

ADDENDUM #1⁰
TO ISM TECHNOLOGIES
HP SERVICE MAINTENANCE AGREEMENT

This Addendum to ISM Technologies HP Service Maintenance Agreement (“Agreement”) is entered into on this *3rd* day of *October*, 2011, by and between Santa Fe County (hereinafter referred to as “County”), a New Mexico political subdivision, and ISM Technologies (hereinafter referred to as “Contractor”), incorporated as a New Mexico Domestic Profit business with a principal address at 205 Santa Elena Rd. SE, Rio Rancho, New Mexico 87124.

RECITALS

WHEREAS, pursuant to Section 41 of Resolution 2006-60, this is a “small purchase,” for the provision of maintenance services;

WHEREAS, the Santa Fe County Purchasing Division sent emails to three (3) qualified vendors requesting quotes for requisition of a HP Service Maintenance Contract;

WHEREAS, ISM Technologies was the only vendor to respond and has been providing the County with dependable, consistent, cost competitive quality maintenance under a State of New Mexico Price Agreement, which agreement has expired;

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

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;

WHEREAS, both parties desire to enter into the Maintenance Agreement with modified and additional terms as stated in this Addendum;

NOW THEREFORE, it is mutually agreed between the parties that the following terms and conditions shall be incorporated into Terms and Conditions of the HP Service Maintenance Agreement as is fully set forth therein.

1. Paragraph 1 (Term) of the Agreement is hereby amended by deleting Paragraph 1 in its entirety and replacing it with the following:

1. EFFECTIVE DATE AND TERM.

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to

Paragraph 6 (Termination) or Paragraph 4 (Appropriations) of this Agreement. The County has the unilateral option to renew for one (1) additional year. The County's option to renew shall be exercised within thirty (30) days prior to expiration of the one year term by providing written notice of renewal to the Contractor.

2. Paragraph 4 (Appropriations and Authorizations) of the Agreement is hereby amended by deleting Paragraph 4 in its entirety and replacing it with the following:

4. APPROPRIATIONS.

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 Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse Contractor for any expenditures made in the performance of the Agreement or this Addendum. 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.

3. The following terms and provisions are further incorporated into the HP Service Maintenance Agreement as additional terms and conditions:

5. COMPENSATION AND INVOICING.

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) The total amount payable to the Contractor under this Agreement shall not exceed Thirteen Thousand Three Hundred Eight Dollars and Seventy cents (\$13,308.70), exclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amount payable under this Agreement shall be paid by the County to the Contractor.
- 2) Contractor shall submit a written request for payment to County at the conclusion of each quarter 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 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 thirty (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 thirty (30) days of the written certification

accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

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

6. 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 thirty (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 thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (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 fifteen (15) days from Contractor's receipt of the notice.

7. **INDEPENDENT CONTRACTOR.** Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, 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 the County and agrees not to purport to do so.

8. **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.

9. 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.

10. PERSONNEL.

- A. All work performed under this Agreement shall be performed by Contractor.
- 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 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.

11. RELEASE. Upon its receipt of all payments due under this Agreement, 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.

12. CONFIDENTIALITY. Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT.

- A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.
- B. Contractor acknowledges that the County shall own any material created under this Agreement that is subject to copyright.

14. CONFLICT OF INTEREST. 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.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS 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 the County shall not be responsible for any changes to the HP Service Maintenance Agreement or this Addendum unless such changes are set forth in a duly executed written amendment.

16. ENTIRE AGREEMENT; INTEGRATION. This Agreement with this Addendum incorporates 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 the written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement or this Addendum.

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

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 Paragraph shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW.

A. In performing its obligations hereunder, Contractor shall comply with all applicable laws, ordinances, and regulations.

B. 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 federal and state district courts of New Mexico, located in Santa Fe County.

20. 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 the 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 the 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 (6) years from the date of final payment under the subcontract; (ii) to allow the 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.

21. INDEMNIFICATION.

A. 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 Contractor performance or non-performance of its obligations under this Agreement, including but not limited to Contractor breach of any representation or warranty made herein.

B. 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 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. Contractor obligations under this Paragraph shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

22. 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.

23. 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:

For Contractor: ~~IMS~~ ^{ISM} Technologies, Inc.
205 Santa Elena Rd. SE
Rio Rancho, NM 87124
Phone: 505-892-3864

For County: Santa Fe County Administrative Services Division
ATTN: Pamela Lindstam
102 Grant Ave
Santa Fe, NM 87501

24 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. Contractor hereby represents and warrants that:

A. 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.

B. This Agreement and Contractor obligations hereunder do not conflict with Contractor corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

25. FACSIMILE SIGNATURES. The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY. The County's liability to 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 2 (Compensation and Invoicing) of this Agreement. In no event shall the County be liable to Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES. This Agreement was not intended to and does not create any rights in any persons not a party hereto.

28. INSURANCE

General Conditions. 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. 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 \$1,050,000.00 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 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. Contractor shall comply with the provisions of the Workers' Compensation Act.

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 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

29. PERMITS, FEES, AND LICENSES. Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

30. 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.

