

**LARAMIE COUNTY CLERK
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM PROCESSING FORM**

1. DATE OF PROPOSED ACTION: September 6, 2016

2. AGENDA ITEM:	<input type="checkbox"/> Appointments	<input type="checkbox"/> Bids/Purchases	<input type="checkbox"/> Claims
	<input checked="" type="checkbox"/> Contracts/agreements/leases	<input type="checkbox"/> Grants	<input type="checkbox"/> Land Use: Variances/Board App/Plats
	<input type="checkbox"/> Proclamations	<input type="checkbox"/> Public Hearings/Rules & Reg's	<input type="checkbox"/> Reports & Public Petitions
	<input type="checkbox"/> Resolutions	<input type="checkbox"/> Other	

3. DEPARTMENT: County Clerk

APPLICANT: Complete Mailing Solutions AGENT: Dan Siglan

4. DESCRIPTION: Consideration of an agreement and addendum with Complete Mailing Solutions for equipment and software support of a digital mailing system.

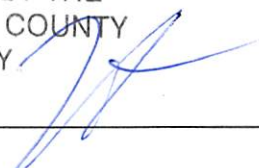
Amount \$2,450.00

From 8/1/2016

To

5. DOCUMENTATION: 2 Originals

RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
DEPUTY LARAMIE COUNTY
ATTORNEY



<u>Commissioner</u>	<u>Clerks Use Only:</u>	<u>Signatures</u>
Ash _____		Co Attny _____
Heath _____		Assist Co Attny _____
Holmes _____		Grants Manager _____
Kailey _____		Outside Agency _____
Thompson _____		
Action _____		
Postponed/Tabled _____		



EQUIPMENT AND SOFTWARE SUPPORT AGREEMENT

3001 S. Tejon St, Englewood, CO 80110
 303-761-0681 www.comp-mail.com

Install At: Laramie County		Bill To:	
Company Dan Siglin		Company	
Attention 2001 Carey Ave		Attention	
Address: Cheyenne WY 82001		Address	
City, ST ZIP 307-633-4375		City, ST ZIP	
Person to Contact	Telephone	Person to Contact	Telephone
Acct.'s Payable Contact	Facsimile	Additional Contact	Facsimile

Customer Purchase Order:		Effective Dates:	
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QUANTITY	MAKE/MODEL/DESCRIPTION	SERIAL #	UNIT PRICE	TOTAL
1	IN6000 mail system			
1	Inline dynamic Scale			
1	Conveyor stacker			
1	70# scale			\$2450.00

Payment Method Bill Customer ^x		
Included in Lease	Sub Total: Tax:	2450.
	Total:	
	TO BE DETERMINED	
		\$2450.00

Name (Print)	Title
Authorized Signature X	Date
Sales Representative:	Approved by CMS Officer: Paul Johnson
	Date:

By signing this document, Client Agree to Attached Terms & Conditions

Additional Inclusions: _____ Additional Exclusions: _____

I. WHAT'S COVERED?

STANDARD maintenance services, as described herein, will be provided for the Products at the Delivery Location. Complete Mailing Solutions Inc., (CMS) agrees to provide the parts and labor associated with the ordinary maintenance of the Products as required due to normal wear and tear ("Maintenance Services"). Unless Customer has purchased **PremierPlus** maintenance service, **STANDARD** Maintenance contracts do not include consumable parts and/or wearable parts as defined by CMS. Supplies (i.e. paper, ink, labels, carrier rate changes, cutting blades, sponges, brushes, feed rollers and belts that touch paper, etc.) are **not** included in Maintenance Services. Maintenance Services may also include preventative maintenance and inspections from time to time, as determined by CMS or required by the USPS. CMS may, at its option, designate a third party to provide Maintenance Services. CMS, in its sole discretion, may service the Products by replacing it with new, or like-new Products; provided that such replacement products are substantially similar to the Products. Maintenance Services will be provided during CMS' normal business hours. Any parts that are replaced by CMS while performing Maintenance Services become the property of CMS.

