

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 6th day of December, 2016 (the "Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and BMI Imaging Systems, Inc., whose corporate address is at 1115 E Arques Avenue, Sunnyvale, CA 94085, hereinafter referred to as "CONTRACTOR" or "BMI".

WITNESSETH:

WHEREAS, COUNTY has a need for online hosting of imaged documents; and

WHEREAS, CONTRACTOR has represented that its DIGITAL REEL™ online Hosting Service meets the COUNTY's needs; and

WHEREAS, CONTRACTOR agrees to issue software licenses for ten (10) kiosk licenses and fifteen (15) named licenses, and provide online document image hosting services to COUNTY; pursuant to the terms stated herein; and

WHEREAS, COUNTY desires to purchase such software licenses and online hosting services, from CONTRACTOR.

NOW, THEREFORE, for and in consideration of the promises herein, and for other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

The following terms used throughout this Agreement shall be defined as follows:

BMI Hosting Services:

BMI hosted online access to Imaged Product (as defined below) for use by COUNTY-authorized End Users.

BMI Documentation:

BMI end-user documentation, help and training materials, as made available to COUNTY from time to time.

County Documents:

All instruments, papers and notices submitted to the Fresno County Recorder's Office,

the recording of which is required or permitted by law.

County Software:

The operating system along with any third-party software installed on COUNTY system hardware.

End User:

Any person who is authorized by COUNTY to access and use Imaged Product in connection with COUNTY's business.

Imaged Product:

The end results of digital or photographic reproduction processes of BMI services that can be viewed by COUNTY on a display device.

ISD:

Information Services Division of COUNTY's Internal Services Department.

Software or System Software:

Digital Reel™ software and its contents.

Standard Business Hours:

Defined as M-F: 5:00 AM to 5:00 PM (Pacific)

System:

The System Software and System Documentation, collectively.

System Documentation:

The documentation related to the Software, and all specifications and materials provided by CONTRACTOR in connection with the System pursuant to this Agreement.

2. OBLIGATIONS OF THE CONTRACTOR

A. BMI SERVICES

CONTRACTOR shall provide Software and BMI Hosting Services to COUNTY in a professional, timely and mutually agreeable manner, in accordance with the terms and conditions set herein below.

1) ONLINE HOSTING SERVICES

CONTRACTOR shall provide to COUNTY BMI Hosting Services as follows:

1 **A. Storage and Access to Imaged Product.**

2 CONTRACTOR shall provide a minimum hardware storage configuration of
3 RAID 5 on which the Imaged Product will be stored. CONTRACTOR will provide access
4 to this hardware configuration in both of its two (2) hosting locations, with one
5 configuration available at any one time at least 99% of Standard Business Hours.

6 **B. Access Services.**

7 CONTRACTOR shall allow access to the Imaged Product to End Users via
8 Internet connections from one or more of CONTRACTOR's data repositories ("Access
9 Services"). End Users will be determined by COUNTY, who will provide CONTRACTOR
10 with updated status information regarding those End Users. Adding or removing End
11 Users will be at the discretion of COUNTY's Contract Administrator (as defined in
12 Section 3-A) or that person's designee. CONTRACTOR will provide COUNTY with
13 software tools to allow for administration level controlled addition or deletion of End
14 Users. COUNTY assumes all responsibility for adding, deleting, or maintaining End
15 Users, whether directly administering the End Users or through CONTRACTOR
16 technical support.

17 **C. Communication Lines.**

18 CONTRACTOR utilizes communication services of telecom third parties.
19 COUNTY acknowledges that CONTRACTOR does not have ultimate control of
20 communication lines used to access the Imaged Product, and that therefore,
21 CONTRACTOR cannot ultimately guarantee the security of transmissions between
22 CONTRACTOR and COUNTY. CONTRACTOR routinely utilizes Secure Socket Layer
23 (SSL) protocol for transmission of the Imaged Product to clients and can provide other
24 enhanced data communication and security provisions upon request, such as single
25 Internet Protocol (IP) access or Virtual Private Network (VPN). Unless otherwise noted,
26 COUNTY should not expect bandwidth greater than 1.5Mb/s during Standard Business
27 Hours. COUNTY should not assume access will be available after Standard Business
28 Hours.

