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# MEMO

APPROVED  
7/24/2023



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DATE: July 18, 2023  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – Formax

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners of Tulsa County on behalf of Tulsa County Administrative Services and Formax for a twelve (12) month maintenance agreement, June 29, 2023 to June, 28, 2024, for a FD7202-Special 4 Inserter with Tower Feeder and a FD7202-10 Non-Intelligent HCVF with Cabinet for \$6,494.00 as further described in the attached.

Respectfully submitted for your approval.

MME / llm

SUBMITTED FOR: The July 24, 2023 BOCC meeting agenda.

CMF# 20231280



1 Education Way • Dover, NH 03820 USA  
Phone: 800-232-5535 • Fax: 603-743-6366  
www.formax.com

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Standard Maintenance Contract Terms

All services made by Formax. ("Formax") to its customers ("Customer") are subject to these Standard Maintenance Agreement Terms ("Terms").

1. Agreement Terms and Termination

The initial period of these Terms commences on the Service Start Date and concludes on the Expiration Date specified in the Maintenance Agreement ("MA") ~~with automatic renewal of successive one-year terms that can be terminated by either party upon thirty days written notice.~~ Maintenance service for equipment added after the start of the term continues for the remainder of the term. RM

2. Charges

- 2.1 Invoicing and Terms of Payment: Formax invoices all annual charges in advance and Customer's payment is due prior to the Renewal Date or Service Start Date.
- 2.2 If the Customer's usage of the equipment changes, the price will change accordingly where applicable. Equipment used for multiple shift (more than eight hours per day) operation may be subject to an additional charge. The MA will be re-billed immediately at the prorated amount.
- 2.3 Renewals will be available at the then current prices and terms, as long as an MA is available. All Renewals are subjected to a 3-5% increase each year.
- 2.4 Inspection/Repair Charges: Equipment for which the Manufacturer's product warranty has expired more than thirty days prior to the Acceptance Date hereof is subject to inspection and repairs, in accordance with Formax's then current policies and charges, prior to the commencement of maintenance service.
- 2.5 If your organization requires significant documentation for renewal of the agreement or vendor set up, there will be a \$150.00 processing charge.

3. Contracts

- 3.1 Warranty and extended warranty contracts are available with a variety of response times. All contracts include interim repairs and cover all parts and labor charges, excluding consumables and/or accessories as specified on the contract.
- 3.2 All contracts require that customer certifies equipment is in working condition prior to commencing contract. See Item 2.4. The customer is responsible for the cost of any parts needed to repair the equipment within the first thirty days of the MA.
- 3.3 Shredder and Cutter Contracts exclude travel and labor coverage on all service issues related to cutting blades, spacers, shafts, bearings, gears & all other components that comprise and attach to the cutting head assembly- parts are excluded after manufacturer's original warranty.
- 3.4 The Customer is responsible for securing their network during any software service repairs where a technician is required to remote into the Customer's computer.

4. General Maintenance Service Conditions

- 4.1 All equipment, parts and materials exchanged due to maintenance service will become the property of Formax at no charge. The Customer warrants that as of the date of exchange, Formax is the lawful owner of the exchanged item. All rights, titles, and interests therein are transferred to Formax free and clear of all liens and encumbrances.
- 4.2 Customer Preventive Maintenance Responsibility: The Customer will use and service the specified equipment in such a manner specified in the documentation and instructions applicable to the specified equipment. Consumables and supplies must meet the requirements of the Manufacturer.
- 4.3 Proprietary Information, Maintenance Tools and Equipment: Formax Maintenance Materials include all maintenance equipment, tests, diagnostic, and verification information and routines, tools and documentation whether on Formax or Customer owned media and whether on Customer's site or accessible by remote inquiry or incorporated in the equipment. All Formax's Maintenance Materials are the property of Formax. The Customer will secure and protect all confidential and proprietary items consistent with the rights therein.
- 4.4 "Fix or Replace" Option: If Formax chooses to replace customer's equipment, Formax will replace the equipment with a comparable unit. The replacement unit will inherit the existing unit's warranty or contract with no change in original expiration date.
- 4.5 Maintenance Service Exclusions:
  - A. Formax is not liable for any failure or delay due to any cause beyond its control and has no obligation arising out of the abnormal use of any item, site conditions not conforming to applicable Manufacturer specifications, or any causes external to any item, including but not limited to acts of God, fire or water damage, criminal conduct, neglect, acts of war, riots, strikes, lighting, electrical disturbances, earthquakes, or other similar causes. Any service that is outside the scope of these Terms may be provided, as available, in accordance with Formax's then current terms, conditions and charges.
  - B. Any service not specified herein including overhaul or refurbishment of the equipment due to age or prolonged usage is outside the scope of these Terms.
  - C. Formax is not liable to the Customer for any loss, damage or equipment problems arising from:

1. with automatic renewal...  
and may be renewed upon  
subsequent written  
agreement by the Parties.  
[Nicholas Williams]

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- 1. The Customer's failure to comply with any Customer designated responsibilities, including providing and proper care of equipment consumables or expendables, or Customer's abuse, misuse, or shipment of equipment.
- 2. The attachment of devices not maintained hereunder, relocation of equipment or the alteration, adjustment, repair or de-installation/re-installation of any equipment by anyone other than a Formax-authorized service representative.

D. Any equipment involved in such activity is subject to inspection at Formax's then current terms, conditions and charges prior to the continuation of maintenance services and Formax reserves the right to terminate maintenance service for the affected equipment upon thirty days written notice.

E. Any upgrades, re-fitting, or changes of design are excluded from contractual liability. These changes include, but are not limited to, electronic or mechanical changes. Such changes are eligible for Formax's then current charges even if the changes are recommended by an associate of Formax, the Manufacturer, or any other technical authority on the specified equipment.

F. Any failure, which includes, but is not limited to, the inability to operate, incorrect configurations or incorrect cabling of any peripheral device such as host computer systems, modems, print buffers, data cables, etc. are excluded from contractual liability. Any correction to the above can be provided at Formax's current charges unless otherwise specified.

G. Recurring service calls due to simple operator adjustments, environment issues such as humidity being high/low or excessive static on the forms, can be charged to the customer for labor and travel reimbursement after prior written warning of the specific issue provided to Formax. Such written warning will notify the customer of potential future charges if service calls are placed for the same specified reasons.

H. Contract excludes parts and labor coverage on all service issues related to cutting blades, spacers, shafts, bearings, gears & all other components that comprise and attach to the cutting head assembly. Agreement assumes that the equipment is functioning and in good operating condition. Any parts not covered under the contract will be billable to the customer at the current rate upon completion of the visit. Maintenance contracts are bound by the "Standard Maintenance Contract Terms"

4.6 The Customer is to pay Formax's then current charges for service due to any of the above exclusions.

**5. Limitation of Remedy**

5.1 Formax and Customer are not liable for any indirect, special or consequential damages or lost profits to anyone arising out of these Terms or the use of maintenance service, documentation or maintenance materials.

5.2 No other warranty, expressed or implied, shall apply to the parts and services provided under these Terms, including any warranty of merchantability or fitness for a particular purpose, which are expressly disclaimed. In no event will Formax be liable for any special, direct, indirect, incidental or consequential damages of any kind, including without limitation, loss of use, loss of data, loss of profits or liabilities to third parties, ~~however caused, whether by negligence of Formax or otherwise.~~ In no event will Formax's liability exceed the annual price per unit paid by customer under these Terms.

*RM*

**6. General**

6.1 6.1 Formax may terminate this agreement at any time, with or without cause. In the event that the maintenance agreement is cancelled, Formax will refund the prorated balance of the MA price from that date

6.2 All orders are subject to acceptance by Formax and fulfillment of Formax's credit requirements.

6.3 Any notice or other communication permitted or required by Customer are to be sent by first class mail to Formax.

6.4 Formax's obligations under these Terms are limited to its service coverage area.

6.5 Formax may assign these Terms in whole or part to any third party service provider without the prior consent of the Customer. Formax may assign all or part of the payments to the extent that Formax's obligations to Customer are not affected.

