

**WINNEBAGO COUNTY  
PURCHASE OF SERVICES AGREEMENT**

**RE: Multifunctional Copier Lease**

**THIS AGREEMENT** made and entered into this **22nd** day of **July, 2014** by and between Winnebago County (hereinafter referred to as "COUNTY", whether a department, board or agency thereof) and **Gordon Flesch Company, Inc.** (hereinafter referred to as "CONTRACTOR").

**WITNESSETH:**

**WHEREAS** the COUNTY whose address is 415 Jackson Street, Oshkosh, Wisconsin 54901 desires to purchase services from the CONTRACTOR for the purpose of **Document Management Services** and WHEREAS the CONTRACTOR whose address is **1110 W. Kennedy Ave., Kimberly, WI 54136** is able and willing to provide such services; **NOW, THEREFORE**, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, the COUNTY and the CONTRACTOR do agree as follows:

1. **TERM** - The term of this agreement shall commence as of the **1st** day of **September, 2014**, and shall terminate as of the **30th** day of **August, 2019**, unless sooner agreed to by the parties. In any event, the CONTRACTOR shall complete its obligations under this agreement not later than the **30th** day of **September, 2019**, and upon its failure to do so, the COUNTY may invoke the penalties set forth in the bid specifications, RFP or Schedule "A". The COUNTY shall not be liable for any services performed by CONTRACTOR other than during the term of this agreement.
2. **SERVICE TO BE PROVIDED** - CONTRACTOR agrees to provide the services detailed in the request for proposals (RFP) # VA03-14, the CONTRACTOR'S response thereto, incorporated herein by reference, on the attached schedule A and the Rental Schedule Equipment List "B" which reflects all equipment to be placed incorporating any changes from the original RFP. In the event of a conflict between or among the bid the RFP, proposal and/or the terms of Schedule "A", it is agreed that the terms of Schedule "A", to the extent of any conflict, will be controlling.

3. **ASSIGNMENT** - CONTRACTOR shall not assign any interest or obligation in this agreement and shall not transfer any interest or obligation in this agreement, whether by assignment or novation, without the prior written consent of the COUNTY unless permitted otherwise by the bid specifications.
4. **TERMINATION** - If through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this agreement, or if the CONTRACTOR shall violate any of the covenants or stipulations of this agreement, the COUNTY shall thereupon have the right to terminate this agreement by giving a thirty (30) day written notice to the CONTRACTOR of such termination and specifying the effective date thereof. There shall be no other termination or cancellation of this agreement during its term, without the prior written consent of both parties unless specifically permitted otherwise by the bid specifications, RFP or Schedule "A".
5. **UNFINISHED WORK** - In the event the COUNTY exercises its unilateral right to terminate this agreement for cause in the manner provided for in paragraph 4 above, all finished or unfinished documents, services, papers, data, products, or the like prepared, produced or made by the CONTRACTOR under this agreement shall at the option of the COUNTY become the property of the COUNTY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, services, papers, data, products or the like. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this agreement by the CONTRACTOR, and the COUNTY may withhold any payments to the CONTRACTOR for the purpose of set-off.
6. **FAILURE TO APPROPRIATE FUNDS** - The failure of the Winnebago County Board of Supervisors to appropriate sufficient funds in any year covered by this agreement shall automatically terminate this agreement.
7. **TERMS OF PAYMENT** - County will pay CONTRACTOR for all the aforementioned work **According to Schedule "A"** upon satisfactory completion of the work and performance of this contract. All goods and services delivered prior to December 31<sup>st</sup>, must be invoiced to COUNTY by January 31<sup>st</sup> of the subsequent year or the invoice will be subject to a 10% deduction for late billing.
8. **WISCONSIN LAW CONTROLLING** - It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling.