II. WHAT ARE THE FEES AND WHEN ARE THEY DUE?

For Purchased Products:

Customer shall commence paying for the Maintenance Services on upon delivery of the Products. All fees for Maintenance Services ("Maintenance Fees") on purchased Products are invoiced annually, in advance.

For Leased Products:

If the Products are being leased from a 3rd party leasing company, and the Maintenance Fee has been included in the lease payment amount ("Leased Products"), then Maintenance Services will be provided for the Initial Term of the lease. If the lease payments are delinquent at the time services are requested or rendered, service could be delayed or chargeable at the then current rates. Customer shall commence paying for the Maintenance Services on Leased Products, where Maintenance Fees are included in the lease payment, on the date the lease commences. During any Renewal Term, Customer agrees to pay invoices for service at the then current fee for Maintenance Services for those products.

Other Fees:

In addition to the Maintenance Fees, Customer agrees to pay: (a) for labor, parts, and expenses for maintenance or repair that is part of an Excluded Service (as defined below); (b) for travel expenses for any on-site maintenance services that in the opinion of CMS is not deemed necessary; and (c) an increased Maintenance Fee for Products that are regularly used by more than one shift of personnel per business day (collectively "Additional Charges"). All Additional Charges shall be at CMS' then current rates for time and materials. Charges for labor shall include travel expenses (including travel time, gas, tolls, mileage, etc.).

All payments for Maintenance Services and Additional Charges are nonrefundable. CMS may adjust the Maintenance Fees at the end of the Initial Maintenance Term (as defined below) and any renewal term that may or may not be included in a lease.

III. WHAT IS THE TERM OF THE MAINTENANCE SERVICES?

For Purchased Products:

Unless otherwise specified in the Agreement, the initial term of these Maintenance Services is one (1) year (the "Initial Maintenance Term"). Unless Customer provides ninety (90) days written notice to CMS prior to the end of the Initial Maintenance Term, or any renewal term, the Maintenance Services shall automatically renew for an additional one (1) year term at CMS then current rate for such service.

For Leased Products:

The term of the Maintenance Services for Leased Products will be equal to the term of the lease as specified in the Agreement.

HIGH VOLUME USERS THAT EXCEED THE MANUFACTURERS ANNUAL CYCLE COUNT, WILL RENEW BASED ON TWELVE (12) MONTHS OR CYCLE COUNT, WHICH EVER COMES FIRST.

IV. HOW DO I REQUEST MAINTENANCE SERVICE?

In order to receive Maintenance Services on the Products, the Customer must notify CMS of a need for service by contacting CMS at 303-761-0681 during normal working hours, 8 AM thru 4:30 PM (Mtn) M-F. If an attendant is not available, a voicemail must be left in the appropriate mailbox. Calls are queued into our automated dispatch system. CMS may, at its sole discretion, attempt to resolve Products performance issues over the telephone. If CMS determines that on-site service is necessary, CMS shall provide such on-site service in accordance with the terms set forth herein.

V. WHAT'S NOT COVERED BY THE CMS MAINTENANCE PROGRAM?

Maintenance Services do not include:

- De-installation of the Products, or moving the Products (however these services are available for an additional fee);
- Services provided before 8:00 a.m. or after 4:30 p.m. local time based on the location of the Products (however service is available outside of those hours for an additional fee);
- Maintenance or repairs made necessary by the failure of Customer to maintain or use the Products in conformance with manufacturers specifications;
- Maintenance or repairs made necessary by changes in the design of the Products made by Customer or mechanical, electrical, or electronic interconnections, or the attachment of other parts or components to the Products by Customer;
- Maintenance or repairs made necessary by accidents or natural disasters;
- Maintenance or repairs made necessary by the negligence of Customer;
- Maintenance or repairs made necessary by the unauthorized maintenance by Customer or any third party other than CMS or its authorized service representatives;
- Damage or repair necessitated by relocation of the Products not conducted by CMS;
- Maintenance or repairs made necessary because Customer has exceeded the published performance specifications or recommended monthly volume limits for the Products;
- Maintenance or repairs made necessary by Customer's use of parts, consumables, or other supplies that do not comply with the manufacturers specifications;
- Recovery of any customer data stored within the manufacturers Products or the maintaining of any back-up data;
- Rebuilding or major overhauls which CMS determines are necessary ("Reconditioning").
- Supplies as indicated in section I.
- Excessive operator training required due to Customer employee changes

