

01/14/14
9-13-14

SERVICES AGREEMENT

THIS SERVICES AGREEMENT ("Agreement"), effective as of the date the last Party signs this Agreement (the "Effective Date"), is made and entered into by and between PFA, Inc., a California corporation having its principal offices at 9980 Glenoaks Boulevard, Suite F, Sun Valley, California 91352 ("PFA"), and the County of Woodbury, Iowa, having its principal offices at 620 Douglas, Room 106, Sioux City, IA 51101 ("Client"). PFA and Client are each individually referred to herein as a "Party" and jointly as the "Parties".

1. RECITALS:

- 1.1 PFA provides document imaging services that produce a seamless integration of new imaged Documents and/or indices with a Client's existing records.
- 1.2 Client needs its recorded Documents scanned into a digitized image format for importation and storage in Client's electronic document management system.
- 1.3 Client desires to obtain and PFA desires to provide the Services, as defined herein, to Client in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereto do hereby mutually promise, covenant and agree as follows:

2. DEFINED TERMS

Capitalized terms in this Agreement shall have the meanings set forth opposite each, respectively, as follows:

- 2.1 "Completed Project" means the Delivery Media which contains the resulting Project after the Services have been performed.
- 2.2 "Conversion Procedure" means that portion of the Services provided by PFA in which all materials in the Project are scanned and converted to digitized images and/or indexed, as further set forth in the attached Services Description Schedule, attached hereto and incorporated herein by this reference.
- 2.3 "Custom Cropping" means a manual procedure whereby the Image Cropping procedure is accomplished manually by hand as opposed to electronically by software and incurs an additional charge as reflected on the Fee Schedule.
- 2.4 "Delivery Media" or "Delivery Medium" means the method or object by which PFA delivers the Completed Project to Client.
- 2.5 "Document(s)" means paper, film, electronic or other media containing instruments recorded in the offices of Client, including, but not limited to Deeds of Trust, Maps, liens, agreements and leases.
- 2.6 "Effective Date" means the date upon which the last Party executes this Agreement and is the date this Agreement commences.

2.7 "File Name Index" means a partial index by Document number or the book and page where the Document was recorded, as specified by Client on the Services Description Schedule attached hereto and made a part hereof, which partial index of digitized images of Documents links to a particular digital image of the Document through a previously created Client created Grantee/Grantor Index.

2.8 "Grantee/Grantor Index" means a full index by Document number, book and page, names of the parties to the Document, type of Document and such other fields as specified by Client on the Services Description Schedule attached hereto and incorporated herein, which full index of digitized images of Documents links to a particular digital image of the Document through a previously created Client created Grantee/Grantor Index.

2.9 "Image" means a digital picture of each page of a Document or a digital file of a Document.

2.10 "Image Cropping Procedure" means an automatic process using software or a manual process defined above as Custom Cropping, by which PFA removes or "crops" the borders created in the Conversion Procedure.

2.11 "Keying Rules" mean the rules established by mutual agreement of Client and PFA which govern the way in which PFA captures the content of the Documents and the way it is represented in the Completed Project, as specified by Client in the Services Description Schedule attached hereto and incorporated herein.

2.12 "Page Stapling Procedure" means the process of identifying each page of a Document and electronically associating them together.

2.13 "Project" means the Documents, Images, film, records, and any other materials provided by Client to PFA for which the Services shall be performed.

2.14 "Recording Procedure" means the transfer of digitized Images, created through the Conversion Procedure and Page Stapling Procedure, onto the Delivery Medium as further set forth in the attached Services Description Schedule.

2.15 "Services" means the Conversion Procedure, Page Stapling Procedure and Recording Procedure provided to Client under the terms of this Agreement, as further set forth in the attached Services Description Schedule.

2.16 "Services Description Schedule" means that certain schedule which further describes and contains the specifications applicable to Client's Project and which is incorporated and made a part hereof as though set forth in full.

2.17 "Term" means the period during which the provisions, terms and conditions of this Agreement are in full force and effect.

3. PROJECT

3.1 Delivery of the Project. Client shall provide and deliver to PFA the Project, in a mutually agreeable time and manner, for which PFA will provide the Services. Client shall bear any costs associated with the delivery of the Project to PFA, unless otherwise provided on the Services Description Schedule, and shall provide and deliver to PFA the best quality microfilm, or other media containing Documents

possible for the Project. Client understands PFA shall perform the Services for all Documents and images contained within the Project and Client agrees to only provide such Documents and images in the Project.

