# IMAGING CONCEPTS OF NEW MEXICO

More than you expect... Guaranteed

COST PER PRINT AGREEMENT

**ALBUQUERQUE**
8600 Pan American Freeway NE
Albuquerque, NM 87113
(505) 828-COPY (2679)
Fax (505) 828-1115

**SANTA FE**
2000 St. Michael's Drive
Santa Fe, NM 87501
(505) 424-1500
Fax (505) 424-3100

www.imagingconceptsnm.com

| CUSTOMER | SHIP TO CUSTOMER NO. | BILL TO CUSTOMER NO. | BR | DIV | CPP 20479 |
|---|---|---|---|---|---|
| Santa Fe County Lound | ANY18 | ANY17 | | | |
| SERVICES ADDRESS: 102 Grant Ave | PHONE 995-2787 / FAX 986-6277 | BILLING ADDRESS: PO BOX 276 | | | TERMS: NET 10 DAYS WAC |
| CITY: Santa Fe / STATE: NM / ZIP: 87504 | CONTACT: Constance | CITY: Santa Fe / STATE: NM / ZIP: 87504 | | | PROGRAM / REVIEW |
| CUSTOMER PURCHASE ORDER NO. | S/T CODE / S/T RATE | INM REPRESENTATIVE: Rafael Ramirez | | NO. 149 | E.B. / DATE |

CUSTOMER E-MAIL ADDRESS: CLejan@co.santa-fe.nm.us. Rafael.Ramirez@icnm.com

Imaging Concepts of New Mexico, Inc. agrees to provide supplies* and services for the operation of the equipment detailed below at the respective per print charges with an effective start date of _____. The term of this agreement is _____ months. Please see attached Schedule A for additional Equipment Detail.

| Product Code Description | Serial Number Location/Exp Code | Beginning Meter | Minimum prints per Billing Cycle | Per Print Charge | Minimum Billing | Excess per print charge |
|---|---|---|---|---|---|---|
| ARM 355 | 65037353 | | unlimited | | $70.35 | |
| | | | | | | |
| | | | | | | |
| Memo | | Schedule A: | | | $ | |
| | | Sub Totals: | | | $ | |
| | | Sales Tax Code: ____ Tax Rate %: | | | $ | |
| | | | | Total : | $ | |

Billing Cycle Preferences (In Advance) (Circle One): Monthly Quarterly Semi-Annually Annually

Excess print Billing Preference (Circle One): Monthly Quarterly Semi-Annually

SUPPLIES* included in this agreement: Except Paper & Staples

SERVICE included in this agreement: parts & Labor

Imaging Concepts of New Mexico, Inc., reserves the right of immediate unwritten cancellation of this Agreement in the event that the payment terms are not honored by the customer as agreed. If invoices are unpaid and overdue, the customer agrees to pay INMs' cost and expenses of collections, including the maximum attorney's fees permitted by law.

Payment Terms: Net 10 Days (WAC).

It is agreed that the supplies furnished through this Agreement will be used solely in the equipment listed above or in schedule A, and failure to abide by these terms will result in breach of this Agreement

Supply shipments will be limited to customer's 60 day needs, as determined by customer volume and manufacturer's yields.

It is agreed that INM may bill, and customer will pay, meter invoices based upon meter estimates, as long as the meter estimate does not exceed the actual meter by more than 10%.

Machines will be moved at a standard charge of $95.00 per machine per move.

The service portion of this agreement specifically excludes parts, including drums, and labor which are necessary to repair a machine damaged by misuse, abuse, negligence or acts of God.

**Service will be rendered in accordance with the terms and conditions as set forth herein and on the reverse side hereof, which the CUSTOMER acknowledges having read and accepted.**

*Sales tax shall apply to all charges.*

ACCEPTANCE:

Imaging Concepts of New Mexico, Inc.

Penny Ellis-Green
Customer Printed Name Title

Government Rep 21 June 10
Title Date

Penny Ellis-Green 7-30-10
Customer Signature Date

Service manager Date

INM / CCPC 5/06

ACCOUNTING COPY

*(Cost per Print Agreement becomes effective only after acceptance by Service Manager)*

Approved as to form
Santa Fe County Attorney
By: [signature] for Stephen Ross
Date: 26 July 2010

**ADDENDUM TO MAINTENANCE AGREEMENT WITH IMAGING CONCEPTS OF NEW MEXICO REGARDING COPY MACHINE ARM355**

**THIS ADDENDUM TO MAINTENANCE AGREEMENT** is made and entered into this 25th day of August, 2010 by and between the County of Santa Fe, hereinafter referred to as the "County," and Imaging Concepts of New Mexico, whose principal address is 8600 Pan American Freeway N.E., Albuquerque, NM 87113, hereinafter referred to as the "Contractor."

**WHEREAS**, pursuant to NMSA 1978, *Section* 13-1-125, "small purchase," the County desires to contract with the Contractor for 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 certain terms; and

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

**NOW THERFORE**, it is mutually agreed between the parties that the following provisions shall be incorporated into the Maintenance Agreement as if fully set forth therein:

**1. TERM**

This Maintenance Agreement to continue in full force and effect for a period of no more than two years. There shall be no pre-payment of services. Services shall be paid in accordance with paragraph 2 below.

**2. COMPENSATION, INVOICING AND SET-OFF**

A. The monthly fee for maintenance shall be $70.53, exclusive of gross receipts tax. Rather than adopting the payment terms set forth in the Maintenance Agreement, Contractor shall submit a written request for payment to County at the conclusion of each month of service. Within fifteen (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 thirty (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 thirty (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 this 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 (7) days from mailing of a certified letter to 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 (7) days, Contractor shall have a reasonable time to cure the breach, provided that, within seven (7) 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 (7) 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 or 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. 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 date (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 (6) 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 principals ("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 date (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 (6) 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. 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 $1,050,000 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.

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. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other material prepared under this Agreement. Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this

Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, County shall own any such copyright.

## 15. 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.

## 16. 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 "Scope of Work", of this Agreement unless such changes are set forth in a duly executed written amendment of this Agreement.

## 17. INTEGRATION

This Addendum to Maintenance Agreement, together with the 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 Maintenance Agreement and this Addendum to Maintenance Agreement.

## 18. 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.

## 19. 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.

## 20. APPLICABLE LAW

In providing the SCOPE OF WORK outlined in the Maintenance Agreement and herein, the Contractor shall comply with all applicable Federal, State of New Mexico and local governments' laws 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 Santa Fe County.

## 21. 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.

## 22. NO THIRD-PARTY BENEFICIARIES

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

## 23. 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.

## 24. 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 on compensation 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.

## 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, § 41-4-1, et seq.

## 26. 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.

C. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

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

**SANTA FE COUNTY**

Penny Ellis-Green interim County Manager.
Santa Fe County Manager

**APPROVED AS TO LEGAL FORM:**

Stephen C. Ross
Santa Fe County Attorney

26 July 2010
Date

**FINANCE DEPARTMENT APPROVAL:**

Teresa Martinez
Santa Fe County Finance Director

7/30/2010
Date

**IMAGING CONCEPTS OF NEW MEXICO:**

Signature

Rafael Ramirez Manager of Government Accounts
Print Name and Title

**FEDERAL IDENTIFICATION NO.: 85-0387036**