

**AGREEMENT**

THIS AGREEMENT is made and entered into on February 26, 2019, by and between the COUNTY OF FRESNO, a political subdivision of the State of California ("COUNTY"), and Document Fulfillment Services, a California corporation, whose address is 2930 Ramona Avenue, Suite 100, Sacramento, California 95826 ("CONTRACTOR").

**Recitals**

A. The office of the COUNTY Auditor-Controller/Treasurer-Tax Collector ("Tax Collector") is responsible for printing and mailing various statements and forms throughout the year.

B. The COUNTY wishes to engage the CONTRACTOR to provide printing and mail services for some of the various statements and forms that the Tax Collector is responsible for, according to the terms of this agreement.

C. The CONTRACTOR represents that it is ready, willing, and able to provide printing and mail services according to the terms of this agreement.

**The parties therefore agree as follows:**

**1. OBLIGATIONS OF THE CONTRACTOR**

A. CONTRACTOR shall receive Data from the Tax Collector, and use the Data to print, insert, presort, and mail Output on behalf of the Tax Collector and according to the Tax Collector's Instructions. "Data" means electronic files containing information necessary to generate Output. "Output" means statements, bills, and correspondence. "Instructions" means instructions and specifications for how the Data is required to be processed into Output.

B. CONTRACTOR shall provide the Tax Collector with appropriate credentials to access CONTRACTOR's Secured File Transfer Protocol (SFTP) server for the purpose of transferring Data to and from CONTRACTOR and the Tax Collector.

C. CONTRACTOR shall pre-process and reformat Data according to United States Postal Service barcode specifications and customize the Tax Collector's customer information according to Instructions.

1 D. Output must be all of the following:

- 2 • Legible, complete and formatted in a form, layout, and design as prescribed by the Tax  
3 Collector according to the Instructions.  
4 • Printed on appropriate paper stock according to Instructions.  
5 • Once completed, electronically sorted according by weight and ZIP to qualify for lowest  
6 possible United States Postal Service rate.

7 E. If the Data does not contain a mailing address for any piece of Output, the  
8 CONTRACTOR shall return that Output to the Tax Collector immediately, unless the Instructions  
9 expressly provide otherwise.

10 F. CONTRACTOR shall supply envelopes for mailing Output, which  
11 envelopes must be sized appropriately to the relevant Output, and shall include pre-addressed  
12 return envelopes when necessary.

13 G. CONTRACTOR shall fold, insert, meter, and mail completed Output in  
14 windowed envelopes, along with inserts such as return payment envelopes and informational  
15 pieces.

16 H. CONTRACTOR shall ensure the correct number of items and inserts are  
17 in each envelope.

18 I. CONTRACTOR shall provide a detailed activity log, including a  
19 breakdown of all labor and materials, along with an invoice for services rendered. CONTRACTOR  
20 shall provide a monthly reconciliation of postage, including all amounts prepaid during the  
21 preceding month and the actual expenditures incurred during the same month, making a specific  
22 notation regarding any remaining postage credit or shortfall.

23 J. CONTRACTOR shall complete mailing services and postmark  
24 correspondence within five business days after receiving Data and Instructions, or on  
25 predetermined date if one is designated by the Tax Collector in the Instructions.

26 K. CONTRACTOR shall return directly to the Tax Collector any Output that  
27 is subject to a mail hold that was requested by the recipient prior to the Output being mailed, any  
28 Output unable to be mailed due to incomplete or incorrect address information provided by the

1 Tax Collector, and all Output returned by the United States Postal Service for any other reason.

2 L. CONTRACTOR shall destroy Data and any materials generated by  
3 CONTRACTOR for the Tax Collector, such as blank pre-printed stock, within 30 days after the  
4 final use of Data by CONTRACTOR, unless otherwise directed by the Tax Collector.

5 M. CONTRACTOR shall not sell or otherwise distribute Data or Output  
6 except as expressly provided by this agreement.

7 N. CONTRACTOR is solely responsible to supply all labor, materials, and  
8 equipment necessary to provide the services under this agreement.

9 O. CONTRACTOR shall comply with all local, state, and federal laws and  
10 regulations applicable to the provision of services under this agreement.

11 2. OBLIGATIONS OF THE COUNTY

12 A. The Tax Collector will provide Data to CONTRACTOR.

13 B. The Tax Collector will provide Instructions to CONTRACTOR, explaining  
14 how Data will be used.

15 C. The Tax Collector must deliver Data and Instructions by electronic  
16 transmission via Secured File Transfer Protocol (SFTP) to CONTRACTOR's server, or alternative  
17 method to CONTRACTOR at its facility, or such other delivery location agreed upon in advance by  
18 the Tax Collector and the CONTRACTOR in writing.

