

AGREEMENT

I. INTRODUCTION

THIS AGREEMENT, is entered into as of _____, between the COUNTY OF TULARE, referred to as COUNTY, and All Net of California, Inc., a California Corporation, DBA Stanton Office Machine Company, referred to as CONTRACTOR, with reference to the following:

II. RECITALS

- A. The COUNTY is replacing its current Micropress system with updated software, four Ricoh Lanier print engines, that are described in Exhibit A and is in need of a qualified vendor to service and maintain said equipment.
- B. Any and all references to "equipment" are in regards to the equipment specified in EXHIBIT A.

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

1. **TERM:** This Agreement shall become effective as of _____ and shall expire at 11:59 PM on _____ unless otherwise terminated as provided in this Agreement.
2. **SCOPE OF SERVICES TO BE PERFORMED:** During the term of the lease of equipment: Stanton Office Machines Company will provide on-site all equipment service needs; all parts replacement, as well as any and all maintenance to the Micropress, the supporting software, four Ricoh Lanier print engines and one Konica Minolta Bizhub C6501, and provide all consumables for such equipment for the County.
3. **PRICE FOR SERVICES:** See EXHIBIT A.
4. **PAYMENT SCHEDULE:** Monthly contracts are due upon receipt. Service will be temporarily suspended if account becomes past due. Terms are NET 30 DAYS, unless specified otherwise. If new or renewal agreement is not paid within the terms of the agreement, agreement becomes void and COUNTY will be subject to a chargeable, pre-maintenance inspection before same equipment can be placed under any future agreement. Any service performed during the "terms" grace period will be reversed to a chargeable status. No further charges to account will be permitted until this fee has been paid.
5. **RENEWAL:** The contract will automatically renew each year upon the anniversary date. The cost per copy will be at our current rate at that time. This contract may be cancelled upon 30 days' advance written notice. Alterations, attachments, or specification changes may require revised maintenance rates. **THIS AGREEMENT IS NOT TRANSFERABLE**

AND CANCELLATION RESULTS UPON SALE OF EQUIPMENT.

6. **LOANER:** Upon availability, a loaner will be furnished at no extra charge while COUNTY'S machine is in shop for repair.
7. **PARTS REPLACEMENT:** Worn or damaged parts will be replaced at no additional charge providing that the wear or damage is not caused by misuse or negligence on the part of COUNTY, its employees, agents, or third parties.
8. **ENGINEERING CHANGES:** Where applicable engineering changes which, in manufacturer's opinion, will improve the performance of the equipment shall be installed at no additional charge.
9. **RECONDITIONING:** When, in Vendor's opinion, a shop reconditioning is necessary because normal repair replacement cannot maintain the equipment in satisfactory operating condition, Vendor will submit a cost estimate of needed repairs which will be in addition to maintenance charges. If COUNTY does not authorize such work, Vendor may immediately terminate this agreement with respect to such equipment. When, In Vendor's opinion, the equipment is no longer repairable due to age, wear, or discontinuance of parts, CONTRACTOR may cancel this agreement immediately and refund any unused portion of the agreement.
10. **LIMITATIONS:** Maintenance service shall not include electrical work external to the equipment maintenance of accessories, attachments, equipment, or devices. This agreement does not cover software support installed on COUNTY'S computers. A separate agreement offering IT and software troubleshooting is available upon request. Does not include repairs made necessary by use of supplies not approved by Stanton's. Maintenance service shall only be performed at the address location specified on the face of this agreement.
11. **ACCEPTANCE:** Acceptance of this agreement by CONTRACTOR is contingent upon (a) satisfactory credit report on COUNTY, and (b) review and approval as indicated on front of agreement by Stanton Office Machine Contracts Manager.
12. **WARRANTY:** All parts furnished hereunder will be free of defects in material and workmanship at the time of installation. There are no other warranties, expressed or implied, which extend beyond the face of this agreement.
13. **CONSUMABLE YIELD:** Consumable yield is based on manufacturer published yields of 6% coverage. Coverage may vary depending on your original and additional supplies may need to be purchased in addition to this agreement.
14. **EQUIPMENT RELOCATION:** Does not include repairs made necessary due to relocation of equipment by parties other than vendor. Should party other than vendor relocate equipment, COUNTY agrees to pay inspection fee before any further service is provided. Cost of relocation by CONTRACTOR is not included in the Maintenance Agreement.

