

**ADDENDUM TO MAINTENANCE AGREEMENT WITH
ROCKY MOUNTAIN BUSINESS SYSTEMS, INC.
REGARDING COPIER HPLJ9050DN**

THIS ADDENDUM TO MAINTENANCE AGREEMENT is made and entered into this 8th day of March, 2016, by and between the County of Santa Fe, hereinafter referred to as the "County", and Rocky Mountain Business Systems, Inc., whose principal address is 11 Plaza La Prensa Unit 7, Santa Fe, New Mexico, 87507, hereinafter referred to as the "Contractor".

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

WHEREAS, Contractor has certified technicians who are approved to conduct maintenance on the subject manufacturer's equipment; and

WHEREAS, Contractor has proposed a Maintenance Agreement which is acceptable in part but requires the removal of certain terms and the addition of other terms; and

WHEREAS, both parties desire to enter into the Maintenance Agreement with modified and additional items.

NOW THEREFORE, it is mutually agreed between the parties that the following provisions shall be incorporated into the Maintenance Agreement as if fully set forth therein. This Addendum and the Rocky Mountain Business Systems Maintenance Agreement are collectively referred to herein as the "Agreement."

1. TERM

The term of this Agreement shall not automatically renew and there will be no prepayment for services. The effective date of this Agreement shall be the date of last signature by the parties. For purposes of payment and services provided by the Contractor, the Term of this Agreement shall commence April 1, 2016 and end March 30, 2018, unless earlier terminated pursuant to Section 3 (Termination) or Section 10 (Appropriations and Authorization), or if maintenance service is discontinued by the Contractor in accordance with the Rocky Mountain Business Systems Maintenance Agreement. After the initial two year term, the County has the option to extend the Term upon 30 days written notice to the Contractor for a term not to exceed four years in total. Contractor will be compensated according to the procedures in Section 2 below.

2. COMPENSATION, INVOICING AND SET-OFF

A. The monthly fee for maintenance of one Hewitt Packer HPLJ9050DN (SN JPSCF3TONL) is \$50.00, exclusive of NM gross receipts tax, and an excess copy fee of \$.012, per month, for each copy over 5,000. Contractor shall submit a written request for payment to County at the conclusion of each month of service. Within 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 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 30 days of the written certification accepting the items or services, County shall pay late payment charges of one and one-half (1.5%) per month, until the amount due is paid in full.

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

A. The County may terminate the Agreement based upon any material breach of the Agreement by the Contractor. The County shall give Contractor written notice of termination specifying the grounds for the termination. The termination shall be effective seven days from mailing of a written notice to the Contractor notifying Contractor of the termination, during which time Contractor shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within seven days, Contractor shall have a reasonable time to cure the breach, provided that, within seven days of its receipt of the written notice of termination, Contractor (i) began to cure the breach and (ii) advised the County in writing that its intent 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 Agreement 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 this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall be not less than seven days from the date of mailing a certified notice of termination to Contractor. County shall pay Contractor for acceptable work, determined in accordance with the specification and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

4. INDEPENDENT CONTRACTOR

The Contractor, its agents and employees are independent contractors performing services for the County, and are not employees or agents of the County. Notwithstanding that the Contractor enters into and performs under this Agreement, the Contractor and its agents and employees shall

not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

5. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships with County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state and local law to perform such work.

6. ASSIGNMENT

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County. Any attempted assignment or transfer without County's advance written approval shall be null and void and without any legal effect.

7. SUBCONTRACTING

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the prior written approval of County. Any attempted subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

8. INDEMNITY

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 of non-performance 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.

9. RECORDS AND INSPECTIONS

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

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

10. 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 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. The 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.

11. INSURANCE

A. General Conditions: The Contractor 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 Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death and property damage for anyone occurrence. Said

policies of insurance shall include coverage for all operations performed for the County of Santa Fe by the Contractor; 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 Agreement is an insured contract. County of Santa Fe shall be a named additional insured on the policy.

C. Worker's Compensation Insurance: The Contractor 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 Contractor shall increase the maximum limits of any insurance required herein.

12. PERMITS AND LICENSES

The Contractor 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.

13. 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.

14. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

15. 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 this Agreement unless such changes are set forth in a duly executed written amendment of this Agreement.

16. INTEGRATION

This Addendum together with the Rocky Mountain Business Systems Maintenance Agreement, incorporate 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 Contractor's Maintenance Agreement and this Addendum.

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

18. SEVERABILITY

If any term or condition of this Agreement 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.

19. APPLICABLE LAW

In providing the services outlined in this Agreement, the Contractor shall comply with all applicable federal, state 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 the First Judicial District Court, Santa Fe County, Santa Fe, New Mexico.

20. NOTICE OF PENALTIES

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

21. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

22. 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 Maintenance Agreement and

Addendum shall be accomplished by placing signatures on the Addendum rather than the Maintenance Agreement.

23. LIMITATION OF LIABILITY

County's liability to Contractor for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in the Section 2 above. In no event shall County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

24. 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.

25. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor hereby represents and warrants that:

A. It is a corporation duly organized and in good standing under the laws of the state of New Mexico.

B. This Agreement has been duly authorized by Contractor, the person executing this Agreement has authority to do so, and, once executed by Contractor, this Agreement shall constitute a binding obligation of Contractor.

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

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

3-8-16
Date

Approved as to form:


Gregory S. Shaffer
Santa Fe County Attorney


2/25/16
Date

Finance Department:


Carole H. Jaramillo
Finance Director

3/2/16
Date

CONTRACTOR - ROCKY MOUNTAIN BUSINESS SYSTEMS, INC.