1 **D. Maintenance.**

2 Standard Maintenance or System Upgrades. CONTRACTOR shall perform
3 preventative maintenance of its servers and other facilities in accordance with its normal
4 maintenance schedules and procedures, as modified from time to time during the term of
5 this Agreement. COUNTY acknowledges that Access Services may not be operable
6 during periods of preventative maintenance. CONTRACTOR will make reasonable
7 efforts to inform COUNTY prior to any scheduled maintenance.

8 Unscheduled Maintenance. COUNTY acknowledges that CONTRACTOR
9 may have to perform maintenance on an emergency basis and that Access Services
10 may not be operable at these times. CONTRACTOR shall provide COUNTY with notice
11 as soon as possible in such situations and will make every reasonable effort to restore
12 Access Services to COUNTY as soon as possible.

13 **E. Customer Support.**

14 CONTRACTOR will provide limited operational and technical support
15 pertaining to BMI Services, during normal coverage hours (8:00 A.M. to 5:00 P.M. PST,
16 Monday through Friday, excepting CONTRACTOR and COUNTY holidays), via toll-free
17 telephone assistance.

18 2) SCOPE OF LICENSE

19 These following terms of use govern the terms and conditions by which the
20 Software may be accessed by COUNTY and COUNTY's designated End Users.

21 **A. LICENSE**

22 CONTRACTOR grants COUNTY a limited right to access and use the
23 Software as intended by CONTRACTOR for lawful internal business, education and/or
24 research purposes only and for no other purpose.

25 The parties acknowledge and agree that, as between CONTRACTOR and
26 COUNTY, title and full ownership of all rights in and to the Software, System
27 Documentation, and all other materials provided to COUNTY by CONTRACTOR under
28 the terms of this Agreement, shall remain with CONTRACTOR. COUNTY will take

1 reasonable steps to protect trade secrets of the Software and System Documentation.
2 Ownership of all copies is retained by CONTRACTOR.

3 COUNTY may not disclose or make available to third parties the Software or
4 System Documentation or any portion thereof. CONTRACTOR shall own all right, title
5 and interest in and to all corrections, modifications, enhancements, programs, and work
6 product conceived, created or developed, alone or with COUNTY or others, as a result
7 of or related to the performance of this Agreement, including all proprietary rights therein
8 and based thereon. Except and to the extent expressly provided herein, CONTRACTOR
9 does not grant to COUNTY any right or license, express or implied, in or to the Software
10 and System Documentation or any of the foregoing. The parties acknowledge and agree
11 that, as between CONTRACTOR and COUNTY, full ownership of all rights in and to all
12 COUNTY data, whether in magnetic or paper form, including without limitation printed
13 output from the System, are the exclusive property of COUNTY.

14 **B. RESTRICTIONS**

15 Except to the extent authorized by CONTRACTOR, COUNTY agrees to keep
16 secret and not disclose any personal name and/or password required by
17 CONTRACTOR to access and use the Software and to not share access and use of the
18 Software with any third party. In the event that COUNTY suspects that a personal user
19 name and password has been disclosed to an unauthorized party, COUNTY agrees to
20 immediately notify CONTRACTOR.

21 Except to the extent permitted by law, COUNTY may not directly or indirectly
22 (i) transmit, redistribute, encumber, sell, rent, lease, lend barter, sub-lease, sublicense or
23 otherwise transfer this Software or the right to access and use this Software to any third
24 party without the express written consent of CONTRACTOR; (ii) use the Software in
25 connection with any service bureau without the express written consent of
26 CONTRACTOR; (iii) remove or obscure any copyright, trademark and other proprietary
27 rights, notices, legends, symbols or labels; (iv) alter, modify, decompile, disassemble,
28 create any derivative works of the Software, including customization, translation or

1 localization, or reverse engineer or otherwise attempt to derive the source code for the
2 Software; or (v) use the DIGITAL REEL™ Software or its contents for any unlawful
3 purpose.

