

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 22nd day of February, 2022 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the state of California ("COUNTY"), and BMI Imaging Systems, Inc., a California corporation, whose address is A e A en e nn a e A ("CONTRACTOR").

WITNESSETH:

WHEREAS, COUNTY has a need for online hosting of digital images of recorded documents in the official custody of the COUNTY Recorder's Office and for the creation of a microfilm backup of recorded documents for calendar year 2021 and later years; and

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

WHEREAS, COUNTY desires to purchase such software licenses and online hosting services, from CONTRACTOR for use by the COUNTY Recorder's office.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS

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

- a) "BMI Hosting Services" means BMI hosted online access to Imaged Product (as defined below) for use by COUNTY-authorized End Users.
- b) "BMI Services" means services provided by BMI outside of BMI Hosting Services, such as the scanning of Fee Books.
- c) "County Documents" means all instruments, papers and notices submitted to the Fresno County Recorder's Office, the recording of which is required or permitted by law.
- d) "End User" means any person who is authorized by COUNTY to access and use Imaged Product subject to the licenses provided in section 2.A.i. of this Agreement.
- e) "Imaged Product" means the end results of digital or photographic reproduction processes of BMI Services that can be viewed by COUNTY on a display device.

- 1 f) "ISD" means the Information Services Division of COUNTY's Internal Services
2 Department.
- 3 g) "Software" or "System Software" means the Digital Reel™ software and its contents.
- 4 h) "Standard Business Hours" means Monday through Friday, 5:00 AM to 5:00 PM
5 (Pacific)
- 6 i) "System" means the System Software and System Documentation, collectively.
- 7 j) "System Documentation" means the documentation related to the Software, and all
8 specifications and materials provided by CONTRACTOR in connection with the System pursuant to this
9 Agreement.

10 2. OBLIGATIONS OF THE CONTRACTOR

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

13 A. BMI ONLINE HOSTING SERVICES. CONTRACTOR shall provide to COUNTY BMI
14 Hosting Services as follows:

15 i. Licenses. CONTRACTOR shall issue to COUNTY licenses to use the System Software,
16 including five anonymous accounts for use by the public on the COUNTY Recorder's Internet website, 10
17 licenses for kiosks accessible to the public in the offices of the COUNTY Recorder's Office, and 20 named
18 licenses for use by employees of the COUNTY Recorder's Office.

19 ii. Storage and Access to Imaged Product. CONTRACTOR shall provide a minimum
20 hardware storage configuration of RAID 5 on which the Imaged Product will be stored. CONTRACTOR will
21 provide access to this hardware configuration in both of its two (2) hosting locations in Sacramento and
22 Sunnyvale, with one configuration available at any one time at least 99% of Standard Business Hours.

23 iii. Access Services. CONTRACTOR shall allow access to the Imaged Product to End
24 Users via Internet connections from one or more of CONTRACTOR's data repositories ("Access Services").
25 End Users will be determined by COUNTY. Adding or removing End Users shall be at the discretion of
26 COUNTY's Contract Administrator (as defined in Section 3.A.), or that person's designee. CONTRACTOR
27 shall provide COUNTY with software tools to allow for IT administration-level controlled addition or deletion
28 of End Users. COUNTY assumes all responsibility for adding, deleting, or maintaining End Users, whether

1 directly administering the End Users, or through CONTRACTOR technical support.

2 iv. Communication Lines. CONTRACTOR utilizes communication services of telecom third
3 parties to provide services under this Agreement. COUNTY acknowledges that CONTRACTOR does not
4 have ultimate control of communication lines used to access the Imaged Product, and that therefore,
5 CONTRACTOR cannot ultimately guarantee the security of transmissions between CONTRACTOR and
6 COUNTY. CONTRACTOR routinely utilizes Secure Socket Layer (SSL) protocol for transmission of the
7 Imaged Product to clients, and can provide other enhanced data communication and security provisions
8 upon request, such as single Internet Protocol (IP) access or Virtual Private Network (VPN). Unless
9 otherwise noted, COUNTY should not expect download bandwidth greater than 1.5Mb/s during Standard
10 Business Hours. Access is not guaranteed outside of Standard Business Hours.