**9. ARBITRATION**

**A.** This Agreement shall be covered by the laws of the State of Wisconsin.

**B.** Claims, disputes, and other matters in question between the parties to this Agreement arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, upon the express written consent of all parties to this Agreement. In the event the parties proceed to arbitration, the following shall govern any such proceedings:

1. The American Arbitration Association shall submit a panel of five arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.
2. The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the party initiating the proceeding) shall be borne equally by the parties. Each party shall pay his own legal fees and expenses incurred in connection with the proceeding.
3. Any arbitration shall take place in the City of Oshkosh, Winnebago County, Wisconsin.
4. Unless otherwise agreed by the parties, the arbitration hearing in this matter shall be limited to one day in length with the arbitrator providing each side equal time to present its case during that day.
5. That any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, related to the discovery procedure, including, but not limited to witness and reporter's fees related to depositions, photocopying fees, postage fees, and delivery fees.
6. That the arbitrator, in issuing any ruling with regard to any arbitration matter, shall issue a written decision which shall include written findings of fact and conclusions of law.
7. The proceeding and arbitration shall be governed by the laws of the State of Wisconsin, including specifically, Chapter 788 of the

Wisconsin Statutes.

10. **CONTRACTOR EFFICIENCY** - CONTRACTOR shall commence, carry on and complete its obligations under this agreement with all deliberate speed and in a sound, economical and efficient manner, in accordance with this agreement and all applicable laws. In providing services under this agreement, the CONTRACTOR agrees to cooperate with the various departments, agencies, employees and officers of the COUNTY.

11. **CONTRACTOR** shall not subcontract any work pursuant to this Agreement without the prior written consent of COUNTY. CONTRACTOR shall maintain a written list of all subcontractors and suppliers performing labor or supplying materials under this Agreement and shall make the list available to COUNTY upon request. COUNTY, at its option, may make direct payments to subcontractors for services performed pursuant to this Agreement or, alternatively, may issue a two-party check to CONTRACTOR and his Subcontractors.

12. **CONTRACTOR** shall comply with any bonding requirements which may be applicable pursuant to Section 779.14(lm), Wisconsin Statutes.

13. **CONTRACTOR** shall pay all legitimate claims for labor performed and materials furnished, used or consumed in making any public improvement or performing any public work pursuant to this Agreement. Failure to comply with this provision, if applicable, may subject CONTRACTOR to criminal penalties pursuant to Sections 779.16 and 943.20, Wisconsin Statutes.

14. **CONTRACTOR EMPLOYEES** - CONTRACTOR agrees to secure at CONTRACTOR'S own expense all personnel necessary to carry out CONTRACTOR'S obligations under this agreement. Such personnel shall not be deemed to be employees of the COUNTY nor have any direct contractual relationship with the COUNTY.

15. **DELIVERY BY MAIL** - Notices, bills, invoices and reports required by this agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

16. **HOLD HARMLESS** - CONTRACTOR agrees to at all times during the term of this agreement, indemnify, save harmless and defend the COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, losses,

damages, costs or expenses, whether personal injury or property damage, that the COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of the CONTRACTOR furnishing the services or goods required to be provided under this agreement, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of the COUNTY, its agencies, boards, commissions, officers, employees or representatives.

**17. INSURANCE**

**A.** Prior to commencing work, CONTRACTOR shall, at its own cost and expense, furnish County with Certificate of Insurance indicating proof of the following insurance from companies licensed in the state:

**1. Workers' Compensation** - statutory - in compliance with the Compensation law of the State and Employers' Liability Insurance with a limit not less than \$100,000 each accident.

**2. Comprehensive or Commercial General Liability Insurance** with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate combined Single Limit for Bodily Injury and Property Damage Liability. This insurance shall include, but not be limited to, the following coverages:

- a)** Premises - Operations
- b)** Products and Completed Operations
- c)** Broad Form Property Damage
- d)** Contractual
- e)** Personal Injury

**3. Automobile Liability** Insurance with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate Combined Single Limit for Bodily Injury and Property Damage Liability. This insurance shall include coverage for all of the following:

- a)** Owned Automobiles
- b)** Hired Automobiles
- c)** Non-Owned Automobiles

**B.** The certificate shall list the **Certificate Holder and Address as follows:** Winnebago County, Attn: Insurance Administrator, Winnebago County Courthouse, P.O. Box 2808, Oshkosh, WI 54903-2808. The Winnebago County Department(s) involved shall be listed under "**Description of Operations**".