3.2 Restrictions on Use. PFA shall only use any and all materials included in the Project provided by Client to PFA for the sole purpose of providing the Services. PFA understands it may not sell, transmit, distribute or otherwise transfer the Project to any third party for any purpose, including use in any other product or service, without Client's prior written consent.

4. SERVICES.

Subject to the terms and conditions of this Agreement, PFA shall provide the Services to Client. PFA shall have the sole discretion to determine the method, manner and location of the performance of its Services under this Agreement.

4.1 Conversion Procedure.

4.1.1 Delivery. PFA shall perform the Conversion Procedure on those recorded Documents within the Project provided by Client and identified in the "Services Description Schedule" attached hereto and made a part hereof.

4.1.2 Scanning. PFA will scan and convert the Project as provided in the Services Description Schedule attached hereto.

4.1.3 Indexing. PFA will, if and as directed on the Services Description Schedule attached hereto, create for Client a File Name Index or a Grantee/Grantor Index.

4.1.4 Acceptance. Client shall have twenty business (20) days after the receipt of each delivery of a portion of the completed Conversion Procedure of the Project scanned and converted images to review same. Client shall provide to PFA, in writing, any questions, issues or objections regarding the quality of the Conversion Procedure provided by PFA within the twenty business (20) day acceptance period. If no writing is received from Client prior to the end of such twenty business (20) day acceptance period, Client will be deemed to have accepted the Conversion Procedure portion of the Services provided by PFA.

4.1.5 Quality Control. PFA and Client acknowledge that PFA will create a quality control procedure for reviewing the Documents and the media upon which they are delivered as more particularly set forth on the Services Description Schedule attached hereto and made a part hereof.

4.2 Page Stapling, Recording, and Image Cropping Procedures.

4.2.1 Page Stapling Procedure. PFA will perform the Page Stapling Procedure on those portions of the Project identified on the Services Description Schedule.

4.2.2 Recording Procedure. PFA will perform the Recording Procedure by transferring the electronic images created onto a Delivery Medium.

4.2.3 Image Cropping Procedure. PFA will perform the Image Cropping Procedure on those portions of the Project identified on the Services Description Schedule.

4.3 Delivery. PFA shall deliver the Completed Project to Client as soon as it is available. Client shall pay all costs associated with delivery of such Completed Project unless otherwise provided on the Services Description Schedule.

4.4 Acceptance. Client will have twenty (20) days after the receipt of each Delivery Medium to review the Completed Project and examine the materials delivered by PFA for clarity, accuracy, content, quality and/or adequacy of the Services by PFA. Unless Client objects in writing to the quality of the Completed Project within the twenty (20) day acceptance period, Client will be deemed to have accepted the Completed Project and the Services, approved the Completed Project as meeting the agreed-upon quality standards and PFA will be deemed to have fully performed its duties and obligations under this Agreement. The Parties may extend this period of acceptance on an individual Project basis by mutual written agreement.

4.5 Standard of Care of Handling Materials. PFA shall use reasonable care in handling Client's Project and any other materials provided by Client.

4.6 Image Count. PFA shall at all times keep an accurate record of each Document, film, electronic image, or other electronic media of the Project as provided to PFA by Client. If microfilm is the medium, PFA shall count each roll received and each frame scanned and digitized and regardless of the medium, PFA will at all times keep an accurate record of each image created and delivered by Client.

4.7 Changes in Services. The Parties hereto may change the Services to be provided hereunder or the amount of compensation set forth herein by written amendment to the Services Description Schedule or Fee Schedule attached hereto and made a part hereof, so long as signed by both Parties.

5. COMPENSATION.

5.1 Fees. Client shall submit payment to PFA for the Services within thirty (30) days of receipt of an invoice, in the amounts as set forth on the Fee Schedule, attached hereto and incorporated herein by this reference. Client understands and agrees it shall be responsible for all expenses incurred by PFA in providing the Services, including but not limited to any shipment and delivery costs and any costs associated with accessing the completed Project on the Delivery Medium. Client shall be responsible for all payments, services, charges, fees, and expenses of any third parties incurred in providing the Services to Client. PFA shall submit a written invoice for payment with each delivery of a Completed Project to Client. Said invoice will show an itemized statement of the Services performed, expenses incurred, and the amount due PFA.

5.2 Late Payment. Late payments shall accrue interest daily at the rate of one and one-half percent (1.5%) per month on any unpaid and past due sum, amount or payment. Client shall be deemed to have approved of the accuracy of said statement unless a written objection is received by PFA within ten (10) days.

5.3 Taxes. Each Party shall be responsible for any and all sales, use, excise, personal property and similar taxes or charges incurred in connection with this Agreement.

