EQUIPMENT LEASE AGREEMENT TERMS AND CONDITIONS
APPROVED FOR USE BY SANTA FE COUNTY

THIS EQUIPMENT LEASE AGREEMENT is made and entered into this 4th day of August, 2009 by and between **Santa Fe County**, hereinafter referred to as "the Lessee", and **XEROX**, a New Mexico Corporation with a principal address located at, 5600 Wyoming NE Suite 200, Albuquerque, NM 87109, hereinafter referred to as "the Lessor".

1. **COMMENCEMENT PROCEDURES.**

A. Execution of Lease. The Lessor and the Lessee mutually agree to enter into a Lease which pertains to the following Equipment identified as:

- Product Description Xerox Phaser 8560 MFP/D multi-function printer; and
- Product Description Xerox Phaser 8560 MFP/D multi-function printer.

B. Initial Term of Lease. The initial term is 48 months and this Lease shall begin on the Acceptance Date of the Equipment and shall continue for the period described in the executed documents unless a non-appropriation or other cancellation provision occurs during the term of the lease and any extensions of the lease. Pursuant to NMSA 1978, Section 13-1-150, the parties hereto agree that the term of this lease shall not exceed a period of four years.

2. **ACCEPTANCE OF EQUIPMENT.** Lessee agrees to inspect all Equipment no later than thirty (30) calendar days after the delivery thereof to Lessee. If acceptance requirements for such Equipment are specified in any applicable purchase documents, those requirements shall be brought to Lessee's attention in writing by Lessor prior to execution of this Lease Agreement. Lessee further agrees to complete, execute and deliver to Lessor either (i) an acceptance certificate after satisfactory completion of such inspection or (ii) written notification of any defects in the Equipment.

3. **DEFINITION OF TERMS.** Terms used in this Lease have the meanings set forth below.

Acceptance Date means the date set forth in the acceptance certificate as the date Lessee accepted the Equipment in accordance with Section 2 in accordance with NMSA 1978, Section 13-1-158.

Assignee means any assignee of all or any portion of Lessor's interest in this executed Lease.

Casualty Loss means, with respect to any equipment, the condemnation, taking, loss, destruction, theft or damage beyond repair of such equipment.

Equipment means items of hardware, software or both as may be specified in the appropriate accompanying documents.

Lease has the meaning "true lease".

Lessee means Santa Fe County.

Manufacturer/Supplier means as to any equipment, the seller and the manufacturer or licensor of such equipment collectively, or where the context requires, any of them.

Software means all software or computer programs that accompany or constitute all or a portion of any equipment, or are provided by or on behalf of any vendor or licensor to

Lessee with respect to any equipment, and all modifications, additions, supplements, translations, derivative works, and full or partial copies of any thereof, regardless of who prepared the same, and code with respect thereto, whether embodied in or contained on a magnetic tape, disk, semiconductor device, or any other device or machine.

Taxes means all license and registration fees and all taxes (local, state and federal), fees, levies, duties, assessments, charges and withholding of any nature, however designated, including without limitation any value added, transfer, sales, use, gross receipts, business, occupation, excise, personal property, other than taxes measured by Lessor's income.

Stipulated Loss Value means the entire payment to Lessee by its insurance company following substantial destruction of the equipment.

4. **END OF LEASE.** Lessor shall be solely responsible for the cost of retrieving the Equipment at the expiration of this Lease.

5. **RENT AND LATE CHARGES.**

A. In consideration of its rights under this Lease, Lessee shall pay Lessor as follows: At the conclusion of each month of possession and use after certification of the equipment, the rent amount of $147.51per month per machine for two Xerox Phaser 8560 MFP/D machines shall be remitted to Lessor. Lessee shall also pay $0.019 for each black copy and $.109 for each color copy.

B. Lessor shall submit a written request for payment to Lessee at the conclusion of each month of possession by Lessee. Within thirty (30) days following certification of that equipment, Lessee shall tender payment for the leased equipment used by Lessee. In the event Lessee fails to tender payment within said thirty (30) days of the certificate for payment, Lessee shall pay late payment charges of one and one–half percent (1.5%) per month, until the amount due is paid in full.