19 D. COUNTY will obtain, maintain, and operate at its own expense, all  
20 necessary devices, software, and services, including, but not limited to hardware, software,  
21 installation, and maintenance of voice or data lines, required for the electronic transmission of  
22 Data and, if applicable, the electronic reception invoices, digital copies of Output, test and sample  
23 forms, and other communication.

24 E. The Tax Collector must transmit all Data in the form of pre-formatted plain  
25 text files.

26 F. The Tax Collector is solely responsible for the correctness of Data, related  
27 tabular codes, verbiage, dates, fees and charges or mailings to the Tax Collector's customers and  
28 all other information in the Data.

1 G. Data remains the sole property of the COUNTY.

2 3. TERM

3 This agreement is effective as of March 1, 2019, and terminates on February  
4 28, 2021.

5 4. TERMINATION

6 1. Non-Allocation of Funds - The terms of this agreement, and the services to  
7 be provided under it, are contingent on the approval of funds by the appropriating government  
8 agency. Should sufficient funds not be allocated, the services provided may be modified, or this  
9 agreement terminated, at any time by giving the CONTRACTOR 30 days' advance written notice.

10 2. Breach of Contract - The COUNTY may immediately suspend or terminate  
11 this agreement in whole or in part, where in the determination of the COUNTY there is:

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

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

24 3. Without Cause - Under circumstances other than those set forth above,  
25 COUNTY may terminate this agreement upon giving 30 days' advance written notice to  
26 CONTRACTOR.

27 5. COMPENSATION/INVOICING:

28 A. COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive

1 compensation for the services performed and forms created under this agreement as follows:

2 1) Services

- 3 • \$0.007 per image of data processing
- 4 • \$0.0367 per image of laser printing (black)
- 5 • \$0.10 per image of laser printing (color)
- 6 • \$0.02 per piece for inserting and metering
- 7 • \$0.01 per piece for additional insert
- 8 • \$0.15 per piece that involves hand work
- 9 • \$75.00 per hour for graphic design
- 10 • \$85.00 per hour of programming
- 11 • The current AADC Letter postage rate and 3 Digit Flat postage rate calculated at
- 12 the time of mailing

13 "AADC" means a presort level in which all pieces in the bundle or container are addressed for  
14 delivery in the service area of the same automated area distribution center.

15  
16 2) Forms

- 17 • \$0.0215 per form measuring up to 8 ½ x 14 inches
- 18 • \$0.0255 per custom 6 x 9 windowed envelope measuring 6 x 9 inches
- 19 • \$0.0215 per custom #7 return envelope
- 20 • \$0.0255 per custom #10 windowed envelope

21  
22 B. CONTRACTOR shall submit monthly invoices for services performed and forms  
23 created the preceding month, to the Tax Collector. Notwithstanding the previous sentence, the  
24 COUNTY shall pay CONTRACTOR in advance for postage based on the CONTRACTOR's  
25 estimated postage charges. These charges will be submitted in advance with each monthly  
26 invoice and adjusted on the following monthly invoice for actual postage charges incurred.

27 C. In no event shall the compensation payable under this agreement exceed four  
28 hundred thousand dollars (\$400,000) for the first year and three hundred fifty thousand dollars

1 (\$350,000) for the second year that this agreement is in effect. The maximum amount payable to  
2 CONTRACTOR shall not exceed seven hundred fifty thousand (\$750,000) during the term of this  
3 agreement. All of CONTRACTOR's expenses incidental to its performance of services under this  
4 agreement shall be borne solely by CONTRACTOR.

5 6. INDEPENDENT CONTRACTOR:

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

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

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

27 7. MODIFICATION: This agreement may not be modified except by written  
28 agreement of both parties.

1           8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this  
2 agreement nor their rights or duties under this agreement without the prior written consent of the  
3 other party.

4           9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless,  
5 and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any  
6 and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to  
7 COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its  
8 officers, agents, or employees under this agreement, and from any and all costs and expenses,  
9 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation  
10 who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR,  
11 its officers, agents, or employees under this agreement.

12           10. INSURANCE

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

17                     A. Commercial General Liability

18                     Commercial General Liability Insurance with limits of not less than Two  
19 Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars  
20 (\$4,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require  
21 specific coverages including completed operations, products liability, contractual liability,  
22 Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed  
23 necessary because of the nature of this contract.

