

**ADDENDUM TO MAINTENANCE AGREEMENT WITH  
PROFESSIONAL DOCUMENT SYSTEMS REGARDING  
SOFTWARE AND HARDWARE FOR  
SFC INFORMATION TECHNOLOGY OFFICE**

**THIS ADDENDUM TO MAINTENANCE AGREEMENT** is made and entered into this 28 day of July, 2017 by and between the County of Santa Fe, hereinafter referred to as the "County", and Professional Document Systems, whose principal address is 2533 Virginia NE, Suite J, Albuquerque, New Mexico 87110 hereinafter referred to as the "Contractor".

**WHEREAS**, pursuant to NMSA 1978, Section 13-1-129, this is a procurement under an existing contract for the provision of maintenance services; and

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

**WHEREAS**, Contractor has entered into a GSA Information Technology Schedule Price List (GS-35F-0018V) to provide General Purpose Commercial IT equipment, software and services; and

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

**WHEREAS**, the Contractor has proposed PDS Maintenance/Support Agreement 2195 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 2195 with modified and additional terms as described by this Addendum.

1. Page 3 Section "General" of the Maintenance/Support Agreement 2195 is hereby amended by deleting paragraph 2 in its entirety including any reference to "reinstatement charges."
2. Page 3 Section "General" of the Maintenance/Support Agreement 2195 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 shall terminate on June 30, 2018, unless earlier terminated pursuant to Section 10 (Termination) or Section 16 (Appropriations and Authorizations). There shall be no pre-payment of services. Services shall be paid in accordance with Section 9 (Compensation, Invoicing and Set-Off) during the term of the Agreement. The County shall have the option to extend the term of this Agreement in one-year increments not to exceed a total of three years. The

County shall notify the Contractor in writing in no less than 60 days before the expiration of the 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 12 items of equipment listed on Attachment A, attached hereto and incorporated herein by reference.
- B. In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed \$29,657.56, exclusive of gross receipts tax. Rather than adopting the payment terms set forth in the Maintenance/Support Agreement 2195, 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 County shall pay late payment charges of one and one-half (1.5%) per month, until the amount due is paid in full.
- C. 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.
- D. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

10. Termination

- A. Termination of Agreement for Cause. Either party may terminate the 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 Contractor written notice of termination. The notice shall specify the effective date of termination, which shall be not less than 15 days from the Contractor's receipt of the notice. 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.

11. 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.

12. Personnel

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

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 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.

14. 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.

15. Indemnification

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 on 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.

16. 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 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. 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.

17. 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 \$1,050,000 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.

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

18. 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 related to this Agreement.

19. Conflict of Interest

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

20. Amendment

No oral modifications; written amendment required. This Agreement may not be modified, altered, changed, or amended orally, but rather, only 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.

21. 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.

22. 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 court of New Mexico, located in Santa Fe County.

### 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 Section 9 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. Notices

Any notice required to be given or either 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, as follows:

To the County: Santa Fe County Information Technology  
Santa Fe County  
P.O. Box 276  
102 Grant Avenue  
Santa Fe, New Mexico 87504-0276

To the Contractor: Claudia Teeter  
Professional Document Systems  
2533 Virginia NE, Suite J  
Albuquerque, NM 87110

### 26. Survival

The provisions of the 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 executed this Addendum to the Agreement as of the date first written above.

SANTA FE COUNTY:

  
Katherine Miller  
Santa Fe County Count Manager

7-28-17  
Date

Approved to form:

  
Gregory S. Shaffer  
Santa Fe County Attorney


7-21-17  
Date

Finance Department:

  
Don D. Moya  
Finance Department Director

7-24-17  
Date

PROFESSIONAL DOCUMENT SYSTEMS

  
Signature

7/26/2017  
Date

Claudia Teeter, Contracts Manager  
Print Name and Title







Agreement Number: 2195 ✓

MAINTENANCE/SUPPORT AGREEMENT ✓

This Agreement is made and entered into as of 07/01/2017 by and between Professional Document Systems ("Service Provider"), and the company, person or entity executing this Agreement as the "Licensee" below:

SANTA FE COUNTY - IT  
142 W. Palace Ave, Suite 302  
SANTA FE, NM 87504-0276

TERM: 07/01/2017 through 6/30/2018

## SCOPE OF SERVICE - SOFTWARE SUPPORT

1. Software upgrades and enhancements of document management software components per Manufacturer specification on items listed in Attachment "A". "Upgrades and Enhancements" means any and all new versions, improvements, modifications, upgrades, updates, fixes, and additions to the Software that are commercially released to end users generally during the term of this Agreement to correct deficiencies or enhance the capabilities of the Software; provided, however, that the foregoing will not include new, separate product offerings, new modules, re-platformed Software, or new functionality.
2. Upon contract renewal, PDS will forward the newest release / version to the customer. New releases will also include new listings of third party product compatibility, including but not limited to operating systems and Hardware. The new features may at times also include modification of previous version features such as operating systems that are no longer supported under the new release. At that time it will be the Customer's responsibility to upgrade its environment to meet the needs of the new release, as specified. PDS will not guarantee support for older software versions that have been declared as non-supported versions by the software developer.
3. PDS shall provide labor to upgrade document management software server components and 5 client licenses once per support term year. (Internet access required, see response action requirements below).
4. Response to Failures, Access Problems and Errors. Licensee's providing PDS with a written Error Report is a prerequisite to PDS's responding to system failures, access problems, performance failures, and Errors. The Error Report must include a written or electronic mail explanation of the software routines employed when the problem occurred, and any available documentation of the Error, including, but not limited to, screen prints of all system errors, 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 system failure and/or critical business function 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 access within one working day.

### Level II

- (A) Definition. No system failure, but Licensee-users are unable to access or execute certain system functions.

- (B) Response. Service Provider PSS 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. Application not performing per documentation but Licensee user can perform basic job functions with alternate procedures.
- (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 software features not currently deployed, user and administrator functionality questions and guidance on client installs and software administration.
- (B) Response. Service Provider will respond within three working days of Service Provider's receipt of request.

5. Provide software and database server "packs" issued by the manufacturer to repair or correct known software defect (if database software was purchased from PDS).
6. Labor to upgrade database server "packs" issued by the manufacturer for server components and 5 client licenses once per support term year (if database software was purchased from PDS, Internet access required, travel billed separately if required).

All response actions on the part of PDS for points one (1) through five (5) 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.

Remote Access - Customer agrees to provide to PDS and maintain at the Customer's expense, Virtual Private Network (VPN) access or remote access through internet connectivity tools. This access is essential to provide support services; if it is not provided PDS reserves the right to charge current travel rates as well as for any additional expenses incurred.

On-Site Services - Following PDS's reasonable efforts to resolve the problems by telephone or through remote access, 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 of the remote connection correction failure and within 16 business hours for Level III issues at no additional costs to the customer.

Assigned Administrator - The customer will assign a "system administrator" or "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 - SOFTWARE SUPPORT**

The following items are specifically excluded from this Agreement:

1. Database Software upgrades, versions and releases of database software components (can be purchased separately if database software was purchased from PDS).
2. Labor and travel to upgrade Database Software server and client components (can be purchased separately).
3. Security and application set up, following initial administration training.
4. Software client installations beyond the scope of original service.
5. Any database modification requested by the user requiring database program script.
6. Any database repair request required due to operator error, reinstallation of operating system or system failure.
7. Any repairs to the system caused by virus or malicious code.
8. Any repairs to the system caused by user or administrator modification of the base program or purchase modules, scanner drivers, image / data storage locations, database, operating system upgrade at the client and server level.
9. Reinstallation of the software and related component due to upgrade of client or server hardware.
10. Any or all conversions of existing program data needed due to changes or upgrades of product or products.

11. Hard disk maintenance, disk surface test and integrity analysis, disk defragmentation and virus scanning and protection.
12. Floppy drive, CD ROM, DVD and Tape drive maintenance. Head Cleaning and Head cleaning kits.
13. Database integrity: Routine database or index file rebuilds; database restoration from backup source.
14. **BACKUP OF DATA, IMAGES, PROGRAMS, SYSTEM FILES:** Performing regular backups to tape, floppy or optical, as applicable; Testing the integrity of the backup media and data/images, as well as the Systems ability to restore data from backup source; Proper, safe storage of the backup media.
15. Data entry or recovery, database editing or recovery, image recovery, or index rebuilds.  
Service, repairs, parts or travel necessary because of accident, misuse, abuse, neglect, theft, vandalism, electrical power failure or fluctuation, strikes, alteration, fire, water or other casualty, acts or omissions in performance by non-PDS personnel; malfunctions of parts, attachments or programs not supplied and installed by PDS; aging, obsolete or incompatible Hardware or Software not supplied and installed by PDS; the use of inferior or incompatible parts or supplies as determined by PDS; unauthorized modification; or other conditions beyond PDS's control are not covered by this Agreement, and will be billed to Customer at prices in effect at the time.
16. Media, including but not limited to: optical disks, CD's, floppy disks, tapes and consumable supply items.
17. The services of a technical support representative outside of Dealer's normal business hours. Those services will be billed to Customer at PDS's current hour rate.
18. The services of a PDS technical support representative for re-installation of PDS system software due to an upgrade of the Windows Operating System and/or the replacement of the associated Hardware, regardless of the reason. Any re-installation required will be billed to Customer at the current support rate.

