

C-5269

**ON-CALL SERVICE AGREEMENT
WITH AMERICAN MICROIMAGING, INC. FOR
DOCUMENT SCANNING AND INDEXING SERVICES**

THIS ON-CALL SERVICE AGREEMENT ("Agreement") is made and entered into as of this 29 day of June, 2012 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and **AMERICAN MICROIMAGING, INC.**, a California corporation ("Contractor"), whose address is 1125 West Sixth Street, Suite 200, Los Angeles, California 90017 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to provide as-needed document scanning and indexing services ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- D. The principal member of Contractor for purposes of Project shall be George Bandarian II, President.
- E. City has solicited and received a proposal from Contractor, has reviewed the previous experience and evaluated the expertise of Contractor, and desires to retain Contractor to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2014 unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall provide "On-Call" DOCUMENT SCANNING AND INDEXING SERVICES as described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator (as defined below in Section 6), Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.2 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.3 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates or Progress Payments Schedule attached hereto as Exhibit B and incorporated herein by reference. Contractor's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subcontractor fees, shall not exceed **Seventy Five Thousand Dollars and no/100 (\$75,000.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement, or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated George Bandarian II, President to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the **Office of the City Clerk**. The City Clerk, or his/her designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one (1) copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with the highest industry standards. For purposes of this Agreement, the phrase "highest industry standards" shall mean those standards of practice recognized by one (1) or more first-class firms performing similar work under similar circumstances.

8.2 All Services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the highest industry standard.

8.3 Contractor represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this

indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Contractor on the Project.

12. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Contractor is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

14.1 Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses

existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

14.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

14.3 Coverage Requirements.

14.3.1 Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

14.3.1.1 Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

14.3.2 General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

14.3.3 Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

14.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

14.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

14.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

14.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

14.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

14.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

14.5.1 Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

14.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor sixty (60) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

14.5.3 Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

14.5.4 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

14.5.5 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

14.5.6 City Remedies for Non Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall

have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

14.5.7 Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

14.5.8 Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further

compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Contractor pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Contractor will be at City's sole risk and without liability to Contractor. Further, any and all liability arising out of changes made to Contractor's deliverables under this Agreement by City or persons other than Contractor is waived against Contractor and City assumes full responsibility for such changes unless City has given Contractor prior notice and has received from Contractor written consent for such changes.

18. COMPUTER DELIVERABLES

All written documents shall be transmitted to City in the City's latest adopted version of Microsoft Word, Excel or portable digital format, which may include PDF, TIFF or a designated Laserfiche-export format.

19. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

20. INTELLECTUAL PROPERTY INDEMNITY

The Contractor shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Contractor's Documents provided under this Agreement.

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Contractor which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Contractor, the additional design, construction and/or restoration expense shall be borne by Contractor. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

24. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other Contractors in connection with the Project.

25. CONFLICTS OF INTEREST

25.1 The Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

25.2 If subject to the Act, Contractor shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

26. NOTICES

26.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: City Clerk
Office of the City Clerk
City of Newport Beach

3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3005
Fax: 949-644-3039

26.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: George Bandarian II, President
AMERICAN MICROIMAGING, INC.
1125 West Sixth Street, Suite 200
Los Angeles, California 90017
Phone: 213-249-6490
Fax: 213-250-3300

27. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to any claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Tort Claims Act (Government Code sections 900 *et seq.*).

28. TERMINATION

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

28.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination,

Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

29. STANDARD PROVISIONS

29.1 Compliance with all Laws. Contractor shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.2 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

29.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

29.6 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

29.7 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29.8 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

29.9 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

29.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

29.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 6/1/12

By: [Signature] (for)
Aaron C. Harp
City Attorney

PSA
oll

ATTEST:
Date: 10/29/12

for By: [Signature] **DEPUTY
CITY
CLERK**
Leilani I. Brown
City Clerk



**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 11-6-12

By: [Signature]
Leilani I. Brown
City Clerk

**CONTRACTOR: AMERICAN
MICROIMAGING, INC., a California
corporation**

Date: 8/12/12

By: [Signature]
George Bandarian II
President

Date: 8/17/12

By: [Signature]
Rema Bandarian
Vice President

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates/ Progress Payment Schedule

EXHIBIT A – SCOPE OF SERVICES

PROJECT OVERVIEW

This document scanning and indexing of archived documents project pertains to the following City departments: City Attorney's Office, City Clerk's Office, City Manager's Office, Human Resources, Municipal Operations, Public Works and Recreation. Each department has been surveyed to determine the amount of documents from each that need to be scanned. For purposes of this Project, the unit of quantitative measurement in regards to documents is presented in number of banker's boxes. The City expects to retain at least two (2) Contractors for execution of this project due to the impending moving date to the new Civic Center. Each department and their respective scanning and indexing needs shall be considered a separate project (departments with lesser needs may be merged into a single project) and will be assigned to retained Contractors based on capacity, turnaround time and track record of results.

