ADDENDUM TO
MAINTENANCE AGREEMENT WITH PROFESSIONAL DOCUMENT SYSTEMS REGARDING HARDWARE MAINTENANCE AND SUPPORT

THIS ADDENDUM TO MAINTENANCE AGREEMENT 1920 is made and entered into on this 31st day of March, 2016 by and between **Santa Fe County** (hereinafter referred to as the "County"), an New Mexico political subdivision, and **Professional Document Systems** (hereinafter referred to as the "Contractor"), whose principal address is 1414 Common Drive, El Paso, Texas 79936, and local address 2533 Virginia Ne, suite J, Albuquerque, NM 87110, hereinafter referred to as 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, Contractor has entered into a GSA Information Technology Schedule Price List (GS-35F-0118V) 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 1920 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 1920 with modified and additional terms as described by this Addendum.

1. Page 2, "GENERAL" of the Maintenance/Support Agreement 1920 is hereby amended by deleting paragraph 2 in its entirety including any reference to a "reinstatement charge."

2. Page 2, "GENERAL" of the Maintenance/Support Agreement 1920 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 July 1, 2016 and terminate June 30, 2017, 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 (4)

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 or extension thereof.

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 29 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 $2,281.67, exclusive of New Mexico gross receipts tax. Rather than adopting the payment terms set forth in the Maintenance/Support Agreement 1920, 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 one and one-half percent (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 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 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. 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. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to this Agreement unless such changes are set forth in a duly executed written amendment.

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: Santa Fe County Manager
Santa Fe County
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

To the Contractor: Claudia Teeter
Professional Document Systems
2433 Virginia NE, Suite J
Albuquerque, NM 87110

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 Contract: INDEMNIFICATION; RELEASE; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY:

_____ Date _____

Katherine Miller
Santa Fe County Manager

Approved as to form:

_____ Date 3-23-16

Gregory S. Shaffer
Santa Fe County Attorney

Finance Department Approval

_____ Date 3/24/16

Carole H. Jaramillo
Finance Director

PROFESSIONAL DOCUMENT SYSTEMS

_____ Date _____

(*signature and title*)

seq.

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SANTA FE COUNTY:

Katherine Miller Date 3·31·16

Katherine Miller
Santa Fe County Manager

Approved as to form:

Date 3-23-16

Gregory S. Shaffer
Santa Fe County Attorney

Finance Department Approval

Carole H. Jaramillo Date 3/24/16

Carole H. Jaramillo
Finance Director

PROFESSIONAL DOCUMENT SYSTEMS

Date 3·29·16

(signature and title)
Contracts Manager