6. TERM AND TERMINATION.

6.1 Term.

The initial Term shall be as set forth on the Services Description Schedule and commences on the Effective Date. All terms and conditions of this Agreement shall remain in full force and effect throughout any extensions of the Term agreed to between the Parties.

6.2 Termination.

Either Party may terminate this Agreement:

6.2.1 Upon failure or neglect of Client to pay any undisputed amounts payable pursuant to this Agreement when due, if default continues for thirty (30) days after written notice to Client;

6.2.2 Upon the failure of either Party to perform any of its obligations under this Agreement if continuing for ten (10) days after written notice to such breaching Party;

6.2.3 Upon termination of the business of either Party;

6.2.4 Upon a filing by or against either Party of a proceeding under any bankruptcy or similar law unless such proceeding is dismissed within thirty (30) days after filing;

6.2.5 Upon the insolvency of either Party;

6.2.6 Upon the making by either Party of an assignment of a material portion of its assets for the benefit of creditors.

If either Party shall breach the terms of this Agreement, the other Party shall reasonably and in good faith attempt to reduce and mitigate damages and injuries. PFA shall be paid for all work completed prior to termination of this Agreement and PFA will return to Client any source material of the Project remaining in its possession.

7. RISK OF LOSS.

PFA shall return any portions of the Project in its possession provided by Client, including but not limited to any original and/or duplicate film, images or Documents, upon delivery of the Completed Project.

8. WARRANTIES.

8.1 Client Warranties.

8.1.1 Client represents and warrants to PFA that it has full power and authority to enter into this Agreement and that the execution, delivery and performance of this Agreement will not conflict with or result in any breach of any terms, conditions or provisions of or constitute a default under the articles of operation of Client or any other instrument or agreement to which Client is a party. Client agrees to

indemnify and hold PFA harmless from and against any fines, penalties, claims or damages directly resulting from any violation, breach or default of the warranties contained in this Section 8.1.1.

8.1.2 Client further warrants and represents that it has the legal right and authority to use, disseminate or publish all materials contained within the Project, including any films, Documents, images or records, and that any such use does not violate the proprietary or other legal rights of any third party.

8.1.3 Client represents and warrants that all materials provided to PFA as part of the Project, including but not limited to any films, Documents, images or other records are public records and Client does not violate any confidentiality agreement, privacy laws, rules and regulations or orders by providing such Project to PFA.

8.1.4 Client represents and warrants that it will comply with all applicable privacy and information security laws as well as best practices together with all other laws, rules and regulations relevant to Client's business model, including but not limited to, the Gramm Leach Bliley Act, the Fair and Accurate Credit Transactions Act, the CAN SPAM Act, and any state and/or federal security breach notification statute.

8.2 PFA Warranties.

8.2.1 PFA represents and warrants to Client that it has full power and authority to enter into this Agreement and that the execution, delivery and performance of this Agreement will not conflict with or result in any breach of any terms, conditions or provisions of or constitute a default under the articles of operation of PFA or any other instrument or agreement to which PFA is a party. PFA agrees to indemnify and hold Client harmless from and against any fines, penalties, claims or damages directly resulting from any violation, breach or default of the warranties contained in this Section 8.2.1.

8.2.2 PFA represents and warrants that it will comply with all applicable privacy and information security laws as well as best practices together with all other laws, rules and regulations relevant to PFA's business model, including but not limited to, the Gramm Leach Bliley Act, the Fair and Accurate Credit Transactions Act, the CAN SPAM Act, and any state and/or federal security breach notification statute.

9. **DISCLAIMER**

9.1 No Verification.

PFA shall not be responsible or liable in any way or manner for any use, dissemination, publication, inaccuracy, incorrectness or error in the materials contained within the Project provided by Client.

9.2 No Warranties.

Client acknowledges and understands PFA makes no warranties regarding the quality or use of the Completed Project and the quality of the Completed Project may depend on the quality of the materials in the Project provided by Client. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, PFA AND ITS SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES AND THE COMPLETED PROJECT, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF NON-

INFRINGEMENT, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

10. INTELLECTUAL PROPERTY

10.1 PFA's Intellectual Property. Client acknowledges that the Services provided to Client under the terms of this Agreement, including all rights, title and interest thereto, are and shall remain the intellectual property of the PFA. PFA expressly reserves any and all proprietary rights, including but not limited to copyright, trademark, trade secret and patent rights in the Services, as well as any renewals thereof, heretofore or hereafter secured therein.

10.2 Client's Intellectual Property. PFA understands and agrees that Client is and shall remain the exclusive owner of all rights, title, and interest in the Project, to the extent any such proprietary rights exist, including any proprietary rights in the selection and arrangement of the materials contained in the Project.