24                     B. Automobile Liability

25                     Comprehensive Automobile Liability Insurance with limits of not less than  
26 One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages.  
27 Coverage should include any auto used in connection with this Agreement.  
28

1 C. Errors and Omissions

2 Errors and Omissions insurance with limits of not less than Two Hundred  
3 Fifty Thousand Dollars (\$250,000.00) per occurrence, Five Hundred Thousand Dollars  
4 (\$500,000.00) annual aggregate.

5 D. Worker's Compensation

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

8 Additional Requirements Relating to Insurance

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

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

23 Within Thirty (30) days from the date CONTRACTOR signs and executes this  
24 agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated  
25 above for all of the foregoing policies, as required herein, to the County of Fresno, Risk  
26 Management, 2220 Tulare St, Fresno, CA 93721 stating that such insurance coverage have been  
27 obtained and are in full force; that the County of Fresno, its officers, agents and employees will not  
28 be responsible for any premiums on the policies; that for such worker's compensation insurance



1 the CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and  
2 employees any amounts paid under the insurance policy and that waiver does not invalidate the  
3 insurance policy; that such Commercial General Liability insurance names the County of Fresno,  
4 its officers, agents and employees, individually and collectively, as additional insured, but only  
5 insofar as the operations under this agreement are concerned; that such coverage for additional  
6 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained  
7 by COUNTY, its officers, agents and employees, shall be excess only and not contributing with  
8 insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be  
9 cancelled or changed without a minimum of thirty (30) days advance, written notice given to  
10 COUNTY.

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

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

17 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during  
18 business hours, and as often as the COUNTY may deem necessary, make available to the  
19 COUNTY for examination all of its records and data with respect to the matters covered by this  
20 agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to  
21 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance  
22 with the terms of this agreement.

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

26 12. NOTICES: The persons and their addresses having authority to give and  
27 receive notices under this Agreement include the following:

28 COUNTY

CONTRACTOR

COUNTY OF FRESNO  
Auditor-Controller/Treasurer-Tax  
Collector  
PO Box 1192  
Fresno, CA 93715-1192

Document Fulfillment Services  
  
2930 Ramona Avenue, Suite 100  
Sacramento, CA 95826

All notices between the COUNTY and the CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-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).

13. VENUE AND GOVERNING LAW: Venue for any action arising out of or related to this agreement shall only be in Fresno County, California.

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

14. DISCLOSURE OF SELF-DEALING TRANSACTIONS: This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR changes its status to operate as a corporation.

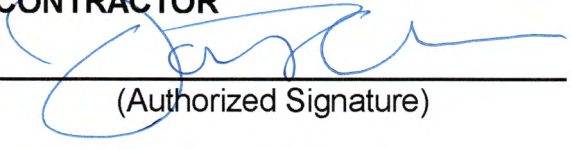
1                   Members of the CONTRACTOR's Board of Directors shall disclose any self-  
2 dealing transactions that they are a party to while CONTRACTOR is providing goods or  
3 performing services under this agreement. A self-dealing transaction shall mean a transaction to  
4 which the CONTRACTOR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

9                   ENTIRE AGREEMENT: This agreement constitutes the entire agreement between  
10 the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all  
11 previous agreement negotiations, proposals, commitments, writings, advertisements, publications,  
12 and understanding of any nature whatsoever unless expressly included in this agreement.

13   *[SIGNATURE PAGE FOLLOWS]*  
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of  
2 the day and year first hereinabove written.

3  
4 **CONTRACTOR**

5   
6 \_\_\_\_\_  
(Authorized Signature)

7 James Gilbride / President & CTO

8 \_\_\_\_\_  
Print Name & Title

9 2930 Ramona Ave #100

10 \_\_\_\_\_  
Sacramento, CA 95826

11 \_\_\_\_\_  
Mailing Address

12 **COUNTY OF FRESNO**

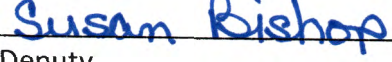
13   
14 \_\_\_\_\_  
Nathan Magsig, Chairman of the Board of  
Supervisors of the County of Fresno

15 ATTEST:

16 BERNICE E. SEIDEL

17 Clerk of the Board of Supervisors

18 County of Fresno, State of California

19 By   
20 Deputy

21 **FOR ACCOUNTING USE ONLY:**

22 ORG No.: 04100500

23 Account No.: 7268/7295

24 Requisition No.:  
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