4 **C. INTELLECTUAL PROPERTY, TRADEMARK AND COPYRIGHT**

5 This Software is protected under U.S. Copyright laws and international
6 treaties, trade secret, trademark and other applicable laws. CONTRACTOR retains
7 ownership of the Software, any portions or copies thereof, and all rights therein.
8 CONTRACTOR reserves all rights not expressly granted to COUNTY. This License
9 does not grant COUNTY any rights in connection with any trademarks or service marks
10 of CONTRACTOR, its suppliers or licensors. All right, title, interest and copyrights in and
11 to the Software and the accompanying Software Documentation and any copies of the
12 Software are owned by CONTRACTOR, its suppliers or licensors. All title and intellectual
13 property rights in and to the content which may be accessed through use of the Software
14 are the property of the respective content owner and may be protected by applicable
15 copyright or other intellectual property laws and treaties. This License grants COUNTY
16 no rights to use such content.

17 **D. DISCLAIMER OF WARRANTIES**

18 Except as expressly set forth herein, the DIGITAL REEL™ Software, data
19 and information accessible through the use of the software and system are provided
20 “AS-IS” without representation or warranty of any kind. CONTRACTOR expressly
21 disclaims all implied warranties of merchantability, fitness for a particular purpose, title,
22 non-infringement and accuracy of data or information.

23 CONTRACTOR does not represent or warrant that the Software is free of all
24 defects or that the Software or its contents will be accessible at all times.

25 Use of the Software and its content, data, information and documentation is
26 at COUNTY’s risk.

27 **3) CONFIDENTIALITY**

28 CONTRACTOR acknowledges and agrees that all COUNTY Documents or any

1 other information and materials furnished by COUNTY to CONTRACTOR that COUNTY
2 identifies as confidential information shall be and remain the confidential information of
3 the COUNTY, including all Imaged Product containing confidential information, unless
4 one or more exclusions set forth below applies. CONTRACTOR agrees that it shall not
5 use or disclose the confidential information for any reason other than as set forth in this
6 Agreement. COUNTY acknowledges and agrees that CONTRACTOR may disclose
7 confidential information to subcontractors for the purposes of this Agreement who are
8 obligated in writing to maintain the confidentiality of confidential information.

9 Exclusions. For the purposes of this Agreement, confidential information shall
10 not include information or materials that: (a) have previously become or are generally
11 known to the public or trade through no breach of this Agreement or similar
12 confidentiality or non-disclosure agreement; (b) are already rightfully known to
13 CONTRACTOR or a third party prior to being disclosed by or obtained from the
14 COUNTY under this Agreement; (c) have been or are hereafter rightfully received by
15 CONTRACTOR from a third party under no restriction on use or disclosure; or (d) have
16 been independently developed by CONTRACTOR without access to the COUNTY's
17 confidential information. COUNTY agrees that CONTRACTOR may disclose COUNTY
18 confidential information in response to a lawful order of a court of competent jurisdiction
19 or legal authority, provided COUNTY is given reasonable notice to take steps to protect
20 such confidential information prior to disclosure, at COUNTY's expense.

21 B. CONTRACTOR PROJECT COORDINATOR

22 Upon execution of this Agreement, CONTRACTOR shall appoint a Project
23 Coordinator who will act as the primary contact person to interface with COUNTY for
24 implementation, maintenance and support of BMI DIGITAL REEL™ Hosting Service.

25 C. OTHER

26 Unless otherwise specified, for third-party software, CONTRACTOR shall provide
27 standard documentation in electronic form via the Internet or File Transfer Protocol
28 (FTP).