11 v. Maintenance

12 Standard Maintenance or System Upgrades. CONTRACTOR shall perform
13 preventative maintenance of its servers and other facilities in accordance with its normal maintenance
14 schedules and procedures, as modified from time to time, during the term of this Agreement. COUNTY
15 acknowledges that Access Services may not be operable during periods of preventative maintenance.
16 CONTRACTOR shall inform COUNTY prior to any scheduled maintenance.

17 Unscheduled Maintenance. COUNTY acknowledges that CONTRACTOR
18 may have to perform maintenance of CONTRACTOR's servers and other facilities on an emergency basis,
19 and that Access Services may not be operable at these times. CONTRACTOR shall provide COUNTY with
20 notice as soon as possible in such situations, and shall make every reasonable effort to restore Access
21 Services to COUNTY as soon as possible.

22 vi. Customer Support. CONTRACTOR shall provide operational and technical
23 support pertaining to BMI Services, during Standard Business Hours, excepting CONTRACTOR and
24 COUNTY holidays, via toll-free telephone assistance.

25 B. SCOPE OF LICENSE. The following terms of use govern the terms and conditions by which
26 the Software may be accessed by COUNTY and COUNTY's designated End Users.

27 a. LICENSE.

28 i. CONTRACTOR grants COUNTY a limited right to access and use the Software

1 as intended by CONTRACTOR for lawful government purposes of the COUNTY's Recorder only, and for
2 no other purpose.

3 ii. The parties acknowledge and agree that, as between CONTRACTOR and
4 COUNTY, title, and full ownership of all rights in and to the Software, System Documentation, and all other
5 materials provided to COUNTY by CONTRACTOR under the terms of this Agreement, shall remain with
6 CONTRACTOR. Ownership of all copies is retained by CONTRACTOR.

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

16 b. RESTRICTIONS

17 i. Except to the extent authorized by CONTRACTOR, COUNTY agrees to keep
18 secret and not disclose any username or password required by CONTRACTOR to access and use the
19 Software, and to not share access and use of the Software with any third party except through kiosks
20 accessible to the public in the offices of the Fresno County Recorder's Office, subject to the licenses
21 provided under section 2.A.i. of this Agreement. If COUNTY suspects that a personal username and
22 password has been disclosed to an unauthorized party, COUNTY agrees to immediately notify
23 CONTRACTOR.

24 ii. Except to the extent permitted by law, COUNTY may not directly or indirectly (i)
25 transmit, redistribute, encumber, sell, rent, lease, lend barter, sub-lease, sublicense, or otherwise transfer
26 this Software or the right to access and use this Software to any third party without the express written
27 consent of CONTRACTOR; (ii) use the Software in connection with any service bureau without the express
28 written consent of CONTRACTOR; (iii) remove or obscure any copyright, trademark and other proprietary

1 rights, notices, legends, symbols or labels; (iv) alter, modify, decompile, disassemble, create any derivative
2 works of the Software, including customization, translation or localization, or reverse engineer, or otherwise
3 attempt to derive the source code for the Software; or (v) use the DIGITAL REEL™ Software or its contents
4 for any unlawful purpose.

5 c. INTELLECTUAL PROPERTY, TRADEMARK AND COPYRIGHT

6 i. The Software is protected under U.S. Copyright laws and international treaties,
7 trade secret, trademark, and other applicable laws. CONTRACTOR retains ownership of the Software, any
8 portions or copies thereof, and all rights therein. CONTRACTOR reserves all rights not expressly granted to
9 COUNTY. The license provided to COUNTY under this section 2.B. does not grant COUNTY any rights in
10 connection with any trademarks or service marks of CONTRACTOR, its suppliers, or licensors. All right,
11 title, interest, and copyrights in and to the Software and the accompanying Software Documentation, and
12 any copies of the 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 are the property
14 of the respective content owner and may be protected by applicable copyright or other intellectual property
15 laws and treaties. The license provided to COUNTY under this section 2.B. grants COUNTY no rights to
16 use such content.