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

D. Payment under this Lease shall not foreclose the right of Lessee to recover excessive or illegal payments.

6. **CANCELLATION.** The Lessee has the right to cancel this Lease at any time, without penalty. Unless some unforeseen circumstance arises which the Lessee shall document, the Lessee will send to the Lessor written notice of such termination sixty (60) calandar days prior to termination.

7. **TERMINATION FOR NON-APPROPRIATION.** Notwithstanding anything in this Lease to the contrary, in the event no funds or insufficient funds are appropriated and budgeted by Lessee's governing body or are otherwise unavailable in any fiscal year for the payment of rent and other amounts due under this Lease, the Lease shall terminate on the last day of the fiscal period for which appropriations were received or other amounts are available to pay amounts due under the Lease without penalty or expense to Lessee. It is up to the Lessee to determine sufficiency of funds, which determination shall be accepted by the Lessor and is final. Lessee shall mail to Lessor or its Assignee written notice at least forty-five (45) days in advance of the termination for non-appropriation.

8. **RETURN OF EQUIPMENT UPON CANCELLATION OR TERMINATION.** In the event of such termination as reflected in Sections 6 and 7 above, Lessee shall immediately cease all use of the

Equipment and shall immediately make arrangements with Lessor or its designee to de-install, disassemble, pack, crate, insure and return the Equipment to Lessor at any destination within the continental United States designated by Lessor. Any expenses or risks associated with returning Equipment to Lessor shall be borne solely by Lessee. Such Equipment shall be in good repair and in the same condition as when received by Lessee, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

9. **EQUIPMENT OWNERSHIP; LIENS; LOCATION.** As between the Lessor and the Lessee, the Lessor is the sole owner of the Equipment and has sole title thereto; the Lessee shall not make any representation to any third party inconsistent with the Lessor's sole ownership of the Equipment. The Lessee covenants that: it will not pledge or encumber the Equipment or the Lessor's interest in the Equipment in any manner whatsoever nor create or permit to exist any levy, lien or encumbrance thereof or thereon except those created by or through the Lessor; the Equipment shall remain personal property whether or not affixed to realty and shall not become a fixture or be made to become a part of any real property on which it is placed without the Lessor's prior written consent; and the Lessee shall maintain the Equipment so that it may be removed from any building in which it is placed without damage to the building or the Equipment. The Lessee may relocate any Equipment from the Equipment location specified in the Lease documents to another of its locations upon prior written notice to the Lessor specifying the new Equipment location, provided the Lessee remains in possession and control of the Equipment. Only the Lessor or its designee shall provide for the moving of any leased Equipment covered by this Lease.

10. **ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES AND LESSOR'S WARRANTIES.** To the extent permitted and so long as no event of default has occurred and is continuing, Lessor hereby assigns to Lessee, for the total term of any Lease, all Equipment warranties provided by any manufacturer/supplier in the applicable purchase documents. Lessee shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in Lessee's name and at its expense. In the event Lessee is precluded from enforcing any such warranty in its name, Lessor, as owner of the Equipment, shall, upon Lessee's request, take reasonable steps to enforce such warranties at costs to be borne by Lessor. All Equipment covered by this Lease shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by the Lessee, and shall be merchantable, fit for the purpose for which leased, of best quality and workmanship and free from all defects. All Equipment delivered pursuant to this Lease shall conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws and regulations.

11. **ALTERATIONS AND ADDITIONS TO EQUIPMENT.** Lessee shall make no alterations or additions to Equipment, except those that a) will not void any warranty made by the manufacturer/supplier, result in the creation of any security interest, lien or encumbrance on the Equipment, or impair the value of use of the Equipment either at the time made or at the end of the term of the applicable Lease, and are readily removable without damage to the Equipment; or b) are required by any applicable law, regulation or order.

12. **INSURANCE OF EQUIPMENT.** Commencing upon acceptance and continuing throughout the initial term, Lessee agrees to keep the Equipment insured at Lessee's expense against all risks or loss from any cause, including without limitation, theft and damage. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may self-insure against such risk provided that Lessor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. Lessee will provide to Lessor proof of such coverage.