1 **3. OBLIGATIONS OF THE COUNTY**

2 A. COUNTY CONTRACT ADMINISTRATOR

3 COUNTY appoints its Director of Internal Services/Chief Information Officer or his
4 designee, as COUNTY's Contract Administrator with full authority to deal with
5 CONTRACTOR in all matters concerning this Agreement.

6 B. COUNTY PROJECT MANAGER

7 Upon execution of this Agreement, COUNTY's Contract Administrator shall
8 designate one individual from ISD who will function as Project Manager with
9 responsibility for day-to-day management of the project for implementation of the
10 System Software. The Project Manager and COUNTY personnel shall have the
11 necessary and appropriate training and experience to implement the terms of this
12 Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

13 C. SAFEGUARDING SYSTEM SOFTWARE

14 COUNTY will follow its present practices to safeguard System Software delivered
15 to COUNTY by CONTRACTOR. A copy of COUNTY'S "Information Technology (IT)
16 Standards and Preferences" will be made available upon request.

17 D. SECURITY

18 COUNTY agrees to validate the integrity of the information and data it receives
19 and transmits over the Internet, and to maintain the security of its Internet account and
20 usage. COUNTY agrees to protect its data and images from unauthorized use,
21 complying with protocols for sensitive, confidential and personal information.

22 E. CUSTOMER COOPERATION

23 COUNTY agrees to make available to CONTRACTOR, in a timely manner, certain
24 COUNTY Documents and as applicable, COUNTY personnel, equipment, and facilities.
25 COUNTY agrees that it will use best efforts to cooperate with CONTRACTOR in all
26 respects of this Agreement and COUNTY acknowledges that its failure to do so may
27 prevent CONTRACTOR from performing services hereunder in a timely manner.
28

1 F. LEGAL COMPLIANCE

2 COUNTY represents and warrants that it is the owner of the COUNTY Documents
3 and/or has or shall acquire all rights, title, interest, licenses and permissions necessary for
4 CONTRACTOR, its employees, agents and/or subcontractors to perform BMI Services
5 under this Agreement without violation or infringement of any third party right or
6 agreement. COUNTY shall be solely responsible for legal compliance with regard to the
7 reproduction of COUNTY Documents and the access and use of Imaged Product in
8 COUNTY's possession and/or control.

9 G. BACKUP OF DOCUMENTS AND DATA/ASSUMPTION OF RISK

10 COUNTY shall be responsible to make prior and ongoing backup copies of all
11 COUNTY Documents, data and programs connected to any network device onto which
12 CONTRACTOR will be loading software, data or Imaged Products in connection with the
13 performance of requested BMI Services. COUNTY acknowledges and agrees that
14 CONTRACTOR makes no claim as to the compatibility or serviceability of any software or
15 Imaged Product in connection with COUNTY's software or equipment.

16 H. NON-SOLICITATION

17 COUNTY shall not recruit, solicit, induce or otherwise contract for the employment of
18 CONTRACTOR's employees or service contractors during the term of this Agreement.

19 **4. TERM**

20 The term of this Agreement shall be for a period of three (3) years, commencing on the
21 Effective Date through and including the last day of the three-year period. This Agreement
22 may be extended for two (2) additional consecutive twelve (12) month periods upon written
23 approval of both parties no later than thirty (30) days prior to the first day of the next twelve
24 (12) month extension period. COUNTY's Director of Internal Services/Chief Information
25 Officer or his/her designee, is authorized to execute such written approval on behalf of
26 COUNTY based on CONTRACTOR's satisfactory performance.

27 **5. TERMINATION**

28 A. NON-ALLOCATION OF FUNDS

1 The terms of this Agreement, and the services to be provided thereunder, are
2 contingent on the approval of funds by the appropriating government agency. Should
3 sufficient funds not be allocated, the services provided may be modified, or this
4 Agreement terminated, at any time by giving CONTRACTOR thirty (30) days advance
5 written notice. In such event, COUNTY shall pay for all goods and services supplied by
6 CONTRACTOR through the date of termination, within 45 days following the termination
7 date.

