

**ADDENDUM TO MAINTENANCE AGREEMENT
WITH PROFESSIONAL DOCUMENT SYSTEMS
REGARDING OFFICE EQUIPMENT MAINTENANCE
AND SUPPORT FOR SANTA FE COUNTY GROWTH MANAGEMENT**

THIS ADDENDUM TO MAINTENANCE AGREEMENT 2899 is made and entered into on this 16th day of October, 2019 by and between **SANTA FE COUNTY** hereinafter the "County", a political subdivision of the state of New Mexico, and **Professional Document Systems**, 1414 Common Drive, El Paso, Texas 79936, hereinafter the "Contractor."

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

WHEREAS, Contractor has certified technicians who are approved to conduct maintenance on the office equipment; and

WHEREAS, the County wishes to obtain equipment maintenance services from the Contractor; and

WHEREAS, the Contractor has proposed PDS Maintenance/Support Agreement 2899 that is acceptable in part but requires the removal of certain terms and the addition of certain terms; and

WHEREAS, both parties desire to enter into PDS Maintenance/Support Agreement 2899 with modified and additional terms as indicated by this Addendum;

1. Page 2, "GENERAL" of the Maintenance/Support Agreement 2899 is amended by deleting subpart 2 in its entirety including any reference to a "reinstatement charge."
2. Page 2, "GENERAL" of the Maintenance/Support Agreement 2899 is amended by inserting the following as Sections 8 through 26:

8. Effective Date and Term

This Agreement shall become effective upon due execution by all parties and the term for purposes of compensation payable to the Contractor for services rendered shall commence November 11, 2019 and terminate November 11, 2020, unless earlier terminated pursuant to Section 10 (Termination) or Section 11 (Appropriations). There shall be no pre-payment of services. Services shall be paid in accordance with Section 9 below. The County shall have the option to extend the term of this Agreement in one-year increments not to exceed a total of four years. The County shall notify the Contractor in writing in no less than 60 days before the expiration of the initial term of this Agreement.

9. Compensation and Invoicing

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows. The County shall pay in full to the Contractor a fee for maintenance and support of the three items of equipment listed on **Attachment A**.

B. In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed \$3,158.52, exclusive of New Mexico gross receipts tax. Rather than adopting the payment terms set forth in the Maintenance/Support Agreement 2899, 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 service for which payment is sought. The Contractor acknowledges and agrees that the 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, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.

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

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

10. Termination

A. Termination of Agreement for Cause. Either party may terminate this Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications 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.

11. Appropriations and Authorizations

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the 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 the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the 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 the Contractor in any way or forum, including a lawsuit.

12. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, 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, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

13. 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

14. Subcontracting

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

15. Personnel

All work performed under this Agreement shall be performed by the Contractor or under its supervision. The 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 or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

16. Release

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

17. Conflict of Interest

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

18. Amendment

This Agreement may not be modified, altered, changed, or amended orally. Either party will not be responsible for any changes to this Agreement unless such changes are set forth in a written amendment that is executed by the parties.

19. Compliance with applicable law; choice of law

In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations of Santa Fe County. 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. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. Indemnification

A. The Contractor shall defend, indemnify, and hold harmless the 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 the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the 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 the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own

counsel shall be retained to represent the County's interest.

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

21. Severability

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

22. Notices

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Attn: Penny Ellis-Green
 Santa Fe County Land Use Department
 P.O. Box 276
 102 Grant Avenue
 Santa Fe, New Mexico 87504-0276

To the Contractor: Claudia Loweree
 Professional Document Systems
 1414 Common Drive
 El Paso, Texas 79936

23. Limitation of Liability

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Paragraph 9 of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

24. Insurance

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.

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 \$1,000,000.00 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 County 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. The County of Santa Fe shall be a named additional insured on the policy.

Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

25. 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, Section 41-4-1, et seq.

26. Survival

The provisions of following paragraphs shall survive termination of this Agreement: INDEMNIFICATION; RELEASE; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; and SURVIVAL.