13. **RISK OF LOSS.** Commencing upon acceptance and continuing throughout the initial term, Lessee shall bear the entire risk of loss with respect to any Equipment damage, destruction, loss, or theft whether

partial or complete. If any item of Equipment is damaged, Lessee shall promptly notify Lessor and, at Lessee's expense, within sixty (60) days of such damage, cause to be made such repairs as are necessary to return such item to its previous condition. In the event any Casualty Loss shall occur, the Lessee shall pay Lessor the Stipulated Loss Value of the Equipment suffering the Casualty Loss upon receipt of such payment from the Lessees insurance company. The Lease payments shall terminate upon a Casualty Loss. After receipt of such Stipulated Loss Value by Lessor or its assigns, the Equipment for which Stipulated Loss Value was received shall be conveyed to Lessee AS IS, WHERE IS and free and clear of all liens and encumbrances created by or arising through Lessor.

14. **TAXES.** Lessor shall report and pay all Taxes now or hereafter imposed or assessed by any governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, upon the rent or other charges payable hereunder, or otherwise upon or in connection with any Lease, whether assessed on the Lessor or the Lessee, other than any such Taxes required by law to be paid by the Lessee. The Lessee shall promptly reimburse the Lessor for all such Taxes paid by the Lessor and invoiced to the Lessee, together with any penalties or interest in connection therewith attributable to the Lessee's acts or failure to act.

15. **INDEMNIFICATION.**

A. The Lessor shall hold the Lessee and its employees harmless and shall indemnify the Lessee and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney costs, for personal injury or damage of property arising from the acts or omissions of the Lessor, its agents, officers, employees or subcontractors.

B. The Lessee shall have the right to approve any counsel retained by the Lessor to defend any demand, suit, or cause of action in which Lessee is named, such approval not to be unreasonably withheld. The Lessor agrees that the Lessee 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 the Lessee and that such suit will not be settled without the Lessee's consent, such consent not to be unreasonably withheld. If, in the Lessee's judgment, a conflict exists between the interests of the Lessee and the Lessor in such demand, suit, or cause of action, the Lessee may retain its own counsel, whose fees shall be paid by the Lessor.

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

16. **DEFAULT.** The occurrence of any of the following shall constitute default by Lessee under this Lease: a) nonpayment by Lessee of rent or any other sum payable by its due date; b) failure by Lessee to perform or observe any other term, covenant or condition of this Lease which is not cured within ten (10) days after certified mailing of notice thereof by Lessor to Lessee; c) insolvency by Lessee; or d) a termination of any applicable software license agreement.

The occurrence of any of the following shall constitute default by Lessor under this Lease: a) Lessor breaches its covenant of quiet enjoyment and fails or is unable to cure such breach within ten (10) days after certified mailing of notice thereof from Lessee; b) Lessor fails to pay manufacturer/supplier within thirty (30) days after Lessor's receipt of a properly executed acceptance certificate and all other documentation necessary to establish Lessee's acceptance of such Equipment under a Lease; c) Lessor makes an assignment for the benefit of creditors.

17. **REMEDIES.** If a default by the Lessee occurs, the Lessor may do one or more of the following; cancel or terminate this Lease; require the Lessee to immediately pay the Lessor all rent payments due until the time of Default; require the Lessee to deliver, at its expense, the Equipment to the Lessor in accordance with Section 8 of this Lease; the Lessor or its agent may peacefully repossess the Equipment without

court order; or the Lessor may exercise any other right or remedy available at law or in equity. If the Lessor defaults, the Lessee has the right to cancel or terminate this Lease effective immediately at no cost to the Lessee. In the event of the Lessor's default, the Lessor shall be responsible for all costs associated with reclaiming and return of Equipment.

18. **ASSIGNMENT.** The Lessor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Lease, in whole or in part, without prior notice and consent of the Lessee which shall not be unreasonably withheld. Each such Assignee will be entitled to all of the Lessor's rights, and unless otherwise agreed to by the Lessor and Assignee, the Assignee shall be obligated to perform all obligations of the Lessor under this Lease. The Lessee and the Lessor further acknowledge that any assignment or transfer by the Lessor shall not materially change the Lessor's or the Lessee's obligations under the assigned Lease. Without the prior written consent of the Lessor, the Lessee will not assign, transfer, pledge, hypothecate, or otherwise dispose of its rights or obligations under this Lease, sublet the Equipment, or permit the Equipment to be used for any purpose not permitted by this Lease.