8 **B. BREACH OF CONTRACT**

9 The COUNTY may immediately suspend or terminate this Agreement in whole or in
10 part, where in the determination of the COUNTY there is:

- 11 1) An illegal or improper use of funds;
- 12 2) A failure to comply with any term of this Agreement;
- 13 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 14 4) Improperly performed service.

15 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY
16 of any breach of this Agreement or any default which may then exist on the part of the
17 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to
18 the COUNTY with respect to the breach or default. The COUNTY shall have the right to
19 demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to
20 the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
21 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall
22 promptly refund any such funds upon demand.

23 CONTRACTOR may, upon thirty (30) days prior written notice to COUNTY,
24 terminate this Agreement if COUNTY fails to comply with any material term or condition
25 of this Agreement unless COUNTY cures such failure within such thirty (30) day period,
26 or other such timeframe as may be mutually agreed upon in writing by the parties.

27 **C. WITHOUT CAUSE**

28 Under circumstances other than those set forth above, this Agreement may be

1 terminated by COUNTY upon the giving of thirty (30) days advance written notice of
2 an intention to terminate to CONTRACTOR.

3 **D. RIGHTS AND OBLIGATIONS**

4 Upon termination or expiration of this Agreement, COUNTY shall pay to
5 CONTRACTOR all amounts due and payable for services rendered. COUNTY may
6 request the return, transfer and/or disposal of all or some of COUNTY's Documents,
7 Imaged Product and COUNTY Confidential Information in CONTRACTOR's possession
8 and/or control. Any and all expenses for the return, transfer or disposal of COUNTY
9 Documents, Imaged Product and Confidential Information shall be borne by COUNTY,
10 including but not limited to any sales or transfer taxes.

11 1) Retention and Backup/Archival Copies of Imaged Product.

12 In the absence of express instructions from COUNTY or separate written
13 agreement as set forth herein, COUNTY agrees that CONTRACTOR may, in its sole
14 discretion, retain one or more copies of Imaged Product for backup, warranty,
15 archival or dispute resolution purposes; provided, nothing in this Agreement shall
16 obligate CONTRACTOR to retain any such copies for any period of time for any
17 purpose. COUNTY acknowledges and agrees that CONTRACTOR shall have no
18 obligation or legal duty to COUNTY arising from this Agreement to retain one or more
19 copies of Imaged Product for any purpose or to provide additional services to
20 COUNTY, even if CONTRACTOR has retained any such copies for backup,
21 warranty and/or archival purposes. Any obligation of CONTRACTOR to retain one or
22 more copies of Imaged Product for any purpose or to provide additional services to
23 COUNTY shall require a separate mutually agreeable retention and services
24 agreement signed by both parties.

25 2) Compliance with Copyright Holder Demands

26 In the event a copyright holder or legal representative of a copyright holder
27 presents a credible claim of having copyright interest in an Imaged Product and on
28 that basis demands or requests the destruction, modification, transfer, reproduction,

1 distribution, display, transmission, and/or preparation of derivative works of, a copy of
2 the Imaged Product in CONTRACTOR's possession and/or control, CONTRACTOR
3 may accommodate and comply with any such demands or request, as
4 CONTRACTOR may decide in its sole and absolute discretion, to avoid and/or settle
5 a claim against CONTRACTOR by the copyright holder, all without cost, benefit,
6 payment, contribution, obligations, notice, consent, or liability of any kind under any
7 legal theory, to COUNTY.

8 **6. COMPENSATION/INVOICING**

9 A. License and Hosting.

10 For each year of the possible five (5) years of this Agreement, COUNTY agrees to
11 pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:
12 annual hosting, licensing for 10 kiosk users and 15 named users, support and
13 maintenance is \$20,100. In no event shall such compensation for all products and
14 services provided under this Agreement for years 1 through 5 exceed \$100,500.00. In
15 the event this Agreement is terminated early by COUNTY, for whatever reason,
16 CONTRACTOR shall refund to COUNTY on a pro-rata basis, all annual fees paid in
17 advance for goods and services to be provided hereunder but not yet delivered.