All of the foregoing are "Excluded Services." Excluded Services also include application configuration and set-up. In the event Customer requests CMS to perform an Excluded Service, Customer shall pay CMS its then current hourly rate for those services (including travel time), as well as the then-current price for any parts required in connection with such services.

VI. WHAT OTHER RESPONSIBILITIES DO I HAVE?

CUSTOMER'S MAINTENANCE OBLIGATIONS: Customer agrees to maintain the Products in accordance with the manufacturers published specifications. Except as specified and approved by CMS, Customer shall not perform, or permit third parties to perform maintenance or repair on the Products.

COPIES OF DATA: Customer is solely responsible for all data stored on the Products and making copies of all such data prior to CMS performing Maintenance Services.

USE OF Manufacturer Recommended Supplies: If the Customer uses other than the OEM supplies, and if such supplies are defective or unacceptable for use in manufacturer's machines and generates service calls or service problems, then CMS may, at its option, assess a surcharge or terminate the Maintenance Services. In this event, the Customer may be offered service on a "Per Call" basis based upon current rates. It is not a condition of this Agreement, however, that the Customer uses only the manufacturer's authorized supplies.

ENVIRONMENT/ELECTRICAL: Customer shall provide a suitable electrical environment for Products as specified by the manufacturer. In order to insure optimum performance by the manufacturer's Products, it is recommended that specific models be plugged into a dedicated line and that they comply with manufacturer's electrical specifications.

COMPLETE SYSTEM COVERAGE: All manufacturer's components (hardware and software) used in a system must be covered under Maintenance Services ("Complete System Coverage"). For example, a customer may not obtain Maintenance Services only for a mailing machine if it is used with a separate scale. In that case, the Customer would also need to purchase Maintenance Services for the scale. If a customer refuses to obtain Complete System Coverage, CMS may terminate the Maintenance Services on any Product that is otherwise covered by such Maintenance Services

ACCESS TO PRODUCTS: Customer shall allow CMS full and free access to the Products and the use of necessary data communications facilities and equipment at no charge to CMS.

PRODUCT MODIFICATIONS: Customer shall not cause modifications or interconnections to be made, or accessories, attachments, or features to be added to the Products without CMS' prior written approval.

VII. WHAT ELSE DO I NEED TO KNOW?

CMS may terminate the Maintenance Services, upon written notice to Customer, if:

- Customer defaults on any payment due under this Agreement or greater than 30 days past due on a contract invoice;
- The Products exceed the maximum monthly or lifetime cycle counts for such Products;
- The Products are modified, damaged, altered or serviced by personnel other than the CMS Authorized Personnel;
- Parts, accessories, consumables, supplies, or components not meeting machine specifications are used with the Products;
- Customer refuses to obtain Complete System Coverage;
- Any services are necessary because Customer has done (or failed to do) something that requires the performance of an Excluded Service;
- Customer decides not to proceed with any Reconditioning that is deemed necessary by CMS.

Furthermore, if the Products are leased, this Agreement shall automatically terminate as to any Products covered by the lease on the date such lease expires, is terminated, or any supplemental invoice is unpaid.

Neither this Agreement nor any rights hereunder may be assigned by Customer without the prior written consent of CMS.