6.6 If the Customer fails to perform as provided herein, Formax has the right to terminate the MA and to exercise any other remedy existing in law or in equity. ~~Customer is to pay Formax all costs and expenses including attorney's fees incurred in the exercising of its rights and remedies.~~ No delay or failure of Formax to exercise any right or remedy constitutes a waiver.

*RM*

Signed: FORMAX

By Representative: Rebecca Morgan

At: 1 Education Way Dover, NH 03820

Approved: FORMAX

By: Rebecca Morgan

Title: Maintenance Contract Sales Associate

Phone: (800) 232-5535 Ext 15

Customer: Tulsa County

Address: 218 W 6th St, Basement

City: Tulsa State: OK

P.O. # \_\_\_\_\_

By: Kelly A. Kanley

Title: Chairman

Effective Date: 6/29/2023

**1. however caused; whether...**

However, it is understood and agreed that to the extent allowed by law, including the Oklahoma Governmental Tort Claims Act, that Customer and Formax shall each bear responsibility for their own acts or omissions.

[Nicholas Williams]

**2. Customer is to pay Formax...**

This clause must be stricken because (per Article 10 Section 26 of the OK Constitution) the County cannot agree to speculative debts that have not been appropriated via the annual budget.

[Nicholas Williams]

APPROVED AS TO FORM:

*Nicholas Williams*  
ASST. DIST. ATTORNEY



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Phone: 800-232-5535 • Fax: 603-743-6366  
www.formax.com

**CUSTOMER CONTACT INFORMATION**

COMPANY: Tulsa County, Administrative Services Serial #: XAC3675

**EQUIPMENT ADDRESS:**

Tulsa County HQ  
218 W 6th St, Basement  
Tulsa, OK 74119-1004

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1. Please provide this information  
[James Rea]

**NAME OF USER:** Theron Roberts

PHONE: (918) 596-5894

EMAIL: troberts@tulsacounty.org

**BILLING ADDRESS:**

Tulsa County, Administrative Services  
218 W 6th St, Suite 250  
Tulsa, OK 74119-1004

**ACCOUNTS PAYABLE:**

NAME: Victoria Wilson

PHONE: (918) 596-5881

EMAIL: vmwilson@tulsacounty.org

**ACCOUNTING MANAGER:**

NAME: Toni Kizer

PHONE: (918) 596-5839

EMAIL: tkizer@tulsacounty.org

**PLEASE RETURN TO: SUE CROUCH BY ONE OF THE FOLLOWING:**

**BY EMAIL: [contracts@formax.com](mailto:contracts@formax.com)**



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**\*\*\* 12 MONTH MAINTENANCE AGREEMENT \*\*\***

TULSA COUNTY HQ  
218 WEST 6TH STREET  
TULSA, OK 74119  
USA

**RE:** FD7202-Special 4 Inserter w/Tower Feeder - Includes four 500-sheet Flex-Feeders

**SERIAL#:** XAB3624, XAC3675, WBX3428

**RE:** FD7202-10 Non-Intelligent HC VF Module w/Cabinet **SERIAL #** WBV3314

**Service Contract Price: \$6,494.00**

**Valid 06/29/23 – 06/28/24**

The contract includes parts, labor, and travel and up to **(2)** scheduled preventative maintenances necessary to repair the product within normal business hours of 8:00AM to 5:00PM. Preventative Maintenance visits should be scheduled by the service provider; however calls can also be scheduled by the customer directly. Contract customers will receive a **One Business Day** priority response when service calls are placed.

Maintenance contracts are bound by the "Standard Maintenance Contract Terms" attached.

Please sign and date this document along with the customer contact sheet as acceptance of this agreement. **Maintenance contracts do not go into effect until payment is received in advance.**

Signature \_\_\_\_\_

Date \_\_\_\_\_

\*Please fax a Tax Exempt Certificate if applicable\*

Purchase Order # \_\_\_\_\_

Fax signed form to 603-743-6366 Attn: Rebecca Morgan or email to RMorgan@FORMAX.COM.

Sincerely,

APPROVED AS TO FORM:

ASST. DIST. ATTORNEY

Rebecca Morgan  
Formax Contract Sales Associate  
800-232-5535 Ext.115