18 B. Additional License Fees.

19 COUNTY may purchase additional named user licenses at the following
20 price/volume combination: 5 users for \$3,000.00. In no event shall costs for additional
21 licenses be in excess of \$6,000.00.

22 C. Maximum Compensation.

23 In no event shall services performed under this Agreement for the entire possible
24 five (5) year term be in excess of \$106,500.00. It is understood that all expenses
25 incidental to CONTRACTOR'S performance of services under this Agreement shall be
26 borne by CONTRACTOR.

27 CONTRACTOR shall submit annual invoices (referencing the provided contract
28 number) , either electronically or via mail to the Fresno County Recorder, 2281 Tulare

1 Street Room 302, Fresno, CA 93721. COUNTY will pay CONTRACTOR within forty-five
2 (45) days of receipt of an approved invoice, by mail addressed to CONTRACTOR's
3 remittance address at 1115 E Arques Avenue, Sunnyvale, CA 94085.

4 **7. INDEPENDENT CONTRACTOR**

5 In performance of the work, duties and obligations assumed by CONTRACTOR under
6 this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and
7 all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and
8 performing as an independent contractor, and shall act in an independent capacity and not
9 as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
10 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or
11 method by which CONTRACTOR shall perform its work and function. However, COUNTY
12 shall retain the right to administer this Agreement so as to verify that CONTRACTOR is
13 performing its obligations in accordance with the terms and conditions thereof.

14 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the
15 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
16 subject thereof.

17 Because of its status as an independent contractor, CONTRACTOR shall have
18 absolutely no right to employment rights and benefits available to COUNTY employees.
19 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
20 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
21 responsible and save COUNTY harmless from all matters relating to payment of
22 CONTRACTOR'S employees, including compliance with Social Security withholding and all
23 other regulations governing such matters. It is acknowledged that during the term of this
24 Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY
25 or to this Agreement.

26 **8. CONFIDENTIALITY**

27 A Party receiving Information (defined below) of the other will not disclose such
28 Information other than to persons in its organization who have a need to know and who

1 will be required to comply with this Section. The Party receiving Information will not use
2 such Information for a purpose inconsistent with the terms of this Agreement. "Information"
3 means the Software, Documentation and all information and intellectual property related
4 thereto (including, but not limited to all databases provided to COUNTY by
5 CONTRACTOR whether created by CONTRACTOR or its third party licensors such as,
6 without limitation, the mapping product databases) as well as information related to the
7 business of CONTRACTOR or COUNTY. Information will not include: (i) information
8 publicly known prior to disclosure; (ii) information coming into the lawful possession of the
9 recipient without any confidentiality obligation; and (iii) information required to be disclosed
10 pursuant to regulatory action or court order, provided adequate prior written notice of any
11 request to disclose is given to the Party whose information is to be disclosed. Each Party
12 will exercise at least the same degree of care to safeguard the confidentiality of the other's
13 Information as it does to safeguard its own proprietary confidential information, but not
14 less than a reasonable degree of care.

15 **9. MODIFICATION**

16 Any matters of this Agreement may be modified from time to time by the written consent
17 of all the parties without, in any way, affecting the remainder.

18 **10. NON-ASSIGNMENT**

19 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or
20 duties under this Agreement without the prior written consent of the other party.

21 **11. HOLD HARMLESS**

22 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request,
23 defend the COUNTY, its officers, agents, and employees from any and all costs and
24 expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in
25 connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents,
26 or employees under this Agreement, and from any and all costs and expenses, damages,
27 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who
28 may be injured or damaged by the performance, or failure to perform, of CONTRACTOR,

its officers, agents, or employees under this Agreement. This indemnification will not extend to claims or damages related to the content of COUNTY data or County Documents hosted by CONTRACTOR in the performance of CONTRACTORS obligations described herein.