1. CONTRACTOR RESPONSIBILITIES/PROVISIONS

- 1.1** Paper Documents: City departments have documents that need to be scanned and indexed. These documents will be of various sizes, including but not limited to:
 - Letter (8.5 x 11)
 - Legal (8.5 x 14)
 - Tabloid (11 x 17)
 - Oversized (i.e. construction drawings and other misc. documents)
- 1.2** File Format: Documents shall be scanned at 200dpi and in either TIFF or PDF format, to be determined by each department prior to the commencement of each specific Project. Departments may also request that documents be delivered in Laserfiche-export format.
- 1.3** File Naming: This Project shall require the Contractor to name and index the individual records, which may include combining multiple pages into one file and/or breaking up larger files into smaller files for ease of use. Each City department will provide specific file-naming instructions prior to commencement of each specific project.
- 1.4** File Delivery: The scanned files shall be organized per the City department's instruction and delivered to the City in DVD format. The original documents shall be returned to the City in the same condition and order in which they were received.
- 1.5** Project Process: The following is a synopsis of the process to be followed by City departments and Contractor for each Project:
 - 1.5.1** City department shall contact Contractor to set up an on-site meeting and analysis of documents to be scanned and indexed;

- 1.5.2 Contractor shall assess the amount of documents to be scanned and the various document types;
 - 1.5.3 City department shall coordinate with Contractor in regards to file naming conventions, instructions and deliverables format;
 - 1.5.4 Contractor shall develop a letter proposal, formalizing the quantity of the project, an estimated completion date and the rate to be charged per image;
 - 1.5.5 Purchasing will confirm that the information and rates on the letter proposal correspond with those listed in the Agreement and shall contact Contractor to commence work.
- 1.6** Contractor shall obtain a City of Newport Beach Business License, if one is not already obtained.

EXHIBIT B – SCHEDULE OF BILLING RATES

Description	Price Per Sheet	Notes/Comments
<i>Standard</i> 8.5" x 11" Image	\$ 0.056	<i>*Includes Pickup, prep, scan, QC and export to TIFF/PDF (Does not include Indexing) AMI will provide Laserfiche export format same price. AMI will provide both formats for \$0.01 additional.</i>
8.5" x 14" Image	\$ 0.056	<i>See Above Notes/Comments.</i>
11" x 17" Image	\$ 0.091	<i>See Above Notes/Comments.</i>
<i>Oversize</i> 18" x 24" Image	\$ 0.52	<i>See Above Notes/Comments.</i>
24" x 36" Image	\$ 0.63	<i>See Above Notes/Comments.</i>
30" x 48" Image	\$ 0.75	<i>See Above Notes/Comments.</i>
<i>Other</i> Carbon Copies		<i>See Above Notes/Comments.</i>
8.5" x 11" Per Image	\$ 0.056	
8.5" x 14" Per Image	\$ 0.056	
Rice Paper	\$ N/A	<i>See Above Notes/Comments.</i>
Bound Notebooks (Per Image)	\$ 0.29	<i>See Above Notes/Comments.</i>

ADDITIONAL PRICING CONSIDERATIONS:

Charge for 2-Sided Documents: **2 sides = 2 images**

Media Delivery Format: **\$15.00 per DVD**

Indexing Price Per Hour: **\$31.63**

Special Handling outside Scope of Work: **\$31.63/hour**

Project Management: **\$2875.00/project**

(AMI will be 100% responsible for import into Laserfiche of all AMI scanned images on a project -1 to 1 basis with sign-off.)

AMI separates Indexing from the total cost of document imaging, as the scope per department will vary widely for each project – the only equitable way to address indexing is per hour. Once the scope of index fields and character number is defined, AMI is happy to provide per-field billing.