

**AMENDMENT TO CONTRACT
CE-1300351**

by and between

CUYAHOGA COUNTY, OHIO

and

SERVICE EXPRESS, INC.

THIS AGREEMENT (the "Contract") is made and entered into this 24th day of January, 2014 by and between Cuyahoga County, Ohio ("the County"), on behalf of the Department of Information Technology and Service Express, Inc., ("Service Express"), a Michigan corporation with offices located at 3854 Broadmoor Ave. SE, Grand Rapids, MI 49512.

WHEREAS, The County and Service Express, Inc., entered into Contract No. CE1300351, for maintenance services and system support of all servers Countywide for Three Hundred Ninety Two Thousand Two Hundred Ninety Dollars and Zero Cents (**\$392,290.00**); and

WHEREAS, The County has amended CE1300351 to allow all maintenance service changes, (adds, removals and / or upgrades), to the inventory listed on Schedule A of the original contract, by use of a change order process and added Fifty Thousand Dollars and Zero Cents (\$50,000.00) of additional funds; and

WHEREAS, The County has a need to again amend CE1300351 to alter the payment schedule for the Professional Services line on Schedule A of the original contract; and

WHEREAS, Service Express is willing and able, to provide the County with continued maintenance service changes using the change order process; and

WHEREAS, this Amendment will not cause an increase in price. The current "not to exceed price" of Four Hundred Forty Two Thousand Two Hundred Ninety Dollars and Zero Cents (**\$442,290.00**) shall remain; and

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Service Express and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

- 1.1 **Scope of Agreement.** During the term of this Contract, Service Express shall continue to provide the County with maintenance service and system support of all Server Products Countywide, including changes made using the change order process.

1.2 Term. This Contract Amendment shall be effective January 1, 2014; and, unless earlier terminated in accordance with the provisions of the Contract or subsequently amended, shall continue in effect for the remaining period delineated in Contract CE-1300351, which is February 28, 2018.

1.3 Insurance Requirements.

(a) Contractor shall procure, maintain, and pay premiums for the following forms of insurance:

(i) Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

If Contractor has employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(ii) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(iii) Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(iv) Professional Liability Insurance/Errors & Omissions Liability Insurance providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$1,000,000 per claim;

\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

(b) Insurance Coverage Terms and Conditions

(i) The insurance policies of the Contractor required for this Contract, with the exception of Professional Liability Insurance/Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

Thirty (30) days prior notice of cancellation or material change;

A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

(ii) The insurance required for this Contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

(iii) These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.

(iv) The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

(v) The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.

(vi) The Contractor shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

1. To the extent that the terms and provisions of this Amendment are inconsistent with or ambiguous when read in conjunction with the original contract or any prior amendment thereto, the terms and provisions of this Amendment shall govern and control.

ARTICLE II – MISCELLANEOUS

- 2.1 Applicable County Ordinances. All contracts with the County, including this Contract, are subject to all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to the Cuyahoga County Ethics Ordinance, the Cuyahoga County Inspector General Ordinance, the Cuyahoga County Contracting and Purchasing Procedures Ordinance, and the Cuyahoga County Debarment Law, Procedures and Review Board Ordinance. Copies of all County Ordinances are available on the County Council website at <http://council.cuyahogacounty.us/>.
- 2.2 Ethics Requirements. The Provider agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Contractor. The Contractor shall consult the Cuyahoga County Office of Inspector General to ensure it is in full compliance with all County Ethics requirements. The Inspector General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.
- 2.3 Governing Law. This Contract shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Contractor hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

All other terms and conditions of the original contract, and the prior Amendments thereto, which are not modified herein, shall remain in full force and effect.

THIS AMENDMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the Cuyahoga County Department of Law as to legal form and correctness.

IN WITNESS WHEREOF, the County and Service Express have each caused this Contract Amendment to be signed and delivered by its duly authorized representative as of the date first written.

Service Express, Inc.

Cuyahoga County, Ohio

BY: _____

Kevin Havert, Corporate Controller

Edward FitzGerald, County Executive

BY: _____

Edward FitzGerald, County Executive