12. INSURANCE

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance throughout the term of this Agreement:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

C. Professional Liability

If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

1 D. Worker's Compensation

2 A policy of Worker's Compensation insurance as may be required by the California
3 Labor Code.

4 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance
5 naming the County of Fresno, its officers, agents, and employees, individually and
6 collectively, as additional insured, but only insofar as the operations under this Agreement are
7 concerned. Such coverage for additional insured shall apply as primary insurance and any
8 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and
9 employees shall be excess only and not contributing with insurance provided under
10 CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without a
11 minimum of thirty (30) days advance written notice given to COUNTY.

12 Within Thirty (30) days from the date CONTRACTOR signs and executes this
13 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as
14 stated above for all of the foregoing policies, as required herein, to the County of Fresno,
15 County of Fresno, Robert Bash, Director of Internal Services/Chief Information Officer, 333 W
16 Pontiac Way, Clovis, CA 93612, stating that such insurance coverages have been obtained
17 and are in full force; that the County of Fresno, its officers, agents and employees will not be
18 responsible for any premiums on the policies; that such Commercial General Liability
19 insurance names the County of Fresno, its officers, agents and employees, individually and
20 collectively, as additional insured, but only insofar as the operations under this Agreement are
21 concerned; that such coverage for additional insured shall apply as primary insurance and
22 any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and
23 employees, shall be excess only and not contributing with insurance provided under
24 CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed
25 without a minimum of thirty (30) days advance, written notice given to COUNTY.

26 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
27 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or
28 terminate this Agreement upon the occurrence of such event.

1 All policies shall be issued by admitted insurers licensed to do business in the State of
2 California, and such insurance shall be purchased from companies possessing a current A.M.
3 Best, Inc. rating of A FSC VII or better.

4 **13. AUDITS AND INSPECTIONS**

5 The CONTRACTOR shall at any time during business hours, and as often as the
6 COUNTY may deem necessary, make available to the COUNTY for examination all of its
7 records and data with respect to the matters covered by this Agreement. The CONTRACTOR
8 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such
9 records and data necessary to ensure CONTRACTOR'S compliance with the terms of this
10 Agreement.

11 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
12 subject to the examination and audit of the Auditor General for a period of three (3) years after
13 final payment under contract (Government Code Section 8546.7).

14 **14. NOTICES**

15 **A. AUTHORITY TO GIVE AND RECEIVE NOTICES**

16 The persons authorized to give and receive notices under this Agreement include the
17 following:

18 COUNTY

19 Robert Bash
20 Director of Internal Services/
21 Chief Information Officer
22 333 W Pontiac Way
23 Clovis, CA 93612
24 Telephone: (559) 600-5800
25 FAX: (559) 600-5927

CONTRACTOR

William Whitney
President and CEO
1115 East Arques Ave
Sunnyvale, CA 94085
Telephone: (408) 736-7444 x204
FAX: (408) 736-4397

26 All notices between the COUNTY and CONTRACTOR provided for or permitted
27 under this Agreement must be in writing and delivered either by personal service, by first-
28 class United States mail, by an overnight commercial courier service, or by telephonic
facsimile transmission. A notice delivered by personal service is effective upon service to
the recipient. A notice delivered by first-class United States mail is effective three

COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

B. PRIMARY ESCALATION CONTACT INFORMATION

(1)

COUNTY

Contact # 1:
ITSD Manager
Information Technology Manager
Office Phone: (559) 600-5800
Email: manager@co.fresno.ca.us

CONTRACTOR

Contact # 1:
Michael Aufranc
Account Representative
Office Phone: 916-924-6666 x405
maufranc@bmiimaging.com

(2)

COUNTY

Contact # 2:
Mark Zack
Information Technology Division Manager
Office Phone: (559) 600-5800
Cell Phone: (559) 349-0210
Email: mzack@co.fresno.ca.us

CONTRACTOR

Contact # 2:
Name Jim Modrall
Title VP Operations
Office Phone: 408-736-7444 x221
Cell: 408-489-2697
[Jmodrall@bmiimaging.com](mailto:jmodrall@bmiimaging.com)

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1 **15. GOVERNING LAW**

2 Venue for any action arising out of or related to this Agreement shall only be in Fresno
3 County, California.

4 The rights and obligations of the parties and all interpretation and performance of this
5 Agreement shall be governed in all respects by the laws of the State of California.