IV. GENERAL TERMS

15. INDEPENDENT CONTRACTOR STATUS:

- (a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees, or officers as an agent, employee, or officer of COUNTY.

- (b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:
 - 1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
 - 2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
 - 3. Withhold state or federal income tax from payments to CONTRACTOR.
 - 4. Make disability insurance contributions on behalf of CONTRACTOR.
 - 5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

- (c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

16. COMPLIANCE WITH LAW: CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

17. GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California. CONTRACTOR waives the removal provisions of California Code of Civil Procedure section 394.

18. RECORDS AND AUDIT: CONTRACTOR shall maintain complete and accurate

records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

19. CONFLICT OF INTEREST:

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raises any questions as to the applicability of conflicts of interest laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

20. INSURANCE: Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in EXHIBIT C attached.

21. INDEMNIFICATION: CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement. CONTRACTOR shall not be responsible for

failure to perform its maintenance obligation due to strikes, fires, flood, and other causes beyond its control. CONTRACTOR shall not be liable for any accidents to or caused by the equipment or machine. CONTRACTOR shall not be liable for service or parts in the instance where anyone other than the Maintenance contractor herein or his agent has worked on the machine nor where the machine is damaged due to negligence or misuse by COUNTY. CONTRACTOR shall in no event be liable to COUNTY or any other person for incidental or consequential damages which may arise as a result of the performance of any obligation under this agreement. CONTRACTOR is not responsible for repairs due to operator error.

22. TERMINATION:

- (a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.
- (b) With Cause: This Agreement may be terminated by either party should the other party.
- 1) be adjudged a bankrupt, or
 - 2) become insolvent or have a receiver appointed, or
 - 3) make a general assignment for the benefit of creditors, or
 - 4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
 - 5) materially breach this Agreement, or
 - 6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or
 - 7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated

profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non-performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the County, said termination will not affect any rights of the COUNTY to recover damages against the CONTRACTOR.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR's services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

23. **SOFTWARE WARRANTY:** CONTRACTOR warrants that any software furnished hereunder, or any software used by it to perform the services to be provided under this Agreement, will continue processing accurately for the term of this Agreement and any extension thereof and that the use of said software will not cause incorrect scheduling or reporting or other improper operations or results.

24. **NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Board of Supervisors
County of Tulare
Administration Building
2800 W. Burrel
Visalia, CA 93291

CONTRACTOR:

Stanton
Office Machine Company
Mike Mosby
4312 N. Selland Avenue
Fresno, CA 93722

Copy to:

General Services – Print & Mail Services
County of Tulare
5953 S. Mooney Blvd.
Visalia, CA 93277

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

25. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the unique skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.
26. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise, The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
27. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.
28. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.
29. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
30. **NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
31. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
32. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

33. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

34. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties

35. **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____

By: _____
Chairman

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

CONTRACTOR

Corporation Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Date: 7/22/15

Signature: 

TITLE: VICE PRESIDENT

Date: 7/22/15

Signature: 

TITLE: ASST. SECRETARY

APPROVED AS TO FORM
County Counsel



Deputy LDV51046

EXHIBIT A

LIST OF EQUIPMENT

Ricoh/Lanier Pro 1357EX Print Engines X 4 Units
(135 pages-per-minute)
100 Sheet Duplexing Document Handler X 4 Units
Duplexing X 4 Units
2,000 (#1), 500 (#2) and 500 (#3) Sheet Paper Decks X 4 Units
2,000 (#4), 1,000 (#5) and 1,000 (#6) Sheet Additional Paper Decks X 4 Units
100 Sheet Stapling Finisher with Booklet Maker X 4 Units
2 Trays X 200 Sheet Each Cover Interposers X 4 Units
Decurl Unit X 4 Units
Print/Color Scan Interface X 4 Units
4 Dongles and 4 Print Links to Connect Units to 8.3 MicroPress
GBC Stream Punch X 2 Units
GBC Die Set: Spiral Binding X 2 Sets and Comb Binding X 2 Sets

PRICE

\$6,670.40 + tax per month for all 4 Systems listed above.