

**AGREEMENT**

**THIS AGREEMENT** is entered into as of \_\_\_\_\_ between the COUNTY OF TULARE, referred to as COUNTY, and CALIFORNIA BUSINESS MACHINES, a California corporation, referred to as CONTRACTOR, with reference to the following:

- A. COUNTY has need of copy machines (with associated services), and issued a Request for Proposals ("RFP") on November 23, 2005, amended December 8, 2005, copy attached as Exhibit A;
- B. CONTRACTOR responded to the RFP with its Proposal ("Proposal") dated January 4, 2006 (as revised), copy attached as Exhibit B;
- C. CONTRACTOR conditioned its Proposal on the requirement that COUNTY allow a leasing company to finance the initial purchase of the required copy machines and bill the COUNTY for the per page minimum guaranteed prorated monthly rent Proposed by CONTRACTOR for such copy machines;
- D. CONTRACTOR has arranged for \_\_\_\_\_ to be Lessor under a financing lease in the form of Lease attached as Exhibit C ("Financing Lease") as to the copy machines described in the Schedule to that Lease;
- E. CONTRACTOR is ready, willing and able to provide the continuing services as to  
the copy machines to be supplied to COUNTY, including copy machines subsequently provided to COUNTY as described in its Proposal;

**ACCORDINGLY, IT IS AGREED:**

- 1. **TERM:** This Agreement shall become effective as of \_\_\_\_\_ and shall expire on \_\_\_\_\_ unless otherwise terminated as provided in this Agreement.
- 2. **FINANCING LEASE:** Concurrent with the term of this Agreement, COUNTY shall enter into the Financing Lease.
- 3. **CONTINUING SERVICES:** CONTRACTOR shall continue to be responsible to replace copiers, provide supplies (excluding copy paper), place higher speed copier models at certain locations, and otherwise provide the services, guarantee performance, and comply with the requirements of the RFP and its Proposal, including COUNTY's amendments and CONTRACTOR's amendments, the terms of which are incorporated by this reference.

///

///

Tulare County Agreement No. \_\_\_\_\_

4. **WARRANTY:** CONTRACTOR warrants and guarantees that each and every copier to be provided to COUNTY under this Agreement shall be in working order according to specifications on delivery, and that CONTRACTOR will replace any copier that cannot be reasonably repaired. In addition, CONTRACTOR warrants and guarantees that it will reasonably repair or replace any copier during the term of the Agreement if and when it ceases to operate within the manufacturer's specifications applicable to such machine

5. **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.

6. **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.

7. **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 D attached.

8. **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:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.

v. 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.

**9. 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 12920 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.

**10. CONFLICT OF INTEREST:**

a. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or 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 the making of any decision on behalf of COUNTY in which such officer, employee or consultant has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant 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 raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

**11. TERMINATION:**

a. With Cause: This Agreement may be terminated by either party should the other party:

- i. be adjudged a bankrupt, or
- ii. become insolvent or have a receiver appointed, or
- iii. make a general assignment for the benefit of creditors, or

- iv. 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
- v. materially breach this Agreement.

For any of the occurrences except item (v), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within TEN (10) days of written notice specifying the breach. If the breach is not remedied within that TEN (10) day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 10 day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice 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, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If 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. 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. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

b. 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.

c. 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 financial emergency otherwise jeopardizing the continuation of essential governmental services, 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.

**12. 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.

**13. 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.

**14. 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:**

Resource Management Agency  
5961 S. Mooney Blvd.  
Visalia, CA 93277

Phone No: (559) 733-6291  
Fax No: (559) 733-6162

**With A Copy To:**

County Administrative Officer  
2800 W. Burrel Ave.  
Visalia, CA 93291

**CONTRACTOR:**

4260 N. Fresno St.  
Fresno, CA 93726-3115

Phone No: (559) 225-5570  
Fax No: (559) 225-5827

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.

**15. CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

**16. 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.

**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.

**18. 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.

**19. EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

**20. 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, 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.

**21. FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.

**22. 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.

**23. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal 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.

**24. 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.

**25. 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.

///

///

/

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

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


COUNTY OF TULARE

Date: \_\_\_\_\_ By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: C. BRIAN HADDIX  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

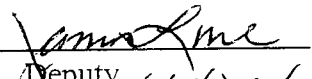
By \_\_\_\_\_  
Deputy Clerk

CONTRACTOR

Date: 5/4/06 By   
TITLE General Manager

Date: \_\_\_\_\_ By \_\_\_\_\_  
TITLE \_\_\_\_\_

Approved as to Form  
County Counsel

By   
Deputy 04/28/04