11. CONFIDENTIALITY

Each Party agrees that the terms and conditions of this Agreement and all knowledge and information regarding the other Party's technology, products, services, policies, business model, proprietary rights, business practices, plans and methods not in the public domain, which may be known or disclosed by either Party to the other as a result of this Agreement, are confidential and proprietary and will be held in confidence and not disclosed to any third party other than to the Parties' designated employees for purposes specifically related to the fulfillment of the obligations of this Agreement. Each Party agrees that it will use and treat such confidential and proprietary information in the same manner as it deals with its own proprietary information and trade secrets. Confidential information shall not include any information that (i) is or becomes generally available to the public through no fault of the receiving Party; (ii) can be demonstrated by credible evidence as having been rightfully known to the receiving Party; or (iii) is subsequently learned from a third party not under a confidentiality obligation to the disclosing Party.

Notwithstanding the previous paragraph, each Party understands that this Agreement is subject to the Iowa Open Records Act. Client may release such information as is necessary to comply with the Iowa Open Records Act.

12. LIMITATION OF DAMAGES AND LIABILITY

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PFA BE LIABLE TO CLIENT FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF PFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PFA'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT OF THE CONTRACT FEES PAID BY CLIENT FOR THE SERVICES.

13. INDEMNIFICATION.

Each Party shall defend, indemnify and hold the other Party, its owners, shareholders, directors, officers, agents, representatives and employees harmless from and against any and all claims, demands, damages, costs, expenses, losses, judgments or liability arising out of this Agreement, or the performance of the Party's obligations under this Agreement or attempted performance of the provisions hereof. Each Party agrees to give the other Party reasonably prompt written notice of any such claims, demands, damages, costs, expenses, losses, judgments or liability. Each Party shall reasonably cooperate fully with the other Party and its legal representatives in the investigation and defense of any and all such claims. Client shall specifically indemnify and hold PFA harmless from and against any and all claims, demands, damages, costs, expenses, losses, judgments or liability predicated upon the use, maintenance, publication, accuracy, correctness, content, and omissions of the information furnished to PFA hereunder, including any representations and warranties by Client, negligent or reckless delivery or furnishing of information or defective or incomplete documentation contained within the Project, whether or not it be willful, intentional or actively or passively negligent on the part of Client or its agents, representatives or employees.

14. MISCELLANEOUS.

14.1 Independence. Nothing contained in this Agreement, nor in the relationship created hereby, should be interpreted to evidence a joint venture, partnership, or principal/agent relationship as between the Parties. Neither Party shall have the right or authority to act for or assume, create, or incur any obligation or liability of any kind, whether expressed or implied, against, in the name of, or on behalf of the other Party. Each Party shall be fully independent in its business operations.

14.2 Time is of the Essence. Time is of the essence in this Agreement in the performance of all obligations required herein.

14.3 Attorneys Fees. If any action or proceeding at law or in equity is necessary to enforce or interpret the terms of this Agreement or the performance by any Party to this Agreement, each Party shall pay its own fees and expenses.

14.4 Notice Provision. Notices required under this Agreement shall be sent to each Party at the addresses set forth in this Agreement by certified mail, return receipt requested or by other accountable means such as Federal Express or UPS or by confirmed facsimile. A notice shall be deemed given three (3) days after certified mailing, one (1) day after delivery by a nationally recognized over-night carrier service, and the day of receipt of a facsimile transmission.

14.5 Governing Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with the laws of the State of Iowa.

14.6 Assignment or Transfer of Agreement. Neither Party shall assign or transfer this Agreement or any interest or obligation herein without the prior consent of the other Party, which shall not be unreasonably withheld. Nothing in this section shall be interpreted to preclude PFA from subcontracting part of the Services, in PFA's sole discretion, to a third party.

14.7 Arbitration. Any controversy or claim arising out of this Agreement, or the breach thereof, shall be

settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction.

14.8. Force Majeure. If either Party is prevented from performing its obligations under this Agreement by any occurrence that is beyond the control of the Parties, then said Party shall be excused from any further performance of its obligations and undertakings under this Agreement. Such acts shall include, but not be limited to, acts of God, strikes, lock-outs, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes, floods or other disasters.

14.9 Entire Agreement. This Agreement contains the entire agreement between the Parties concerning the rights granted and the obligations assumed in this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

14.10 Amendments. No amendment of this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of both Parties.

14.11 Partial Invalidity. If any term of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the Agreement terms shall remain in full force and effect and shall not be affected.

