

Zimbra

rudy.salinas1@co.hidalgo.tx.us

Legal Review

Agreement previously Approved. <sup>ON</sup> 12/15/15 Ai 526661

From : Victor M. Garza <victor.garza@da.co.hidalgo.tx.us>

Mon, Dec 14, 2015 10:08 AM

Subject : Legal Review

To : 'Rudy Salinas' <rudy.salinas1@co.hidalgo.tx.us>

Cc : 'Martha Salazar' <martha.salazar@co.hidalgo.tx.us>

Reply To : victor.garza <victor.garza@da.co.hidalgo.tx.us>

Mr. Salinas,

Our office has reviewed the services agreement between Copy Graphics and the County, for HIDTA Task Force paper shredder, and at this time approve as to the form of the agreement.

Please let me know if you need anything else.

Respectfully,

**Victor M. Garza**

*Assistant District Attorney*

Civil Division

**Office of the Criminal District Attorney**

Hidalgo County, Texas

100 N. Closner RM 303

Edinburg, Texas 78539

(956) 292-7609 EXT. 8185

(956) 318-2079 FAX

[victor.garza@da.co.hidalgo.tx.us](mailto:victor.garza@da.co.hidalgo.tx.us)

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## TERMS AND CONDITIONS

**ACCEPTANCE:** Copy Graphics, Inc. (Seller) agrees to provide and the Customer agrees to accept maintenance service on equipment listed at charges indicated in accordance with Seller's service policies. Seller shall have full and free access to the equipment to provide service thereon. Full and free access includes activation of remote access to automated monitoring of meters, consumable supply usage, and service alerts.

**ERRORS & OMISSIONS:** This contract allows inadvertent mistakes such as mathematical calculations and/or typing errors to be corrected without resulting in a breach of this agreement. All inadvertent errors will be rectified upon discovery and written notice given to the other party.

**TERM:** The term of this agreement shall be for a period of four (4) years commencing on 10/17/15 to 10/16/19 unless terminated earlier as herein provided. Customer may terminate this agreement without cause on thirty (30) days written notice.

**SERVICE AVAILABILITY:** Service will be rendered under this Agreement only during normal business hours of Seller (Monday through Friday 8 a.m. to 5 p.m. except national holidays).

**INCLUSIONS:** Service plan includes on-site remedial maintenance, lubrication, cleaning, adjustments and the replacement of unserviceable parts except integrated circuit boards, unless equipment is protected by Seller approved power protection device. The unserviceability of parts will solely be determined by Seller, and replaced on an exchange basis. Replaced parts will become the property of Seller.

**EXCLUSIONS:** Service and maintenance support to be provided under this Agreement does not include repairs, replacement of parts and labor caused by, arising from, related to or made necessary by: a) use of equipment in a manner not recommended by OEM; b) failure to continually provide a suitable installation environment, including but not limited to, adequate electrical power, air conditioning or humidity control; c) Customer's improper use, management, or supervision of covered equipment; d) accident and disaster, including but not limited to, fire, flood, water, wind or lightning; e) electrical work, devices, cables, etc., external to the equipment; f) the maintenance of accessories, alterations, attachments or other devices not covered by this agreement; g) excessive electrostatic discharge, improper grounding, improper power line protection; h) failure of Customer to perform OEM recommended daily/weekly maintenance and cleaning as described in the manufacturer's operator manuals; i) service providers and parts installers other than the Seller; j) improperly trained and inexperienced operators; k) service related to relocation of equipment; l) consumable items such as chemicals and supplies, including but not limited to, ink, toner, toner cartridges, developers, ribbons, drums, maintenance kits, certain fuser and heater rollers, lamps and verification stamps; m) connected products such as computer, printer, software or network-related failures, programming, or training; n) license and/or installation fees for any renewal or upgrade of any and all software installed on unit o) service related to installation of additional accessories.

**EQUIPMENT OVERHAUL:** In the event that Equipment requires repairs beyond the limits of regular service and maintenance, such as, but not limited to, excessive wear and tear, age, long-term use, excessive use or other similar causes, an overhaul, as determined by Seller, may be required. Said overhauls are not covered by this Agreement. In such event an estimate of repairs shall be submitted by Seller to Customer detailing the cost of an overhaul. If Customer does not authorize said overhaul, Seller may discontinue service of the equipment without refund of the unused portion of this Agreement. Seller may refuse to renew this Agreement upon expiration.

**ASSIGNMENT:** This Agreement is not assignable to a third party without written permission from Seller, such permission not to be unreasonably withheld, and any attempt by Customer to assign any rights, duties, or obligations which arise under this Agreement without such permission shall be void. This contract is not refundable. If the equipment is traded in on new Seller equipment, any unused portion of the yearly contract charge will be prorated and applied towards the maintenance of the new equipment.

**LIMITED WARRANTY:** Seller warrants that services will be performed hereunder in a workmanlike manner in accordance with reasonable commercial standards. Parts are warranted against defects solely to the extent of the manufacturer's warranty, if any.

**DISCLAIMER OF WARRANTY:** EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, REPLACEMENT PARTS, LABOR AND SERVICES ARE PROVIDED "AS IS". SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**HAZARDOUS PRODUCTS:** Customer acknowledges that there may be products covered under this agreement that may be or become, considered as hazardous materials under various laws and regulations. Seller agrees to make available to Customer, safety information concerning said products. Customer agrees to disseminate such information, so as to give warning of possible hazards to persons who Customer can reasonably foresee may be exposed to such hazards, including but not limited to Customer's employees, agents, contractors and customers. If Customer fails to disseminate such warnings and information, Customer shall defend and indemnify Seller against any and all liability arising out of such failure.

**LIMITATION OF LIABILITY:** SELLER SHALL NOT BE HELD RESPONSIBLE FOR SELLER'S INABILITY TO PROVIDE TIMELY SERVICE DUE TO DELAYS. IN NO EVENT WILL SELLER, OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR AFFILIATES, BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR BUSINESS INFORMATION, LIABILITY TO THIRD PARTIES, AND THE LIKE, ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT. SELLER'S LIABILITY TO CUSTOMER (IF ANY) FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO, AND IN NO EVENT EXCEED THE AMOUNT PAYABLE BY CUSTOMER FOR SERVICE AND MAINTENANCE SUPPORT ON THE UNIT OF EQUIPMENT INVOLVED FOR THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH ALLEGEDLY GAVE RISE TO THE DAMAGES.

**GOVERNING LAW:** This contract shall be governed by and construed according to the laws of the State of Texas.