

**CONTRACT RIDER  
LEASE AGREEMENT ADDENDUM  
PA 95-2014**

This Lease Agreement Addendum ("Addendum") is made this \_\_\_\_ day of \_\_\_\_\_, 2014, and is made part of and amends that certain Lease Agreement ("Agreement") by and between **Advance Business Systems & Supply Company** ("Lessor") and **Howard County, Maryland** ("Lessee"). The words "you" and "Your" refer to the Lessee and the words "We", "Us", and "Our" refer to the Lessor. Unless otherwise defined herein, capitalized terms shall have the definition set forth in the Agreement.

**NOW THEREFORE**, for goods and valuable consideration, intending to be legally bound and pursuant to the terms and conditions of the Agreement, it is hereby agreed as follows:

1. Lessor hereby covenants and agrees to perform all services in strict and entire conformity with the County of Fairfax, Virginia Request For Proposal 2000000264 ("Bid"), in cooperation with U.S. Communities Government Purchasing Alliance, Lease or Purchase of Multifunctional Devices and Other Related Products, Services and Solutions, which is incorporated herein by reference. If any terms in the Lease Agreement are in conflict with the provisions of the Bid, the provision of the Bid shall control.
2. **Section 3. TAXES.** The following is added to the end of the section: "Both Lessor and Lessee acknowledge that the Lessee is a governmental entity, exempt from all local, state and federal taxes. Should such exemption be denied, the Lessee agrees to pay all applicable non-exempt taxes to the Lessor."
3. **Section 4. INTEREST.** The sentence is replaced with: "Should You fail to pay any part of the rent or any other sum You are required to pay under the Lease within thirty (30) days after the due date thereof, You agree to pay to Us interest on such delinquent payment from the expiration of said thirty (30) days until paid at an annual percentage rate of six percent (6%)."
4. **Section 6. INSTALLATION AND USE.** Subsection (d) is replaced with: "You bear the entire risk of loss, damage, theft, rent distraint or destruction of the equipment from any cause whatsoever, and upon any such occurrence, You shall not be relieved of the obligation to pay rent or from any other obligation under this Agreement unless (1) this Agreement is terminated; or (2) the damage is caused by Advance employees or agents."
5. **Section 7. ACCEPTANCE.** The first sentence is changed to begin with, "Unless within 30 days after delivery of the Equipment..."
6. **Section 8. LIABILITY AND INSURANCE.** This section is replaced with: "You agree to keep the equipment insured for damage or injury caused by the equipment or its use; to insure the equipment for replacement cost; and to include Us as Loss Payee as Our interest may appear. You shall provide evidence of insurance if requested. We acknowledge that You are a governmental entity that obtains its insurance in part from a self-insurance program and in part from participation in a government-sponsored insurance pool, that Your insurance requirement per this paragraph may be fulfilled through a program of self-insurance, and that evidence of insurance coverage may be provided via a letter from Your appropriate department prior to the Commencement Date. You must continue to make payments until the Lease is paid off by the insurance proceeds."

7. **Section 11. LIMITATION OF LIABILITY.** This section is replaced with:

Advance's liability shall be limited at Advance's option to either (a) the repair or replacement of the Equipment by Lessor; or (b) to the amount of the rent due under the Agreement which has previously been paid by Customer under this Agreement, not to exceed, in any event, an amount equal to six months' rent.

If the Lessor causes damage to the Lessee's property or injury or death to its employees, agents or officials, the limitation of liability set forth in Section 11 will not apply. In such cases, the Lessor's liability shall not exceed the policy limits of its general liability insurance.

Except as otherwise set forth in this Section 11, Lessor shall not be liable for any damages, direct, indirect, incidental or consequential resulting from, or from any delay in delivering Equipment, services, work product and/or goods or for any anticipated, actual, or alleged lost profits, incidental damages, loss of time or other losses incurred by Lessee or any third party in connection with the Equipment, services, work product and/or goods as described, provided or to be provided under this Agreement, including, but not limited to, the loss of use of the Equipment and services, failure of performance of the Equipment and goods, loss of any data (whether belonging to Lessee or anyone who has provided data to Lessee), and which data is at any time within Lessee's custody; loss of (or loss of use of) any software or feature or any computer, electronics or other equipment attached or connected to the Equipment (whether by electrical, mechanical or any other means) and/or software related to the Equipment's use.

Under no circumstances shall Lessor be liable to Lessee or its employees, agents, successors, assignees or any third party for direct, indirect, incidental, special or consequential damages resulting from the installation, connection, interfacing and/or operation of the Equipment independently or in conjunction with any other property or equipment.

