discretion, terminate the POA Equipment Contract, Service/Supply Agreement including this Addendum at any time for any reason by giving Contractor written notice of termination or cancelation. The notice shall specify the effective date of termination or cancelation, which shall be not less than seven (7) days from the date of mailing a notice of termination or cancelation to Contractor. County shall pay Contractor for acceptable services performed before the effective date of termination or cancelation but shall not be liable for any work or services performed after the effective date of termination or cancelation.

### 4. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer or subcontract any interest in the Equipment Contract, Service/Supply Agreement including this Addendum or assign any claims for money due or to become due under the Equipment Contract, Service/Supply Agreement including this Addendum without the prior written approval of the County. Any attempted assignment, transfer or subcontracting without County's advance written approval shall be null and void and without any legal effect.

### 5. INDEMNIFICATION

A. Contractor shall defend, indemnify, and hold harmless County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of Contractor's performance or nonperformance of its obligation under this

Agreement, including but not limited to Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees (i) that County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to County and (ii) that such suit will not be settled without County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of County and Contractor in such demand, suit, or cause of action, counsel shall be retained to represent the County's interest.

C. Contractor's obligations under this section shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

#### 6. 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 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 or be canceled upon written notice by County to Contractor. Such termination shall be without penalty to County, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement. County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by County. County'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 Contractor in any way or forum, including a lawsuit.

#### 7. RELEASE

The Contractor, upon final payment of the amount due under this Agreement, releases the County, its officers, agents and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the County to any obligation not agreed to herein unless the Contractor has express written authority from the County to do so, and then only within the strict limitations of that authority.

#### 8. AMENDMENT

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto. Contractor specifically acknowledges and agrees that County shall not be responsible for any changes to the Contractor's services under this Agreement unless such changes are set forth in a duly executed written amendment of this Agreement.

#### 9. INTEGRATION

This Addendum together with the POA Service/Supply Agreement and Equipment Contract, incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Equipment Contract, Service/ Supply Agreement and this Addendum.

11. EQUAL OPPORTUNITY COMPLIANCE

A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. Contractor agrees to abide by the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

12. SEVERABILITY

If any term or condition of this Addendum shall be held invalid or non-enforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

13. APPLICABLE LAW

In providing the services outlined in the Equipment Contract and Service/Supply Agreement and herein, the Contractor shall comply with all applicable State of New Mexico and local government law and ordinances. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Venue shall be in Santa Fe County.

14. SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes. The parties further agree that execution of the POA Equipment Contract and Service/Supply Agreement and this Addendum shall be accomplished simultaneously and in conjunction with each other and unless this Addendum is signed, the Equipment Contract and Service/Supply Agreement shall not be valid.

15. LIMITATION OF LIABILITY

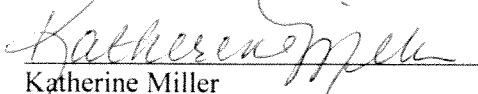
County's liability to Contractor for any breach of this the POA Equipment Contract, Service/Supply Agreement including this Addendum by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Paragraph 2 above. In no event shall County be liable to Contractor for special or consequential damages, attorneys fees or collection costs, even if County was advised of the possibility of such damages prior to entering into this Agreement.

16. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.


IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first written above.

SANTA FE COUNTY:

  
Katherine Miller  
Santa Fe County Manager

9.4.14  
Date

APPROVED AS TO FORM:

  
Gregory S. Shaffer  
Santa Fe County Attorney

8/19/14  
Date

FINANCE DEPARTMENT APPROVAL:

  
Teresa C. Martinez  
Finance Department Director

8/22/14  
Date

CONTRACTOR:

PACIFIC OFFICE AUTOMATION, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

FEDERAL IDENTIFICATION NUMBER:

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first written above.

SANTA FE COUNTY:

\_\_\_\_\_  
Katherine Miller  
Santa Fe County Manager

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory S. Shaffer  
Santa Fe County Attorney

8/19/14  
\_\_\_\_\_  
Date

FINANCE DEPARTMENT APPROVAL:

\_\_\_\_\_  
Teresa C. Martinez  
Finance Department Director

\_\_\_\_\_  
Date

CONTRACTOR:

PACIFIC OFFICE AUTOMATION, INC.

\_\_\_\_\_  
Signature

8/22/2014  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Paul Holmes, Branch Manager  
Print Name and Title

FEDERAL IDENTIFICATION NUMBER: