

APPROVED
02/10/2020

MEMO



DATE: February 5, 2020

FROM: Matney M. Ellis
Procurement Director

On behalf of Matney M. Ellis:

Amanda K. Hensley

TO: Board of County Commissioners

SUBJECT: Agreement – BMI Imaging Systems, Inc. (BMI)

Submitted for your approval and execution is the attached Agreement between the Board of County Commissioners on behalf of the Tulsa County Clerk's Office and BMI Imaging Systems, Inc. (BMI) for Conversion and Hosting services.

Respectfully submitted for your approval and execution.

MME / arh

SUBMITTED FOR: The February 10, 2020 BOCC meeting agenda.

CMF# 20200287



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BMI IMAGING SYSTEMS HOSTING WORK ORDER

This Hosting Work Order (this “**Work Order**”) is made and entered into as of February 1, 2020 (the “**Effective Date**”) between BMI Imaging Systems, Inc, (“**BMI**”) and Tulsa County Clerk (“**Customer**”).

BMI shall perform services (the “**Services**”) as described in this Work Order. The records, books, manuscripts, photographs, newspapers, periodicals, files, disks, tapes and/or other materials provided by Customer to BMI shall be referred to as the “**Documents**”. The results of digital or photographic reproduction processes of BMI that can be viewed by Customer on a computer screen shall be referred to as the “**Imaged Product**”.

1. STORAGE AND ACCESS TO IMAGED PRODUCT

BMI shall provide a minimum hardware storage configuration of RAID 5 on which the Imaged Product will be stored. BMI will provide this hardware configuration in both of its two (2) hosting locations, with one configuration available at any one time at least 99% of normal business hours. Normal business hours are defined as: 5:00 AM to 5:00 PM, PST.

1.1 ACCESS SERVICES. BMI shall allow access to the Imaged Product to authorized users via Internet connections from one or more of BMI data repositories. Authorized users will be determined by Customer. Adding or removing authorized users will be at the discretion of Customer or his/her representative. Customer acknowledges that he/she assumes responsibility for adding, deleting or maintaining users, whether directly administering the users through its representative.

1.2 The Internet by its very nature is inherently an unsecure medium. The Customer is responsible for validating the integrity of the information and data it receives and transmits over the Internet. The Customer is required to protect the security of its Internet account and usage. The Customer’s passwords will be treated as private and confidential and not disclosed to or shared with any third parties. Customer agrees to protect their data and images from unauthorized use, complying with protocols for sensitive, confidential and personal information.

1.3 COMMUNICATIONS LINES. BMI utilizes communication services of telecom third parties. Customer acknowledges that BMI does not have ultimate control of communications lines used to access the Imaged Product and, therefore; BMI cannot ultimately guarantee the security of transmissions to and from BMI to Customer. BMI routinely utilizes TLS (Transport Layer Security) protocol for transmission of the Imaged Product to clients and can provide other enhanced data communication and security provisions upon request, such as single IP access or VPN. Unless otherwise noted, communication between BMI and Customer will utilize TLS. Unless otherwise contracted, Customer should not expect bandwidth greater than 5Mb/s during normal business hours. Customer should not assume access will be available after business hours.

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1.4 MAINTENANCE.

(a) Regular Maintenance or System Upgrades. BMI shall perform preventive maintenance of its servers and other facilities in accordance with its normal maintenance schedules and procedures, as modified from time to time during the term of this Agreement. Customer acknowledges that Access Services may not be operable during periods of preventive maintenance. BMI will make reasonable efforts to inform Customer prior to any scheduled maintenance.

(b) Unscheduled Maintenance. Customer acknowledges that BMI may have to perform maintenance on an emergency basis and that Access Services may not be operable at these times. BMI shall provide Customer with notice as soon as possible in such situations and will make every reasonable effort to make Access Services available to Customer as possible.

3. CUSTOMER SUPPORT

Customer may contact BMI either by telephone, email and/or other means agreed to by BMI and Customer, for operational and technical support pertaining to the Services. Such support shall be provided on Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., Pacific Time, excluding BMI holidays. BMI holidays are [New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday following Thanksgiving, Christmas Day, and the day after Christmas Day.] BMI will provide Customer with a toll-free telephone number for support. Support shall be unlimited as to time, provided support requests from Customer are reasonable and are requested within the hours indicated above.