Signature

03/02/2016
Date

Michael Gonzales -Manager
Print Name and Title

Maintenance Agreement

NO. 2016-0271-CL/KQ



ROCKY MOUNTAIN BUSINESS SYSTEMS

The Maintenance Agreement Includes all labor necessary for cleaning, lubrication, technical adjustments and replacement of parts except as follows:

- I. Repairs resulting from causes other than normal use, abuse or misuse by the operator(s). Including without limitation, damage to copier drums and use of supplies or spare parts that do not meet Manufacturers published specifications and which cause abnormally frequent service calls or service problems, accidents, transportation, failure of electrical power, air conditioning or humidity control.
- II. Repairs made necessary by service performed by personnel other than Rocky Mountain Business Systems.
- III. Additional service calls or work which the customer requests to be performed outside the regular business hours.
- IV. Shop repair, reconditioning, rebuilding, overhaul or modification to the equipment except those specified by the authorized technician to assure greater performance of the equipment.

All service under this agreement shall be rendered on the user's premises during the normal working hours (9:00 a.m. to 5:00 p.m., Monday thru Friday.)

In the event that it is necessary to remove the equipment to Rocky Mountain Business Systems authorized facility for repair, Rocky Mountain Business Systems will provide transportation to and from the service point.

"After Hour" or overtime services as requested will be provided on an "If Available" basis.

Service performed on Saturday, between the hours of 9:00 a.m. and 5:00 p.m. will be billed at one and one-half (1 1/2) times the hourly rate.

Service performed after hours on weekdays will be billed at one and one-half (1 1/2) times the hourly rate until 10:00 p.m. and twice (2x) the hourly rate from 10:00 p.m. to 8:00 a.m..

Service performed on Saturday from 5:00 p.m. to midnight, Sunday and Rocky Mountain Business Systems holidays will be charged at twice (2x) the hourly rate.

Under the Comprehensive and Standard Maintenance Agreements, all intervening emergency calls between the regular periodic maintenance call that are found to be necessary by Rocky Mountain Business Systems service technician to keep the equipment in good mechanical operating condition, are included.

Rocky Mountain Business Systems reserves the right to inspect all equipment to be covered under Maintenance Agreement to determine that it is in good mechanical condition on the effective date of the agreement. Should the equipment require repair or overhaul prior to acceptance, such repairs, if requested will be made at the hourly rate plus parts.

Rocky Mountain Business Systems reserves the right to discontinue the Maintenance Agreement Service on any machine for the following reasons:

- A. Machine is not being used in accordance with the intended purpose.
- B. Abuse of the equipment by the operators.
- C. Unavailability of outdated parts.
- D. Lack of proper operator maintenance between the scheduled inspections.
- E. Equipment requires shop repairs or overhaul but approval to proceed is denied.
- F. Lack of payment.

Written notice will be provided by Rocky Mountain Business Systems to the customer 30 days prior to termination of maintenance for any of the above reasons. In addition a 30 day notice of cancellation by customer is required failure to provide a 30 day cancellation will result in the contract renewing for one more year. This is a nonrefundable Maintenance Agreement. This agreement shall be automatically renewed for successive quarterly periods upon payment by the customer of the amount for such quarter at the rate in effect at the time of renewal. Taxes are subject to change at anytime. Customer is responsible for payment.

This Maintenance Agreement does not provide for the replacement of consumable supplies. Installation of paper or toner will be performed without charge if the service technician is present for service reasons. A charge at the hourly rate will be made if a special call is requested for the purpose of installing these items. Should the customer request that toner be delivered on an emergency basis a charge of \$25.00 will be applied.

Special provisions or additions for networked machines included as part of this agreement will be attached as an addendum to this contract. Otherwise a charge of \$120.00 per hour for networking will be assessed after the warranty period.

MODEL <u>HPLJ9050DN</u>	SERIAL NUMBER <u>JPSCF3TONL</u>	ACCESSORY _____	SERIAL NUMBER _____
CONTRACT PERIOD <u>APRIL 1, 2016 TO MARCH 30, 2018</u>		MAINTENANCE KITS AND TONER NOT INCLUDED	
TYPE OF CONTRACT	COMPREHENSIVE <input type="checkbox"/>	STANDARD <input checked="" type="checkbox"/>	PER COPY <input type="checkbox"/>
		DOES NOT INCLUDE DRUM	TONER INCLUSIVE <input type="checkbox"/>
BASE CHARGE		COPIES INCLUDED	EXCESS COPY CHARGE
\$50.00 PER MONTH		6000 PER MONTH	.012
\$ 4.16 TAX ON LABOR			START METER B/W
			START METER COLOR

TOTAL AMOUNT INCLUDING TAX: **\$54.16 PER MONTH**

BILLING REQUEST _____

SANTA FE COUNTY CLERKS OFFICE 102 GRANT AVE SANTA FE NM	PHONE: <u>605 986-6200</u>	ROCKY MOUNTAIN BUSINESS SYSTEMS 11 Plaza La Prensa Unit 7 Santa Fe, New Mexico 87507 (505) 983-1181	3515 Wyoming Blvd. NE Albuquerque, New Mexico 87111 (505) 323-5252
Approved by (PLEASE PRINT) <u>Katherine Miller</u>	Approved by (PLEASE PRINT) <u>MICHAEL GONZALES</u>		
Title (PLEASE PRINT) <u>County Manager</u>	Title (PLEASE PRINT) <u>SALES</u>		
Date Approved (PLEASE PRINT) <u>3-8-16</u>	Date Approved (PLEASE PRINT) <u>03/02/2016</u>		
Signature <u>Katherine Miller</u>	Signature <u>[Signature]</u>		

Approved as to form
Santa Fe County Attorney
By: [Signature]
Date: 3-15-16