The Equipment supplied under this Agreement may contain one or more hard drives that may contain or retain data resulting from Lessee's or others' use of the Equipment while it was in Lessee's custody and/or during the term of the Service Agreement. This data may remain imbedded on the hard drive(s) after the Equipment is no longer in service under this Agreement. The responsibility for the security of any such data located and retained on the Equipment hard drive(s) is and will remain that of the Lessee. If the Equipment is returned to the lessor at the termination of this Agreement (or otherwise), the Lessor, upon Lessee's request, will protect or destroy this data at cost of One Hundred Dollars (\$100.00) per machine. In no instance shall Lessor be responsible to any third party for the protection of, protection against dissemination, or destruction of any data imbedded (in any manner) on the Equipment hard drive(s). To the extent permitted by the Local Government Tort Claims Act, found at Sections 5-301 through 5-304 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as supplemented from time to time, and the limitations of liability set forth therein, and subject to appropriations by the Howard County Council, the Lessee covenants and agrees to the extent set forth in Paragraph 12 to indemnify and hold Lessor harmless from any claim(s) alleged or brought against Lessor by or from anyone regarding the security, use, or disclosure of any data imbedded on the hard drive(s) of the Equipment, during the term of this Agreement or thereafter.

8. **Section 12. INDEMNIFICATION.** This section is replaced with: "To the extent permitted by the Local Government Tort Claims Act, found at Sections 5-301 through 5-304 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as supplemented from time to time, and the limitations of liability set forth therein, and subject to appropriations by the Howard County Council, and notwithstanding anything to the contrary contained elsewhere in this

Agreement, Lessee assumes liability for and shall indemnify, protect, save and keep harmless the Lessor, its agents, servants, and employees from and against all liability, including, losses, damages, and expenses and disbursements, incurred by or asserted against Lessor in any way relating to or arising out of this rental or the use of the Equipment. The indemnification contained in this paragraph shall continue in full force and effect, notwithstanding the termination of the Agreement and shall survive the termination of this Agreement. In no event shall the Lessee be liable for (a) special, indirect or consequential damages or (b) any damages whatsoever from loss of data or profits arising out of or in connection with the contract exceeding Lessee's actual rental fees as agreed under the terms of this Lease."

9. **Section 13. DEFAULT.** This section is replaced with: "Any of the following events or conditions will constitute default hereunder:

(a) You fail to pay any sum due Us within thirty (30) days after the due date thereof; or (b) any representation or warranty made by You herein or in any document delivered by You in connection herein will prove to have been misleading in any material respect when made."

10. **Section 14. REMEDIES.** In the first sentence, "with or without notice" is replaced with: "with thirty (30) days' notice".

In subsection (d), "with or without notice to You" is replaced with: "with notice to You".

In subsection (f), "eighteen percent (18%), costs, taxes and expenses including attorneys' fees of twenty-five percent (25%)" is replaced with: "six percent (6%) costs and expenses".

The language in Section 14 after "(g) exercise all rights available to Us under applicable law." is deleted.

11. **Section 15. CONFESSION OF JUDGMENT.** This section is deleted in its entirety.

12. **Section 16. ASSIGNMENT.** The second sentence is replaced with: "You agree that all Our rights in the Equipment and under this Lease may be assigned, pledged or otherwise disposed of, but only if We provide You prior written notice and You consent in writing to the assignment, pledge or disposition, which consent shall not be unreasonably withheld."

13. **Section 18. STATUTE OF LIMITATIONS.** This section is deleted in its entirety.

14. **Section 19. JURISDICTION.** The end of the first sentence is changed to read, "...including but not limited to, those located in Howard County, Maryland."

15. **Section 20. SURVIVAL.** This section is deleted in its entirety.

16. **Section 22. LESSEE WAIVERS.** This section is deleted with the exception of the bolded, capitalized statement which reads, "WE AND YOU EACH AGREE TO WAIVE AND TO TAKE ALL REQUIRED STEPS TO WAIVE ALL RIGHTS TO A JURY TRIAL."

17. **Personal Guaranty.** This paragraph is deleted in its entirety.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement PA-95-2014.

WITNESS:

**ADVANCE BUSINESS & SUPPLY  
COMPANY, INC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Alan I. Elkin  
President

Print Name: \_\_\_\_\_

WITNESS:

**HOWARD COUNTY, MARYLAND** a body  
corporate and politic

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrative Officer

\_\_\_\_\_  
Ken Ulman  
County Executive

APPROVED FOR LEGAL SUFFICIENCY  
this \_\_\_\_ day of \_\_\_\_\_, 2014.

INFORMATION TECHNOLOGY APPROVED:

\_\_\_\_\_  
Margaret Ann Nolan  
County Solicitor

\_\_\_\_\_  
Christopher J. Merdon  
Chief Information Officer  
Department of Technology and Communications  
Services

REVIEWING ATTORNEY:

\_\_\_\_\_  
Type Name: \_\_\_\_\_  
Title: \_\_\_\_\_