4. RENEWAL, SUSPENSION AND TERMINATION

4.1 RENEWAL PRICING. The initial term of this Work Order shall run through June 30, 2020 and may be extended for additional one (1) year terms subject to annual fiscal appropriations and by written agreement of the parties. .

4.2 SUSPENSION / TERMINATION FOR THIRD PARTY COPYRIGHT CLAIMS. BMI may suspend services or access to Imaged Product, in whole or in part, or terminate this Agreement without liability to Customer as a result of compliance with and/or settlement of third party notices of claimed copyright infringement arising from or related to the Documents or Imaged Product.

4.3 TERMINATION FOR BREACH. Either party may terminate this Agreement if the other party materially breaches this Agreement and fails to cure the breach within 30 days following notice from the other party specifying the breach.

4.4 SUSPENSION FOR NON-PAYMENT. BMI may suspend services or access to Imaged Product, in whole or in part, immediately upon notice to Customer if Customer fails to make any payment of Fees when due.

4.5 RIGHTS AND OBLIGATIONS UPON TERMINATION. Upon termination or expiration, BMI shall promptly delete any of Customer's data (including without limitation Imaged Product) in its possession. BMI shall have no obligation to return Imaged Product to Customer or transfer such materials to any third party unless mutually agreed by the parties in writing. Any expense incurred by BMI in

returning, transferring or disposing of Customer's data shall be borne by Customer, including but not limited to any sales tax previously uncollected due as a result of status change of delivery.

5. OWNERSHIP/NO WARRANTY

5.1 OWNERSHIP / COMPLIANCE WITH LAW / INDEMNITY. Customer warrants that it is the owner or legal custodian of the Documents and that Customer has or shall obtain all rights, title, licenses or permissions necessary for BMI to host and display the Imaged Product in accordance with this Work Order. BMI may refuse Customer's access to the Documents or the Imaged Product, in whole or in part, if required by law or order of competent legal authority.

5.2 NO WARRANTY. Except as expressly stated herein, BMI makes no representations and warranties under this Work Order and hereby disclaims all warranties implied by law, including but not limited to, the implied warranties of merchantability, title, and fitness for a particular purpose. Customer waives the implied warranty of merchantability and fitness for a particular purpose. BMI does not represent or warrant that its buildings are fireproof or the contents of the buildings (including the Documents and the Imaged Product) cannot be destroyed by fire, flood or other acts of nature, war or terror.

6. LIMITATION OF LIABILITY

SUBJECT TO THE LIMITATIONS OF LIABILITY CONTAINED ELSEWHERE IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, BMI'S LIABILITY TO CUSTOMER FOR THE UNAUTHORIZED DISCLOSURE OF DOCUMENTS OR IMAGED PRODUCT SHALL BE LIMITED TO DAMAGES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BMI'S EMPLOYEES, AND BMI'S LIABILITY TO CUSTOMER FOR LOSS OF OR DAMAGE TO THE DOCUMENTS OR THE IMAGED PRODUCT SHALL BE LIMITED TO DAMAGES CAUSED SOLELY BY THE NEGLIGENCE OF BMI AND ONLY FOR THE REPLACEMENT COSTS OF THE MEDIUM ON WHICH THE DOCUMENTS OR IMAGED PRODUCT WAS ORIGINALLY PRODUCED. IN ANY ACTION TO ENFORCE A CLAIM AGAINST BMI, CUSTOMER SHALL HAVE THE BURDEN OF PROVING NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF BMI. CUSTOMER WAIVES THE BENEFIT OF ANY PRESUMPTION IN LAW OR OTHERWISE THAT ANY DAMAGE TO OR LOSS OF THE DOCUMENTS WAS CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BMI.