14.12 Non-Waiver. PFA may accept any payment from any person tendering the same without thereby accepting such person as a party or successor in interest to this Agreement, or waiving any breach of covenant or provision against assignment or transfer by Client. Waiver by PFA of any breach of any provision of this Agreement by Client shall not operate or be construed as a waiver of any subsequent or other breach by Client.

14.13 Representation of Counsel; Mutual Negotiation. All Parties have had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the Parties, at arms length with the advice and participation of counsel and will be interpreted in accordance with its terms without favor to any Party.

14.14 Authority and Approval. Each Party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each had been properly authorized and empowered to enter into this Agreement. Each Party further acknowledges that it has read this Agreement and agrees to be bound by it.

14.15 Construction of Captions. The captions of the paragraphs of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

Vendor Name and Customer have executed this Agreement to be effective as of the date it is signed by Customer.

Client: **WOODBURY COUNTY, IOWA**

By: George W. Boykin

Print Name: George W. Boykin

Title: Chairman

Date: January 14, 2014

Vendor: **PFA, INC.**

By: James Harper

Print Name: James Harper

Title: President

Date: December 20, 2013

SERVICES DESCRIPTION SCHEDULE

A. Conversion Procedure.

PFA shall perform the Conversion Procedure on the recorded Documents from 6/01/1994 to 3/13/2002 (309 16mm film containing approximately 618,000 Images) for the period contained within the Project.

PFA shall scan and convert the Images at 300 dots per inch.

B. Indexing – File Name Index – Auto-Indexing.

Client requests that the book and page for each Image be automatically generated by the PFA Conversion Procedure and sight verified. This process of sight verification is included in the Conversion Procedure. If auto indexing is not possible, in PFA's discretionary judgment, PFA will manually perform the File Name Indexing process, the cost of which is set forth on the Fee Schedule attached hereto and made a part hereof.

C. Page Stapling Procedure.

PFA shall perform the Page Stapling Procedure on the recorded Documents from 6/01/1994 to 3/13/2002 all of which are contained within the Project for storage on Client's electronic document management system.

D. Recording Procedure.

PFA shall perform the Recording Procedure on the recorded Documents from 6/01/1994 to 3/13/2002 contained within the Project and shall store the images onto the Delivery Media of MAM/A Archival Gold DVDs in a manner consistent with Client's recording system provided by Real Vision Imaging (RVI). File Name Indexing and import specifications are to be provided by Client and/or RVI, Client's recording system vendor.

E. Keying Rules.

If any Keying Rules are required, they will be established between the Parties after the commencement of the Project.

F. Quality Control.

Client and PFA understand and agree that if the Documents are provided on microfilm, that microfilm is a gray-scale medium capable of preserving information which may not be transferred to a binary image. The frequency and degree to which this will occur cannot be reasonably determined or guaranteed prior to production. PFA's microfilm scanning systems incorporate sophisticated image enhancement technology. Prior to performing the Conversion Procedure, PFA will preview each roll of film on a light table to determine the optimal enhancement settings for that roll based on its overall content. Following the Conversion Procedure, PFA will view every fifth (5th) to every tenth (10th) Image on a high resolution monitor to assess digital Image quality to

determine that the scanning system was functioning within the prescribed set-up parameters. The internal viewing will be determined by PFA in the pre-scanning quality assessment at the time of the pre-scanning review.

Any manual re-scanning or manual re-processing that is required because background density, image quality and/or frame formatting on the film exceeds the automatic enhancement or image cropping capability of the scanner will be deemed to be a chargeable event to be paid by Client to PFA. The criterion and standard for acceptable image quality will be within PFA's sole discretion. PFA and Client agree to attempt in good faith to discuss and refine quality issues as they pertain to the microfilm and electronic images.

G. Term.

The Term of this Agreement shall be for one (1) year from the Effective Date of this Agreement. Either Party may cancel this Agreement upon written notice at least thirty (30) days prior to the end of the initial Term or any extensions or renewals thereof.

H. Completion of Project.

It is anticipated that the Completed Project will be delivered to Client on the Delivery Media within six (6) months of PFA's receipt of the Project from Client.

FEE SCHEDULE

Client shall submit payment in the following amounts to PFA for the following Services:

<u>FUNCTION & PROCEDURE</u>	<u>PRICE</u>
Conversion Procedure – Price includes automatic Page Stapling Procedures and automatic Image Cropping	\$0.0311 per Image
Page Stapling Procedure – Manually identify the first and Supporting pages of each Document – when and if needed	\$0.0150 per Image
Custom Cropping – When and if needed	\$0.0100 per Image