17 d. DISCLAIMER OF WARRANTIES

18 i. Except as expressly set forth herein, the DIGITAL REEL™ Software, data, and
19 information accessible through the use of the software and system are provided “AS-IS”, without
20 representation or warranty of any kind, except that CONTRACTOR expressly warrants and represents that
21 its DIGITAL REEL™ online Hosting Service meets the COUNTY’s needs.

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

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

26 C. CONFIDENTIALITY OF COUNTY’S INFORMATION

27 a. CONTRACTOR acknowledges and agrees that all COUNTY Documents or any
28 other information and materials furnished by COUNTY to CONTRACTOR that COUNTY identifies as

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

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

17 c. Notwithstanding anything provided above, CONTRACTOR shall not sell or disclose
18 COUNTY Documents to any third party, or otherwise use COUNTY Documents for CONTRACTOR's
19 business purposes except as expressly provided in this Agreement.

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

23 E. OTHER.

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

26 b. COUNTY may request CONTRACTOR to add the Fee Book Index to the hosted
27 system, so that the Fee Book Index may be viewed through the hosted system by employees of the
28 COUNTY Recorder's Office. The Fee Book Index is an index (that is, a list) of recorded documents.

1 c. COUNTY may request CONTRACTOR to add the Land Index to the anonymous data
2 set, so that the Land Index may be viewed by the public through the five anonymous accounts for use by
3 the public on the COUNTY Recorder's Internet website as provided in section 2.A.i. of this Agreement. The
4 Land Index is an index (that is, a list) of recorded documents.

5 F. MICROFILM DIGITAL ARCHIVE PROJECT. BMI shall assist the COUNTY in the continued
6 implementation of the Microfilm Digital Archive (MDA) Project, as provided by California Government Code
7 section 27322.2, by providing the services described in Attachment A, attached and incorporated by this
8 reference.

9 3. OBLIGATIONS OF COUNTY

10 A. COUNTY CONTRACT ADMINISTRATOR: COUNTY appoints its Assessor-Recorder or
11 their designee, as COUNTY's Contract Administrator, with full authority to deal with CONTRACTOR in all
12 matters concerning this Agreement.

13 B. COUNTY PROJECT MANAGER: Upon execution of this Agreement, COUNTY's Contract
14 Administrator shall designate one individual who will function as Project Manager, with responsibility for
15 day-to-day management of the project for implementation of the System Software. The Project Manager
16 and COUNTY personnel shall have the necessary and appropriate training and experience to implement
17 the terms of this Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

18 C. SAFEGUARDING SYSTEM SOFTWARE: COUNTY will follow its present practices to
19 safeguard System Software delivered to COUNTY by CONTRACTOR. A copy of COUNTY'S "Information
20 Technology (IT) Standards and Preferences" will be made available upon request.

21 D. SECURITY: COUNTY agrees to validate the integrity of the information and data it receives
22 and transmits over the Internet, and to maintain the security of its Internet account and usage. COUNTY
23 agrees to protect its data and images from unauthorized use, complying with protocols for sensitive,
24 confidential, and personal information.

25 E. COOPERATION: COUNTY agrees to make available to CONTRACTOR, in a timely
26 manner, certain COUNTY Documents and as applicable, COUNTY personnel, equipment, and facilities.
27 Each party agrees that it will use best efforts to cooperate with the other parties in all respects of this
28 Agreement. COUNTY acknowledges that delay in making COUNTY Documents available to the

1 CONTRACTOR may delay CONTRACTOR's performance of services under this Agreement.

2 F. LEGAL COMPLIANCE: COUNTY represents and warrants that it has, under Government
3 Code section 27231, lawful authority in relation to the COUNTY Documents to engage the CONTRACTOR,
4 its employees, agents and/or subcontractors to perform BMI Services under this Agreement without
5 violation or infringement of any third party right or agreement. COUNTY shall be solely responsible for legal
6 compliance with regard to the reproduction of COUNTY Documents, and the access and use of Imaged
7 Product in COUNTY's possession and/or control.

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

14 H. NON-SOLICITATION: COUNTY shall not recruit, solicit, induce, or otherwise contract for
15 the employment of CONTRACTOR's employees or service contractors during the term of this Agreement.
16 This section 3.H. shall not subject COUNTY to any liability if a CONTRACTOR employee responds to a
17 COUNTY job posting.

18 4. TERM

19 The term of this Agreement shall be for a period of three (3) years, commencing on the December
20 6, 2021, through and including December 5, 2024. This Agreement may be extended for two (2) additional
21 consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days
22 prior to the first day of the next twelve (12) month extension period. The ISD Director/CIO or his or her
23 designee is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S
24 satisfactory performance.

25 5. TERMINATION

26 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
27 provided hereunder, are contingent on the approval of funds by the appropriating government agency.
28 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement

1 terminated, at any time without penalty by giving the CONTRACTOR thirty (30) days advance written
2 notice.

3 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
4 Agreement in whole or in part, where in the determination of the COUNTY there is:

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

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

16 C. Without Cause - Under circumstances other than those set forth above, this
17 Agreement may be terminated by COUNTY by giving thirty (30) days advance written notice of an intention
18 to terminate to CONTRACTOR.

19 6. COMPENSATION/INVOICING:

20 A. COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive
21 compensation as follows:

22 Annual hosting, paid in advance each year, which includes five anonymous accounts for use by the
23 public on the COUNTY Recorder's Internet website, 10 licenses for kiosks accessible to the public in the
24 offices of the COUNTY Recorder's Office, and 20 named licenses for use by employees of the COUNTY
25 Recorder's Office, plus support and maintenance, is \$27,600 per year. COUNTY may purchase additional
26 named user licenses in increments of 5 users for \$500.00 per year, which will be added to the hosting fee.
27 The Microfilm Digital Archive (MDA) Project (see section 2.F. and Attachment A) will cost \$.045 per image.
28 The cost to add the Fee Book Index to the hosted system as provided in section 2.E.b. of this Agreement is

1 \$50 per roll of film. The cost to add the Land Index to the anonymous data set as provided in section 2.E.c.
2 of this Agreement is \$1,000.

3 .
4 If this Agreement is terminated early by COUNTY, for whatever reason, CONTRACTOR shall
5 refund to COUNTY on a pro-rata basis, all annual fees paid in advance for goods and services to be
6 provided hereunder but not yet delivered, including but not limited to the pro-rata share of the hosting fee
7 for the period after the date of determination.

8 CONTRACTOR shall submit monthly invoices referencing the provided contract number, either
9 electronically or via mail, in triplicate to the County of Fresno, Recorder's Office, Attention: Business
10 Manager, 2281 Tulare Street, Room 201, Fresno, CA 93721.

11 The maximum compensation payable to the CONTRACTOR for the initial three-year term of this
12 Agreement is \$400,000, which is \$133,333.33 for the first year, \$133,333.33 for the second year, and
13 \$133,333.34 for the third year. If this Agreement is extended an additional fourth year, the maximum
14 compensation payable to the CONTRACTOR for the fourth year is \$125,000, which is a maximum of
15 \$525,000 for all four years. If this Agreement is extended an additional fifth year, the maximum
16 compensation payable to the CONTRACTOR for the fifth year is \$125,000, which is a maximum of
17 \$650,000 for all five years.

18 It is understood that all expenses incidental to CONTRACTOR'S performance of services under this
19 Agreement shall be borne by CONTRACTOR. COUNTY shall pay CONTRACTOR within forty-five (45)
20 days of receipt of an approved invoice.

21 7. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations
22 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that
23 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all
24 times be acting and performing as an independent contractor, and shall act in an independent capacity and
25 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
26 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which
27 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer
28 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the

1 terms and conditions thereof.

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

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

11 8. CONFIDENTIALITY OF CONTRACTOR'S TRADE SECRETS: Subject to Sections 9 and
12 10 of this Agreement, if under this Agreement COUNTY receives from CONTRACTOR any trade secrets of
13 CONTRACTOR under California Evidence Code section 1060, the COUNTY will not disclose such trade
14 secrets other than to persons in its organization who have a need to know and who will be required to
15 comply with this section 8. The COUNTY will not use such trade secrets for a purpose inconsistent with the
16 terms of this Agreement. . If CONTRACTOR provides to COUNTY under this Agreement any information or
17 documentation containing trade secrets, CONTRACTOR shall clearly and conspicuously mark that
18 information or documentation as containing trade secrets, and shall clearly and conspicuously mark the
19 trade secrets as such. Subject to Sections 9 and 10 of this Agreement, if COUNTY receives any
20 information or documentation from CONTRACTOR that is clearly and conspicuously marked as containing
21 trade secrets of the CONTRACTOR, COUNTY will exercise at least the same degree of care to safeguard
22 the confidentiality of CONTRACTOR's trade secrets as COUNTY does to safeguard its own confidential
23 information, but not less than a reasonable degree of care. CONTRACTOR shall make all reasonable
24 efforts to provide services under this Agreement without providing any trade secrets to COUNTY.

25 9. PUBLIC RECORDS. COUNTY is not limited in any manner with respect to its public
26 disclosure of this Agreement, or any record or data that CONTRACTOR may provide to COUNTY.
27 COUNTY's public disclosure of this Agreement, or any record or data that CONTRACTOR may provide to
28 COUNTY, may include but is not limited to the following:

- 1 A. COUNTY may voluntarily, or upon request by any member of the public or governmental
2 agency, disclose this Agreement to the public or such governmental agency.
- 3 B. COUNTY may voluntarily, or upon request by any member of the public or governmental
4 agency, disclose to the public or such governmental agency any record or data that
5 CONTRACTOR may provide to COUNTY, unless such disclosure is prohibited by court
6 order.
- 7 C. This Agreement, and any record or data that CONTRACTOR may provide to COUNTY, is
8 subject to public disclosure under the Ralph M. Brown Act (California Government Code,
9 Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).
- 10 D. This Agreement, and any record or data that CONTRACTOR may provide to COUNTY, is
11 subject to public disclosure as a public record under the California Public Records Act
12 (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250)
13 (“CPRA”).
- 14 E. This Agreement, and any record or data that CONTRACTOR may provide to COUNTY, is
15 subject to public disclosure as information concerning the conduct of the people’s business
16 of the State of California under California Constitution, Article 1, section 3, subdivision (b).
- 17 F. Any marking of confidentiality or restricted access upon or otherwise made with respect to
18 any record or data that CONTRACTOR may provide to COUNTY shall be disregarded, and
19 have no effect on COUNTY’s right or duty to disclose to the public or governmental agency
20 any such record or data.

21 10. PUBLIC RECORDS ACT REQUESTS. If COUNTY receives a written or oral request under
22 the CPRA to publicly disclose any record that is in CONTRACTOR’s possession or control, and which
23 COUNTY has a right, under any provision of this Agreement or applicable law, to possess or control, then
24 COUNTY may demand, in writing, that CONTRACTOR deliver to COUNTY, for purposes of public
25 disclosure, the requested records that may be in the possession or control of CONTRACTOR. Within five
26 business days after COUNTY’s demand, CONTRACTOR shall (a) deliver to COUNTY all of the requested
27 records that are in CONTRACTOR’s possession or control, together with a written statement that
28 CONTRACTOR, after conducting a diligent search, has produced all requested records that are in

1 CONTRACTOR's possession or control, or (b) provide to COUNTY a written statement that
2 CONTRACTOR, after conducting a diligent search, does not possess or control any of the requested
3 records. CONTRACTOR shall cooperate with COUNTY with respect to any COUNTY demand for such
4 records. If CONTRACTOR wishes to assert that any specific record or data is exempt from disclosure
5 under the CPRA or other applicable law, it must deliver the record or data to COUNTY and assert the
6 exemption by citation to specific legal authority within the written statement that it provides to COUNTY
7 under this section. CONTRACTOR's assertion of any exemption from disclosure is not binding on
8 COUNTY, but COUNTY will give at least 10 days' advance written notice to CONTRACTOR before
9 disclosing any record subject to CONTRACTOR's assertion of exemption from disclosure. CONTRACTOR
10 shall indemnify COUNTY for any court-ordered award of costs or attorney's fees under the CPRA that
11 results from CONTRACTOR's delay, claim of exemption, failure to produce any such records, or failure to
12 cooperate with COUNTY with respect to any COUNTY demand for any such records.

13 11. MODIFICATION: Any matters of this Agreement may be modified from time to time by the
14 written consent of all the parties without, in any way, affecting the remainder.

15 12. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement nor
16 their rights or duties under this Agreement without the prior written consent of the other party.

17 13. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at
18 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
19 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
20 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
21 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
22 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
23 or corporation who may be injured or damaged by the performance, or failure to perform, of
24 CONTRACTOR, its officers, agents, or employees under this Agreement.

25 The provisions of this section 13 shall survive the expiration or termination of this Agreement.

26 14. INSURANCE

27 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third
28 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance

1 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or
2 Joint Powers Agreement (JPA) throughout the term of the Agreement:

3 A. Commercial General Liability

4 Commercial General Liability Insurance with limits of not less than Two Million Dollars
5 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
6 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
7 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
8 liability or any other liability insurance deemed necessary because of the nature of this contract.

9 B. Automobile Liability

10 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
11 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
12 used in connection with this Agreement.

13 C. Worker's Compensation

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

16 Additional Requirements Relating to Insurance

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

24 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
25 employees any amounts paid by the policy of worker's compensation insurance required by this
26 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
27 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
28 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

1 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
2 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
3 foregoing policies, as required herein, to the County of Fresno, Internal Services Department, Attention:
4 Director of Internal Services/Chief Information Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that
5 such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers,
6 agents and employees will not be responsible for any premiums on the policies; that for such worker's
7 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers,
8 agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate
9 the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its
10 officers, agents and employees, individually and collectively, as additional insured, but only insofar as the
11 operations under this Agreement are concerned; that such coverage for additional insured shall apply as
12 primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents
13 and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's
14 policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
15 days advance, written notice given to COUNTY.

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

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

22 15. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business hours,
23 and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of
24 its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall,
25 upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
26 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

27 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
28 the examination and audit of the California State Auditor for a period of three (3) years after final payment

1 under contract (Government Code Section 8546.7).

2 16. NOTICES: The persons and their addresses having authority to give and receive notices
3 under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	BMI IMAGING SYSTEMS, INC.
Director of Internal Services/CIO	William Whitney
333 W. Pontiac Way	1115 East Arques Ave
Clovis, CA 93612	Sunnyvale, CA 94085

7 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
8 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
9 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
10 personal service is effective upon service to the recipient. A notice delivered by first-class United States
11 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
12 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
13 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
14 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
15 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
16 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
17 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
18 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section 14
19 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
20 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
21 beginning with section 810).

22 17. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall
23 only be in Fresno County, California.

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

26 18. DISCLOSURE OF SELF-DEALING TRANSACTIONS

27 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit
28 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status

1 to operate as a corporation.