EXCEPT AS PROVIDED IN THE IMMEDIATELY PRECEDING PARAGRAPH AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, BMI SHALL HAVE NO LIABILITY UNDER ANY LEGAL THEORY OR TYPE OF ACTION TO CUSTOMER FOR ANY DAMAGE OR LOSS SUSTAINED BY CUSTOMER AS A RESULT OF BMI'S SERVICES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, FURTHER INCLUDING WITHOUT LIMITATION, DAMAGE OR LOSS SUSTAINED BY REASON OF MISSING OR ILLEGIBLE PAGES, MISSING OR DAMAGED DOCUMENTS OR IMAGED PRODUCT OR MISDELIVERY OF DOCUMENTS OR IMAGED PRODUCT OR UNAUTHORIZED DISCLOSURE OF DOCUMENTS OR IMAGED PRODUCT, EVEN IF BMI OR ITS REPRESENTATIVES HAVE BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

IN THE EVENT BMI MAY BE HELD LIABLE TO CUSTOMER FOR MONETARY DAMAGES UNDER THIS AGREEMENT, IN NO EVENT SHALL SUCH DAMAGES EXCEED THE AMOUNT PAID TO BMI BY CUSTOMER FOR THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING

THE DATE OF THE CLAIM GIVING RISE TO THE DAMAGES. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO PREVENT CUSTOMER FROM PROCURING AND MAINTAINING ITS OWN INSURANCE FOR THE DOCUMENTS AND IMAGED PRODUCT.

7. GENERAL

7.1 FORCE MAJEURE. Neither party shall be liable under this Agreement by reason of any failure or delay in the performance of its obligations under this Agreement (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages, or any other cause beyond the reasonable control of such party.

7.2 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma applicable to contracts made and to be performed in Oklahoma.

7.3 CLAIMS. Venue for interpretation and enforcement of this Agreement shall be exclusive to the courts located in Tulsa County, Oklahoma.

7.4 NOTICES. All notices, including notices of address change, required to be sent under this Work Order shall be in writing and shall be deemed to have been given upon the date sent by confirmed facsimile or three days following the date such notice was mailed by first class mail, to the addresses set forth at the bottom of this Work Order.

7.5 SEVERABILITY. In the event any provision of this Work Order is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

7.6 RELATIONSHIP BETWEEN THE PARTIES. BMI is an independent contractor, and nothing in this Work Order shall be construed to create a partnership, joint venture or agency relationship between the parties.

7.7 SUCCESSORS. Subject to approval of the Board of County Commissioners of Tulsa County, Oklahoma, this Work Order shall be binding on and inure to the benefit of the parties to it and their respective heirs, legal representatives, successors and assigns.

7.8 ENTIRE AGREEMENT. This Work Order supersedes any prior agreements and understandings between the parties relating to the subject matter of this Work Order. No supplement, amendment or modification of this Work Order shall be binding unless executed in writing by all of the parties.

7.9 COUNTERPARTS. This Agreement may be executed in two or more counterparts using facsimile (electronic) signatures, each of which shall be considered an original for all purposes, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Work Order to be signed by their duly authorized representatives.

BMI IMAGING SYSTEMS, INC.

Signature: William Whitney
Name: William Whitney
Title: President
Date: 2/14/2020

CUSTOMER

Signature: Røn Peters
Name: Røn Peters
Title: Chairman
Date: 02/10/2020

Attest: Michael Willis
Michael Willis, County Clerk



Approved as to form:

James G. Rea Digitally signed by James G. Rea
Date: 2020.02.04 09:39:44 -06'00'
Assistant District Attorney

Scope of Work:

Tulsa County Clerk will copy all Digital Reel files to an external drive and ship to:

BMI Imaging Systems
1115 E. Arques Avenue
Sunnyvale, CA 94085
Attn: Jim Modrall

BMI will convert the Digital Reel data to the current version and place one copy in each of our CA data centers for hosting.

BMI hosting + conversion = \$4,000 includes 10 named accounts plus one year of hosting. \$4,000 per year in future years to be invoiced to SHI for payment

County of Tulsa acknowledges and SHI designates the following individual is as the Master Administrator of the Tulsa County Clerk Digital Reel dataset:

Jeff Droll
Applications Manager
jdroll@tulsacounty.org