6 **16. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

7 This provision is only applicable if the CONTRACTOR is operating as a corporation (a
8 for-profit or non-profit corporation) or if during the term of the agreement, the
9 CONTRACTOR changes its status to operate as a corporation.

10 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
11 transactions that they are a party to while CONTRACTOR is providing goods or
12 performing services under this agreement. A self-dealing transaction shall mean a
13 transaction to which the CONTRACTOR is a party and in which one or more of its
14 directors has a material financial interest. Members of the Board of Directors shall
15 disclose any self-dealing transactions that they are a party to by completing and signing a
16 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated
17 herein by reference, and submitting it to the COUNTY prior to commencing with the self-
18 dealing transaction or immediately thereafter.

19 **17. ENTIRE AGREEMENT**

20 This Agreement constitutes the entire agreement between the CONTRACTOR and
21 COUNTY with respect to the subject matter hereof and supersedes all previous Agreement
22 negotiations, proposals, commitments, writings, advertisements, publications, and
23 understandings of any nature whatsoever unless expressly included in this Agreement.

24 ///

25 ///

26 ///

27 ///

28 ///

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
2 and year first hereinabove written.

3 CONTRACTOR

4 William Whitney
5 William Whitney, President and CEO

6 Date: 10/31/2016

7 Janice Harrison
8 Janice Harrison, Controller/Treasurer

9 Date: 10/31/16

COUNTY OF FRESNO

Ernest Buddy Mendes
Ernest Buddy Mendes
Chairman, Board of Supervisors

Date: 12-7-16

Bernice E. Seidel
Clerk, Board of Supervisors

By: Susan Bishop
DEPUTY

REVIEWED & RECOMMENDED FOR APPROVAL

Paul Dictos
Paul Dictos, CPA, Assessor-Recorder

Robert W. Bash
Robert W. Bash, Director of Internal Services/
Chief Information Officer

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg
County Counsel

By: John T. Smith
DEPUTY

APPROVED AS TO ACCOUNTING FORM
~~Vicki Crow, CPA~~ Oscar J. Garcia, CPA
Auditor-Controller/Treasurer-Tax Collector

By: Celen E. Cordero

22 FOR ACCOUNTING USE ONLY:

23 FUND: 0001
24 SUBCLASS: 10000
25 ORG NO.: 04200200
26 ACCOUNT NO.: 72957295
27
28

1 Exhibit A

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3
4 In order to conduct business with the County of Fresno (hereinafter referred to as "County"),
5 members of a contractor's board of directors must disclose any self-dealing transactions that
6 they are a party to while providing goods, performing services, or both for the County. A self-
7 dealing transaction is defined below:

8 *"A self-dealing transaction means a transaction to which the corporation is a party and in
9 which one or more of its board members has a material financial interest"*

10 The definition above will be utilized for purposes of completing this disclosure form.

11 INSTRUCTIONS

12 (1) Enter board member's name, job title (if applicable), and date this disclosure is being
13 made.

14 (2) Enter the board member's company/agency name and address.

15 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to
16 the County. At a minimum, include a description of the following:

17 a. The name of the agency/company with which the corporation has the
18 transaction; and

19 b. The nature of the material financial interest in the Corporation's transaction that
20 the board member has.

21 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable
22 provisions of the Corporations Code.

23 (5) Form must be signed by the board member that is involved in the self-dealing
24 transaction described in Sections (3) and (4).
25
26
27
28

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	