IN WITNESS WHEREOF, the parties have duly executed this Addendum to the Agreement as of the last date of signature by the parties hereto.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

Date 10.16.19

Approved as to form:


Rachel A. Brown
Interim County Attorney

Date 10-10-19

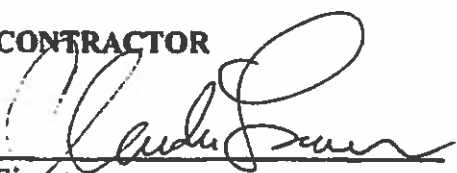
Finance Division:



Gary L. J. Giron
Finance Director

Date 10/11/19

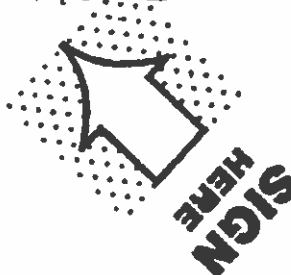
CONTRACTOR



Signature

Date 10/14/2019

CLAUDIA LOWERY, CONTRACTS MANAGER
Print name and title



Finance Division:



Gary L. J. Girón
Finance Director

Date 10/11/19

CONTRACTOR

Signature

Date _____

Print name and title



Agreement Number: 2899

MAINTENANCE/SUPPORT AGREEMENT

This Agreement is made and entered into as of 11/11/2019 by and between Professional Document Systems ("Service Provider"), and the company, person or entity executing this Agreement as the "Licensee" below:

SANTA FE COUNTY LAND USE
102 GRANT AVE
SANTA FE, NM 87504-0276

TERM: 11/11/2019 through 11/10/2020

SCOPE OF SERVICE - HARDWARE SUPPORT

1. Preventative Maintenance on hardware items listed in attachment "A" will be performed in accordance with the Manufacturer suggested guidelines. Additional Preventative Maintenance requested by the customer or due to high usage may be subject to additional charges.
2. On site labor required to repair reported deficiencies when a "depot" unit is not available.
3. Parts required to repair reported deficiencies as deemed necessary by Professional Document Systems.
4. Response to equipment malfunction and failures. Licensee's providing PDS with a written Error Report is a prerequisite to PDS's responding to equipment malfunction and failures. The Error Report must include a verbal, written or electronic mail explanation of the equipment routines employed when the problem occurred, and any available documentation of the error including error messages, time of error, and any other information PDS reasonably requires. Reasonably promptly after PDS receives the Error Report, PDS will cooperate with Licensee in assigning an appropriate level and time of response to the situation and Service Provider personnel to assist Licensee in solving the problem. The levels of problems, response times, and descriptions of the response for the levels of problem are described in the following subparagraphs:

Level I

- (A) Definition. Complete equipment failure.
- (B) Response. PDS will respond within two working hours after the later of receipt of the Error Report and agreement that this Level of response is needed and will immediately assign Service Staff resources until resolution and use best efforts to restore equipment operation within one working day.

Level II

- (A) Definition. Licensee-users are unable to execute certain equipment functions.
- (B) Response. Service Provider personnel will respond to Licensee within four working hours of receipt of the Error Report and agreement to this Level and will assign service staff resources until resolution, and use best efforts to restore access within one working day.

Level III

- (A) Definition. Equipment not performing per documentation but Licensee user can perform basic functions.
- (B) Response. Service Provider will respond within one working day of Service Provider's receipt of the Error Report and use best efforts to restore function within three working days.

Level IV

- (A) Definition. Guidance for equipment features not currently deployed and user functionality questions.
- (B) Response. Service Provider will respond within three working days of Service Provider's receipt of request.

All response actions on the part of PDS for points one (1) through four (4) above are contingent on the following:

Assigned Service Call Number - Licensee to utilize our 800 technical support line (800-708-8584) and receive a Service Call Number.

On-Site Services - Following PDS's reasonable efforts to resolve the problems by telephone, PDS will provide on-site Maintenance Services at Licensee's facilities in connection with the correction of any Level I, or II issue within eight business hours and within 16 business hours for Level III issues at no additional costs to the customer.

Assigned Administrator - The customer will assign a "key operator" who will be responsible for performing regular operator care and adjustments, answering operator questions and problems, and placing any calls to the PDS support staff. Emergency calls caused by non-performance of regular operator care and adjustment procedures or by persons other than the designated person(s) will be charged to the customer at then applicable rates.