## 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 Exhibits section.

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: 2195

Professional Document Systems

Claudia Teeter  
(Signature)

Claudia Teeter  
(Typed or Printed Name)

Contract Administrator  
(Title)

Date: 2/27/2017

Dealer Address and Support Number:

Professional Document Systems

1414 Common Drive  
El Paso, Texas 79936

2533 Virginia NE, Suite J  
Albuquerque, NM 87110

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

SANTA FE COUNTY - IT

Katherine Miller  
(Signature)

Katherine Miller  
(Typed or Printed Name)

County Manager  
(Title)

Date: 7-28-17

Approved as to form  
Santa Fe County Attorney  
By Robert A. Jowers  
Date: 7-21-17

Reviewed and Approved  
for SIGNATURE  
Don Moya [Signature] Date 7-24-17



2/27/2017

Santa Fe County  
Term: 07/01/2017 - 06/30/2018  
Rates Reflect GSA Contract Pricing

GS-35F-0118V

Agreement 2195  
ATTACHMENT A

GSA ITEM NUMBER	ITEM	DEPARTMENT	QTY	CONTRACT M.A. COST PER	CONTRACT M.A. COST TOTAL
PDS-456-100-425-MA	ScanXtender aka APPLICATIONXTENDER IMAGE CAPTURE SERVER - ANNUAL MAINTENANCE	Various	8	\$107.50	\$845.00
PDS-457-100-248	AppXtender Capture Package	Finance	1	\$122.19	\$122.19
PDS-456-100-468-MA	APPLICATIONXTENDER SERVER - ANNUAL MAINTENANCE - 50 CC USERS	Various	1	\$13,545.03	\$13,545.03
PDS-457-100-245-MA	APPLICATIONXTENDER SERVER 5 CC USERS MAINTENANCE	Sheriff	1	\$1,309.23	\$1,309.23
PDS-457-100-245-MA	APPLICATIONXTENDER SERVER 5 CC USERS MAINTENANCE	Land Use	1	\$1,309.23	\$1,309.23
PDS-456-100-427-MA	APPLICATIONXTENDER OCR SERVER ANNUAL MAINTENANCE	Clerk	1	\$349.13	\$349.13
PDS-456-100-497-MA	APPXTENDER PROINDEX FULL TEXT SERVER ANNUAL MAINTENANCE	Clerk	1	\$645.00	\$645.00
PDS-456-100-429-MA	APPXTENDER PROINDEX FULL TEXT SERVER ANNUAL MAINTENANCE - 5 CC USERS	Clerk	4	\$204.25	\$817.00
PDS-TS-SW-MA	PDS-Tracksuite Software - ANNUAL MAINTENANCE - CLERKTRACK RECORDING SW	Clerk	1	\$3,200.37	\$3,200.37
PDS-456-100-439-MA	ERMx SERVER aka APPXTENDER REPORTS MGMT SERVER ANNUAL MAINTENANCE	Clerk	1	\$1,612.50	\$1,612.50
PDS-456-100-465-MA	APPLICATIONXTENDER SERVER - ANNUAL MAINTENANCE - 5 CC USERS (ERMx Licenses)	Clerk	1	\$2,902.51	\$2,902.51
PDS-TS-SW-MA	PDS-Tracksuite Software - ANNUAL MAINTENANCE - COURTTRACK	Sheriff	1	\$3,200.37	\$3,200.37

TOTAL 2017

\$29,657.56

Applicable NM Gross Receipts @ 7.3125% for services  
\*\*Current GRT rate as of 2/27/2017 - subject to change 7/1/2017\*\*

\$2,168.71

\$31,826.27

Reminder: The following are contract exclusions and subject to billable rates:

- A.) Database reinstallation, re-creation of the database, migration of the database or restoring the database from backup  
B.) Software reinstallation for any reason (e.g. New PC, hard drive replaced, virus etc.)

Billable Rates:

- 1) Software Server installation - \$980.00
- 2) Software client installation - \$110.00
- 3) Database installation - \$1,980.00