VIII. DESCRIPTION OF SOFTWARE SUPPORT

Subject to the terms and conditions set forth below, CMS agrees to provide and the Customer agrees to purchase Software support, with respect to the licensed computer programs (the "Licensed Programs") set forth in Attachment B. In providing Software Support to the Customer, CMS agrees to perform the following services:

- Provide the Customer with enhancements and fixes as they become available, to the Licensed Programs that have a valid Software Maintenance Agreement (SMA). CMS reserves the right to determine what constitutes an enhancement; enhancements billable to CMS are billable to Customer;
- Provide reasonable remote technical assistance and consultation to the Customer with respect to use of the Licensed Programs with valid SMA;
- Any assistance required to fulfill CMS's obligations under this Agreement, will be provided at no additional charge unless such assistance is found to be the result of operating system issues, network issues, hardware failure, user error, neglect or negligence. Assistance required as a result of such failure, user error, neglect or negligence will be compensated by the Customer at CMS's standard hourly rate then in effect, plus reasonable expenses for transportation, meals and lodging. **It is understood that Customer is solely responsible for protecting and/or removing any confidential data/images stored or residing on any Customer devices. CMS, under no circumstances, is liable for any damages including special, exemplary, punitive, incidental, or consequential damages, regardless of the claim, as the result of any information/data on Customer's system.**

Response Time

There is no guaranty regarding the response time to a service call from the Customer. CMS will respond to software service calls in the order received and will make every effort to respond within the same work day. CMS, however, has established a priority coding system for each problem reported.

1. **'A' Priority** - A software error renders the entire system inoperable. Resources assigned within one (1) hour. Resources continue to work on the problem during normal business hours (and then some) until the problem is resolved. Average resolution time less than 8 hours.
2. **'B' Priority** - A software error is detected for a system module which seriously impairs systems operations, but does not render it "down." Resources are assigned within four (4) hours and remain assigned until completed, work continues during normal business hours.
3. **'C' Priority** - Minor problem, but sufficient severity as to warrant correction before the next software release. Generally completed within 30 days.
4. **'D' Priority** - "Would likes" and minor problems which will be incorporated in future software releases. CMS reserves the right to determine "would like" relevance to the package and the scheduling of the development and release of such items.

IX. SOFTWARE SUPPORT HOURS

For purposes of this Agreement, the period of maintenance service availability and software support will be during normal business hours, 8:00 a.m. to 4:30 p.m. (Mountain Time), Monday through Friday. Remote/Telephone Maintenance Services provided during weekends, normal holidays, (which include: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day) and after normal business hours are restricted to "A Priority" and provided at "No Charge". Any maintenance services performed during weekends, holidays and after hours other than listed above shall be at CMS's standard hourly rate then in effect for the day or holiday, plus travel expenses.

X. SOFTWARE SUPPORT EXCLUSIONS

CMS is not obligated to provide service under the Agreement where as necessitated by vandalism, theft, misuse, hardware malfunction, neglect, acts of third parties, fire, water, casualty, acts of God, mob violence, labor disputes, malfunction of affiliated equipment, unauthorized modification of the software, electrical failure, accidents, climatic conditions, or from other causes unrelated to the ordinary operation of the software. This Agreement is void if service is performed on the software by unauthorized individuals, or if attempts are made to modify the software or use the software in a manner not set out in the instruction manual or license agreement. Should it be necessary to perform services outlined in this agreement at the Customer's site, Customer shall be responsible for actual out-of-pocket expenses incurred in travel.

**ADDENDUM TO EQUIPMENT & SOFTWARE SUPPORT AGREEMENT
Laramie County/Complete Mailing Solutions**

THIS ADDENDUM modifies the Equipment and Software Support Agreement "Agreement" between Complete Mailing Solutions (hereinafter referred to as "CMS"), 3001 S. Tejon St., Englewood, CO 80110 and Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, (hereinafter referred to as "COUNTY"). The parties agree as follows:

I. PURPOSE

The purpose of this Addendum is to modify CMS' s Agreement for the maintenance and support of a Digital Mailing System, as more fully described in the Agreement and Terms and Conditions (Attachment 'A'), which are specifically incorporated herein by reference.