SPECIFIC EXCLUSIONS - HARDWARE SUPPORT

The following items are specifically excluded from this Agreement:

1. Routine maintenance procedures as described in the Cleaning section of the operator's guide.
2. Cost of rebuilding, refurbishing, or re-manufacturing the equipment.
3. Any glass or mirror components.
4. Consumable and starter toner products.
5. Motors, drum units, bulbs/lamps, shutters, lenses, back up batteries, CMOS batteries, network/modem cards, SCSI boards and power cords.
6. Roller kits for scanners (Consumable item).
7. PCA board malfunction or scratched reading/scanning glass caused by paper clips, staples or any other foreign material.
8. Service, repair, or replacement of parts, attachments, and modifications of equipment that is installed by anyone other than an authorized PDS representative will void this agreement.

GENERAL

1. Days and Hours of Coverage: This Support Agreement covers service during Dealer's normal working hours, 8:00 a.m. to 5:00 p.m. MST, Monday through Friday; unless an Extended Hours option is purchased. Coverage on Holidays (New Year's, Memorial, Independence, Labor, Thanksgiving, day in connection with Thanksgiving and Christmas Day) is not included in PDS's normal working hours.
2. Approximately 30 days prior to expiration Dealer will offer the option to renew to Customer. Failure to accept by the expiration date will result in cancellation of this Agreement. Acceptance of the renewal after the expiration date will result in reinstatement charges.
3. This Agreement is not assignable by the customer.
4. This Agreement constitutes the entire agreement between the parties herein with respect to the subject matter hereof, and no representation, either written or oral, will be of any force or effect unless specifically set forth in this Agreement. No amendment or waiver of the terms of this Agreement may be made except in writing.
5. Neither party will be responsible for delays or inability to service caused, directly or indirectly, by strikes, accidents, climactic condition, or other reason of a like or dissimilar nature beyond its control. In no event will either party be liable for loss of profits or special, indirect or consequential damages arising from use of, or inability to use, Software, Hardware or related Documentation. No action relating to obligations herein may be brought by either party more than one year after the cause of action has occurred.
6. The offering of this Agreement, in and of itself is no guarantee that the System is suitable for the Customer's purposes, or whether the System will achieve the Customer's intended results.
7. Dealer's liability in case of non-performance herein will be limited to the Annual Maintenance Charge specified in the

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers effective as of the date first set forth above.

Agreement Number: 2899

Professional Document Systems

SANTA FE COUNTY LAND USE

Claudia Loweree

(Signature)

Katherine Miller

(Signature)

Claudia Loweree

(Typed or Printed Name)

Katherine Miller

(Typed or Printed Name)

Contract Administrator

(Title)

County manager

(Title)

Date: 9/10/2019

Date: 10.16.19

Dealer Address and Support Number:

Professional Document Systems

1414 Common Drive
El Paso, Texas 79936

6565 Americas Pkwy #200
Albuquerque, NM 87110

800-644-7112 General Inquiries
800-708-8584 Technical Services

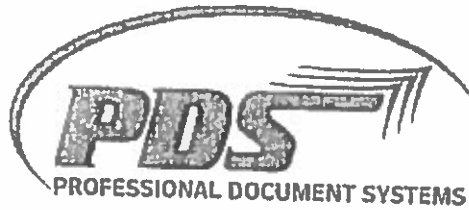
Approved as to form
Santa Fe County Attorney

By: [Signature]

Date: 10-10-19

Myra Finow 10/16/19

Exhibits section.



For service please call 1-800-708-8584

Maintenance Agreement

Attachment A

SANTA FE COUNTY LAND USE
102 GRANT AVE
SANTA FE, NM 87504-0276

EQPT. INFORMATION	EQPT. S/N	EQPT. LOCATION	ANNUAL
GRAPHTEC CSX510 Large Format Scanner	A10910139		\$2,201.39
Canon IPF 750 plotter	AABY3897		\$0.00
Canon DR-7550C Scanner	EY307971		\$957.13
TOTAL \$3,158.52			