2 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
3 that they are a party to while CONTRACTOR is providing goods or performing services under this
4 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
5 and in which one or more of its directors has a material financial interest. Members of the Board of
6 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing
7 a Self-Dealing Transaction Disclosure Form, attached hereto as Attachment B and incorporated herein
8 by reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
9 immediately thereafter.

10 19. ELECTRONIC SIGNATURES

11 The parties agree that this Agreement may be executed by electronic signature as provided in
12 this section 17. An "electronic signature" means any symbol or process intended by an individual signing
13 this Agreement to represent their signature, including but not limited to (1) a digital signature; (2) a faxed
14 version of an original handwritten signature; or (3) an electronically scanned and transmitted (for
15 example by PDF document) of a handwritten signature. Each electronic signature affixed or attached to
16 this Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing
17 this Agreement for all purposes, including but not limited to evidentiary proof in any administrative or
18 judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of
19 that person. The provisions of this section 17 satisfy the requirements of Civil Code section 1633.5,
20 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5,
21 beginning with section 1633.1). Each party using a digital signature represents that it has undertaken
22 and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1)
23 through (5), and agrees that each other party may rely upon that representation. This Agreement is not
24 conditioned upon the parties conducting the transactions under it by electronic means and either party
25 may sign this Agreement with an original handwritten signature.

26 20. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
27 CONTRACTOR and COUNTY with respect to the subject matter hereof, and supersedes all previous
28 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and

1 understanding of any nature whatsoever unless expressly included in this Agreement.

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

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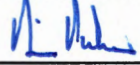
CONTRACTOR


William Whitney, CEO

BMI Imaging Systems,
Inc.

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COUNTY OF FRESNO


Brian Pacheco
Chairman of the Board of Supervisors of
the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

FOR ACCOUNTING USE ONLY:

Fund:0035

Subclass: 17058

ORG: 1048

Account: 7295

ATTACHMENT A

Microfilm Digital Archive (MDA) Project:

1. County Recorder staff will upload Official Record images and data to an Internet portal maintained by the Contractor for storage and access by County Recorder staff through the MDA site. County Recorder staff will upload images and data bi-weekly. Images and data uploaded to the MDA site by County Recorder staff must include at a minimum recorded document numbers and page count .
2. The Contractor will create silver original microfilm rolls of the Official Record images that County Recorder staff upload to the MDA site. The Contractor will use 16mm Microfilm – Simplex rolls that are either 100 feet or 215 feet long.
3. Through the MDA application, the Contractor will compare the number of pages to the page count provided by County Recorder staff and provide a programmatic alert for any pages or documents missing from an upload. Following any alert, County Recorder staff will review to determine whether documents are actually missing; then, if any documents are missing, County Recorder staff upload corrected documents.
4. Through the MDA application, the Contractor will track the image capacity of each roll of microfilm containing Official Record images. When the roll of microfilm is getting close to full capacity, the Contractor will create one silver original microfilm roll that will be sent to the County via UPS at no cost to the County. The Contractor represents and warrants to the County that the full capacity of a roll is approximately 2,500-page images for a 100-foot roll or approximately 7,000-page images for a 215-foot roll. A digital copy of each microfilm roll will be maintained online, by the Contractor, for disaster recovery in the event of an emergency, and access by County Recorder staff at any time as needed in the determination of the County Recorder's Office. The Contractor will maintain the digital copy of each microfilm roll in a secure

ATTACHMENT A

Statement on Standards for Attestation Engineers No. 16 (SSAE 16) System and Organization Controls (SOC) 2 data center.

5. BMI will process and inspect the microfilm rolls for image write and processing quality. As part of this process, BMI will inspect film for scratches, water spots that may have been created during processing, film fog, and image quality. During the quality control process, the operator may also splice any retakes. The process is complete once the box label is created, and the roll is inserted for delivery to client.
6. All training for County Recorder staff using the MDA system for online access to images and data will be provided by the Contractor as requested by the County, at no cost to the County.

SELF-DEALING TRANSACTION DISCLOSURE FORM

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

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

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

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Attachment B

(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:	