II. TERM

This Addendum shall commence on the earlier of either the date last executed by the duly authorized representatives of the parties, or August 1, 2016, and shall remain in full force until completely performed or terminated in accordance with the terms of the Agreement and this Addendum.

III. PAYMENT

COUNTY shall pay CMS the amount indicated in the Agreement, for the maintenance and support of the Digital Mailing System described in the Agreement. CMS shall bill COUNTY by a properly executed invoice. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with WYO. STAT. ANN. § 16-6-602, as amended.

IV. ADDITIONAL PROVISIONS

A. Independent Contractor: The services to be performed by CMS are those of an independent contractor and not as an employee of COUNTY. CMS is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CMS assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CMS is free to perform the same or similar services for others.

B. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

C. Acceptance Not Waiver: COUNTY approval of the reports, and work or materials furnished hereunder shall not in any way relieve CMS of responsibility for the technical accuracy of the work. COUNTY approval or acceptance of, or payment for, any of the services shall not

be construed to operate as a waiver of any rights under the Agreement and this Addendum or of any cause of action arising out of the performance of the Agreement and this Addendum.

D. Entire Agreement: The Agreement (Attachment 'A') (5 pages including Terms and Conditions) as modified by this Addendum (4 pages) represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

E. Modification: The Agreement and this Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

F. Invalidity: If any provision of the Agreement and this Addendum is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or inability to enforce, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of the Agreement and this Addendum are fully severable.

G. Applicable Law and Venue: The parties mutually understand and agree that the Agreement and Addendum shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning the Agreement and Addendum or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CMS and to COUNTY in executing the Agreement and Addendum. This provision is not intended nor shall it be construed to waive COUNTY' s governmental immunity as provided in the Agreement and Addendum.

H. Contingencies: CMS certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with the Agreement and this Addendum, nor were any fees, commissions, gifts or other considerations made contingent upon the award of the Agreement and this Addendum.

I. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of the Agreement and this Addendum because of race, color, gender, creed, handicapping condition, or national origin.

J. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, et seq., and/or any properly promulgated rules and regulations relating thereto.

K. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including WYO. STAT. ANN. §§ 1-39-101 to -121, as amended, by entering into the Agreement and this Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any

action, whether in tort, contract or any other theory of law, based on the Agreement and this Addendum.

L. Indemnification: To the fullest extent permitted by law, CMS agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of CMS for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees.

M. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement and Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in the Agreement and this Addendum shall operate only between the parties to the Agreement and this Addendum, and shall inure solely to the benefit of the parties to the Agreement and this Addendum.

N. Conflict of Interest: COUNTY and CMS affirm, to their knowledge, no CMS employee has any personal beneficial interest whatsoever in the Agreement and this Addendum described herein. No staff member of CMS, compensated either partially or wholly with funds from the Agreement and this Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Agreement and this Addendum.

O. Force Majeure: Neither party shall be liable to perform under the Agreement and this Addendum if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

P. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CMS the Agreement and this Addendum may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CMS at the earliest possible time of the services which will or may be effected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate the Agreement and this Addendum in order to acquire similar services from another party.

Q. Termination: The Agreement and this Addendum may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties

R. Notices: All notices required and permitted under the Agreement and this Addendum shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

S. Addendum Controls: Where a conflict exists or arises between any provision or condition of the this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

T. Compliance with Law: CMS shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

LARAMIE COUNTY, WYOMING

By: _____ Date _____
K.N. Buck Holmes, Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CMS

By: Paul Johnson - Paul Johnson Date 8/12/2016
Title: President

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY:

By: Bernard Haggerty Date 8-19-16
Deputy Laramie County Attorney