19. **GOVERNING LAW.** In providing the Equipment outlined in the Lease, the Lessor shall comply with all applicable Federal, State and local laws, rule and regulations. This Lease shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Lessor and Lessee agree that the exclusive forum for any litigation between them arising out of or related to this Lease shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. **RECORDS AND INSPECTIONS.**

    A. To the extent their books and records relate to their performance under this Lease or any sub-lease entered into pursuant to it or cost or pricing date (if any) set forth in this Lease or that was required to be submitted to Lessee as part of the procurement process, the Lessor agrees to maintain such books and records during the term of this Lease and for a period of six (6) years from the date of final payment under this Lease; allow the Lessee or its designee to audit such books and records at reasonable times and upon reasonable notice; and to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

    B. To the extent their books and records relate to their performance of this Lease or any sub-lease entered into pursuant to it or cost or pricing data (if any) set forth in this Lease or that was required to be submitted to the Lessee as part of the procurement process, Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; to allow County or its designee to audit such books and records at reasonable times and upon reasonable notice; and to keep such books and records in accordance with GAAP.

21. **AMENDMENT.** This Lease shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

22. **INTEGRATION.** This Lease 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 Lease. No prior agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.

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

24. NOTICE OF PENALTIES. The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

25. THIRD PARTY BENEFICIARY. This Lease was not intended to and does not create any rights in any persons not a party hereto.

26. NEW MEXICO TORT CLAIMS ACT. No provision of this Lease modifies or waives any sovereign immunity or limitation of liability enjoyed by Lessee or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

27. INSURANCE.

A. General Conditions: The Lessor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance Including Automobile: The Lessor shall procure and maintain during the life of this Lease a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000 combined single limits of liability for bodily injury, including death and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the Lessee by the Lessor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other Equipment both on and off work; and contractual liability coverage under which this Lease is an insured contract. Lessee shall be a named additional insured on the policy.

C. Worker's Compensation Insurance: The Lessor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits: If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-27, as amended), the Lessor shall increase the maximum limits of any insurance required herein.

28. INDEPENDENT CONTRACTOR. The Lessor, its agents and employees are independent contractors leasing the Equipment to the Lessee, and are not employees or agents of Lessee. Notwithstanding that the Lessor enters into and performs under this Lease, the Lessor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use Lessee's vehicles, or participate in any other benefits afforded to employees of Lessee. Except as may be expressly authorized elsewhere in this Lease, Lessor has no authority to bind, represent, or otherwise act on behalf of Lessee and agrees not to purport to do so.

29. PERMITS AND LICENSES. The Lessor shall procure all permits and licenses, pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work.

30. EQUAL OPPORTUNITY COMPLIANCE.

A. The Lessor 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, the Lessor specifically agrees not to discriminate against any person with regard to employment with the Lessor or participation in any program or activity offered pursuant to this Lease 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. The Lessor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Lease.

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS EQUIPMENT LEASE AGREEMENT TERMS AND CONDITIONS, SIMULTANEOUS WITH EXECUTION OF THE ACCOMPANYING LEASE DOCUMENTS, ON THE DATES SPECIFIED BELOW.

SANTA FE COUNTY:

Roman Abeyta
Santa Fe County Manager

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

7-15-09
Date

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez
Finance Director

7/23/09
Date

XEROX:

_____

FEDERAL IDENTIFICATION NO.

_____

sex physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Lessor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Lease.

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS EQUIPMENT LEASE AGREEMENT TERMS AND CONDITIONS, SIMULTANEOUS WITH EXECUTION OF THE ACCOMPANYING LEASE DOCUMENTS, ON THE DATES SPECIFIED BELOW.

SANTA FE COUNTY:

_____
Roman Abeyta
Santa Fe County Manager

APPROVED AS TO FORM:

_____ _____
Stephen C. Ross Date
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL:

_____ _____
Teresa C. Martinez Date
Finance Director

XEROX:

_____

FEDERAL IDENTIFICATION NO.

160-468-202