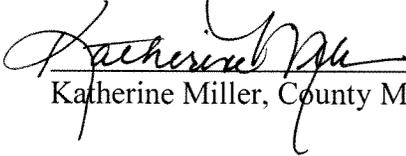
31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM. Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. PROHIBITED ACTIVITY. Contractor is prohibited from using funds provided herein or personnel employed in the administration of this Agreement for political activities; sectarian or religious activities; lobbying, or political patronage.

33. SURVIVAL. The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTIONS; RELEASE; CONFIDENTIALITY; PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates written below.

SANTA FE COUNTY:

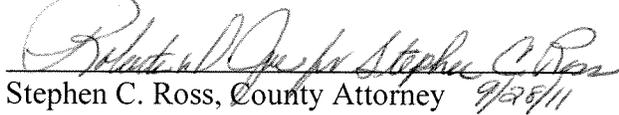


Katherine Miller, County Manager

CONTRACTOR: ISM Technologies

Signature

APPROVED AS TO FORM:



Stephen C. Ross, County Attorney 9/28/11

Title

FINANCE DEPARTMENT:



Teresa Martinez, Finance Director

FEDERAL TAX ID NUMBER



205 SANTA ELENA RD. SE
RIO RANCHO, NM 87124
PHONE: (505) 892 - 3864
FAX: (505) 892 - 3830

HP SERVICE MAINTENANCE CONTRACT

Customer Name: SANTA FE COUNTY

Installation Address: 102 Grant Ave.
Santa Fe, NM 87501

Phone: 505-995-2732

Contact: A. Erle Wright
Data Integration Administrator

CONTRACT DESCRIPTION

Model	Serial Number	Base Rate	Discount	Ext. Price	
1. HP DJ 2500CP/ C4704A - GIS	ESA8615982	1,899.00	10%	1,709.10	
2. HP CLJ 8550/ C5504A- GIS	JPMB038247	1,399.00	10%	1,259.10	
3. HP DJ 5500PS/ Q1252A- GIS	SG43C2401S	1,999.00	10%	1,799.10	
4. HP 4200 SCANNER/ Q1280A-GIS	DK45Q1101C	2,499.00	10%	2,249.10	
5. HP DJ 5500PS/ Q1252A - Assessor 's	SG27K14018	1,999.00	10%	1,799.10	
6. HP DJ 800 PS/ C7780C - Land Use	SG25K3102Q	1,299.00	10%	1,169.10	
7. VIDAR SCANNER GM67D -GIS	GM67D39025P	2,199.00	10%	1,979.10	
Pre Contract Evaluation visit for all units above (travel fee included, parts will be billed separately in any needed)				N/A	1,345.00
				Subtotal:	13,308.70
CONTRACT DATES: 09/01/2011—08/31/2012				Tax(7.4375%)	989.35
				TOTAL:	\$ 14,289.05

Contract includes 3 preventive maintenance service visits and any repairs (parts and labor).

CUSTOMER ACCEPTANCE: *see attached addendum #1 included as part of this Agreement*

By: Katherine Mills
 Title: SFC Manager
 Date: 10.3.11

PO#: _____

ISM TECHNOLOGIES ACCEPTANCE

By: Stanislav Matijevic
 Title: SERVICE MANAGER
 Date: 09-01-11

Approved as to form
 Santa Fe County Attorney
 By: Robert A. [Signature]
 Date: Sept 28 2011

TERMS AND CONDITIONS

ISM Technologies, Inc. agrees to provide and the customer agrees to accept maintenance service on the equipment listed above at the charges indicated in this contract with the following terms and conditions:

1. TERM

This agreement is effective from the commencement date and shall continue for one year with possibility of renewal not later than 10 business days after expiration . After the 10th business day after expiration, customer's equipment will have to be reevaluated at customer's expense.

2. MAINTENANCE SERVICE

ISM Technologies, Inc. agrees to provide maintenance service (including labor, parts[as available from manufacturer], and travel fees) Monday through Friday, from 8 AM to 5 PM (except holidays), and keep the equipment in good working condition while operated in accordance with the manufacturer's specifications while using manufacturer approved consumables.

This contract includes 3 preventive maintenance calls per year, scheduled by ISM Technologies, Inc. dependent upon volume and operating conditions in addition to customer's service calls also included in this Contract.

3. EXCLUSIONS

Maintenance service is contingent upon proper use of all equipment and does NOT include:

- a. Electrical work external to the equipment or maintenance of accessories, attachments, upgrades, networks, computers other devices not specifically named in this contract;**
- b. Use of supplies and consumables not approved by manufacturer unless specifically approved by ISM Technologies in writing.**
- c. Repair of damage or increase in service time resulting from accident, transportation, neglect, operator errors, theft, fire, electrical failure, power surges, A/C or humidity control.**
- d. Equipment located in an unsuitable place of installation or an unsafe or hazardous enviroment, as determined by manufacturers specifications or operator manuals.**
- e. Replacement of consumable supplies (ink cartridges, print heads, cleaners and other listed as consumables by manufacturer).**

4. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Commission or the Legislature of the State Of the New Mexico, if funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Santa Fe County Commission or the Legislature of the State of New Mexico, if state funds are involved, this Agreement shall terminate upon written notice being given by the County to the Contractor.

The County is expressly not committed to expenditure of any funds until such time as they programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.