**C.** Such insurance shall include under the **General Liability and Automobile Liability Policies** Winnebago County, its employees, elected officials, representatives, and members of its boards and/or commissions as "**Additional Insureds**",

**D.** CONTRACTOR shall require Subcontractor; if applicable, to furnish identical certificates of insurance to the Winnebago County Insurance Administrator prior to contract taking effect.

**E.** Such Insurance Certificate shall include a thirty (30) day notice prior to cancellation or material policy change, which notice shall be given to Winnebago County, Attention: Insurance Administrator, 415 Jackson Street, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808. All such notices will name the CONTRACTOR and identify the Project.

The Winnebago County Insurance Coordinator must approve any exception to these requirements. Submit any requests in writing to Winnebago County Attn: Insurance Administrator, Winnebago County Courthouse, P.O. Box 2808, Oshkosh, WI 54903-2808 or e-mail to [ppeterson@co.winnebago.wi.us](mailto:ppeterson@co.winnebago.wi.us).

**18. LIMITATION EFFECT ON PAYMENTS BY COUNTY** - In no event shall the making of any payment required by this agreement constitute or be construed as a waiver by the COUNTY of any breach of the covenants of this agreement or a waiver of any default of the CONTRACTOR and the making of any such payment by the COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of the COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

**19. DISCRIMINATION** - During the term of this agreement the CONTRACTOR agrees not to discriminate against any person, whether a recipient of services (actual or potential), an employee, or an applicant for employment on the basis of race, religion, sex, handicap, national origin, age, cultural differences, sexual preference, marital status, or physical appearance. Such equal opportunity shall include but not be limited to the following:

employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, or any other form of compensation. The CONTRACTOR agrees to post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this agreement as they relate to affirmative action and nondiscrimination.

**20. AFFIRMATIVE ACTION** - CONTRACTOR may be required to file an Affirmative Action Plan with the COUNTY if the CONTRACTOR receives \$10,000 in annual aggregate contracts or other such consideration of comparable worth and CONTRACTOR has 10 or more employees. Such plan must be filed within fifteen (15) days of the effective date of this agreement and failure to do so by said date shall constitute grounds for immediate termination of this agreement by the COUNTY.

**21. EQUAL OPPORTUNITY EMPLOYER** - CONTRACTOR shall, in all solicitations for employment placed on CONTRACTOR'S behalf, state that CONTRACTOR is an "Equal Opportunity Employer."

**22. COMPLIANCE INFORMATION** - CONTRACTOR agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine such compliance.

**23. CONTRACTOR'S LEGAL STATUS** - CONTRACTOR warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this agreement on its behalf are authorized to do so, and, if a corporation, that the name and address of CONTRACTOR'S registered agent is as set forth opposite the heading REGISTERED AGENT on the last page of this agreement. CONTRACTOR shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and CONTRACTOR'S legal status.

**24. ENTIRE AGREEMENT** - The entire agreement of the parties is contained herein and this agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

**IN WITNESS WHEREOF**, the COUNTY and the CONTRACTOR have executed this agreement and its Schedules as of the day and date first set forth above.

**FOR THE CONTRACTOR:**

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**FOR THE COUNTY:**

\_\_\_\_\_  
**Mark Harris, County Executive**  
  
\_\_\_\_\_  
**Susan Ertmer, County Clerk**

**REGISTERED AGENT:**

\_\_\_\_\_  
\_\_\_\_\_

**Drafted by:  
John A. Bodnar  
Corporation Counsel for  
Winnebago County**

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Revised 6/2004

### **Schedule "A"**

Payment for all equipment and services required under this contract will be made as follows:

- A monthly payment of \$\_\_\_\_\_ will be made to the Contractor beginning in September 2014.
- The Contractor will be paid \$.0033 per page for black & white prints. Payment to be paid quarterly.
- The Contractor will be paid \$.043 per page for color prints. Payment to be made quarterly.

The Contractor will accept a County MasterCard for the payment of all invoices.

All equipment to be supplied is reflected on the attached Rental Schedule Equipment List "B".