RESOLUTION - ACTION REQUESTED 2016-574

MEETING: November 1, 2016

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Approve a Lease Agreement with U.S. Bank for the Human Services Department

RECOMMENDATION AND JUSTIFICATION:
Approve a Lease Agreement with U.S. Bank To Provide Copy/Scan Equipment for the Human Services Department; and Authorize the Board of Supervisors Chair to Sign the Lease Agreement and Associated Lease Documents (Subject to Approval as to Form by County Counsel)

This term of this Lease Agreement is 60 months at a monthly payment of $1,088.03 for a total amount not to exceed $65,281.80 plus sales tax. The monthly payment remains unchanged from the existing Agreement. This Agreement will become effective upon the completion of the existing Agreement in March 2017. This equipment will be supplied by Spriggs, Inc., Merced, California.

This Lease Agreement provides for 7 new replacement copiers to update the Human Services Center machines with faster equipment plus an additional copier for the Coulterville office at no additional cost over our existing lease payment. The new copiers are approximately twice as fast as our existing equipment. In addition, the lower service and supply cost for the new equipment will result in $50.39 savings per month.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The existing 60-month Agreement was signed by the County Administrative Officer on February 28, 2012.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this Agreement is not approved, Human Services will continue to use the existing, slower equipment and forego the $50.39 monthly reduction in service and supply costs.

FINANCIAL IMPACT:
This lease will be paid from the Human Services Administration Budget line 001-0507-672.04-71, and costs will be shared by various Human Services Programs. The payment amount remains unchanged from the existing agreement. There is no impact to the County General Fund.

ATTACHMENTS:
CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson, CAO 10/25/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier
Lease Agreement

CUSTOMER INFORMATION

FULL LEGAL NAME  STREET ADDRESS
County of Mariposa  5100 Bullion Street, Floor 2

CITY  STATE  ZIP  PHONE  FAX
Mariposa  CA  95338  209-966-3222

BILLING NAME (IF DIFFERENT FROM ABOVE)  BILLING STREET ADDRESS

CITY  STATE  ZIP  E-MAIL

EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)

Human Services 5362 Lemee Lane, Mariposa, CA 95338

SUPPLIER INFORMATION

NAME OF SUPPLIER  STREET ADDRESS
Spriggs, inc  3368 N. Hwy 59, Suite K

CITY  STATE  ZIP  PHONE  FAX
Merced  CA  95348  209-383-7505  209-383-3221

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES  SERIAL NO.
Konica Minolta BH454e including FS534/SD, PC410, PK  A61E811027977
Konica Minolta BH454e including FS534/SD, PC410, PK  A61E811027983
Konica Minolta BH454e including FS534/SD, PC410, PK  A61E811027997
Konica Minolta BH364e including DF701, FS534, PC410, PK  A61E811027945
Konica Minolta BH364e including DF701, FS533, PK410  A61E8110227554
Konica Minolta BH364e including DF701, FS533, PC410  A61E8110227581

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

See the attached Schedule A

TERM AND PAYMENT SCHEDULE

Term in  60 Months  Payments* of $  1,088.03 *plus applicable taxes

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initial at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing. If no box is checked and initial, then Fair Market Value will be your end of lease option. Leases with $1.00 or $100.00 purchase options will not be renewed. To the extent that any purchase option indicates that the purchase price will be the "Fair Market Value" (or "FMV"), such term means the value of the Equipment in continued use.

☐ 1) Purchase all at not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3. Customer's initials

This is a Noncancelable / Irrevocable Agreement; This Agreement Cannot Be Canceled or Terminated.

LESSOR ACCEPTANCE

U.S. Bank Equipment Finance

Customer's signature  Title  Date

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

Mariposa County

Customer's signature  Title  Date

Federal Tax I.D. #

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, delivery and installation has been fully completed and is satisfactory. Upon your signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Agreement (or until you default). Your approval as indicated below of our purchase of the Equipment from the supplier is a condition precedent to the effectiveness of this Agreement.

Customer's signature  Title  Date

This is Counterpart No. 2 of 2 Serially Numbered, Manually Executed Counterparts of this Agreement to the extent that this Agreement constitutes chattel paper under the Uniform Commercial Code as in effect in any applicable jurisdiction. No Security Interest in this Agreement may be perfected through transfer and possession of any Counterpart other than Counterpart No. 1.
1. AGREEMENT: For business purposes only, you agree to lease from us the goods (the "Equipment") and/or to finance certain licensed software and services ("Licensed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name. This Agreement becomes valid upon execution by you and will start on the date we pay the supplier. Interim interest date adjustments will be as an annual effective rate of 12% on the balance due with each customer payment due date. This Agreement will renew for 10-month term(s) unless you purchase or return the Equipment (according to the conditions herein) or send us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. RENT, TAXES AND FEES: You will pay the monthly Payment (as adjusted when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If the cost of any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request it and to pay a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code ("UCC") or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover for us all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of $30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST: At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free from liens and claims; and (3) at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement, you will not remove it all of the Equipment, and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-salable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. We will notify you within 30 days if your state of organization revokes or terminates your existence.

4. COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE: You agree to keep the Equipment fully insured against risk and loss, with us as lender’s loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurer as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(ies) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, you agree to pay a monthly property damage surcharge ("PPDS) of up to 0.0005% of the Equipment cost as a result of your oversight and risk assumption. Payment for any PPDS will be for the remaining amount of the term of this Agreement. If the PPDS is not paid, we may further describe a lien on the Equipment (which may make a profit on this program under this Agreement). AS LONG AS YOU ARE NOT IN DEFAULT AT THE TIME OF A LOSS (excluding losses from intentional acts), the remaining balance owed on the subject Equipment will be forgiven. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and you do not have the PDS program you will pay us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). Any proceeds of insurance will be paid to us and credited, at our option, against any balance due to us.

5. ASSIGNMENT: You have no right to sell, transfer, assign or sublease the Equipment or this Agreement, without our prior written consent. Without our prior written consent, you shall not reassign or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, the new Lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us or our agents. You shall agree to reimburse us when we request it and to pay a processing fee for each expense or charge we pay on your behalf. We may charge you for

6. DEFAULT AND REMEDIES: You will be in default if you (a) do not pay any Payment or other sum due to us or any other person when due or if you break any of your promises in this Agreement or any other agreement we have with or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any of your guarantor's financial, business or credit condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or less, the maximum charge allowed by law. If you are in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently, we may also use or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us money, including any depositary accounts, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees and related costs. In the event of any enforcement of this Agreement, you agree to pay (a) the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that your rights and remedies are governed exclusively by this Agreement. You waive all rights under Article 2A (508-522) of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. INSPECTIONS AND REPORTS: We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparable form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

8. FAXED OR SCANNED DOCUMENTS, MISC.: You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of these documents. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

9. WARRANTY DISCLAIMERS: YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS AND CONSIDER ANY AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE OUR OBLIGATIONS TO YOU UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN RESPECT TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.

10. LAW, JURY WAIVER: Agreements, promises and commitments made by Lessors concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.

LEASE AGREEMENT
This Schedule “A” is to be attached to and becomes part of the Agreement dated by and between the undersigned and U.S. Bank Equipment Finance.

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<th>MAKE/MODEL NO./ACCESSORIES</th>
<th>SERIAL NO.</th>
<th>STARTING METER</th>
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<tr>
<td>Konica Minolta BH227 including DF628, DK510, DK513, FK514</td>
<td>A7AK8 11884188</td>
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This Schedule “A” is hereby verified as correct by the undersigned Customer, who acknowledges receipt of a copy.

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This California Judicial Reference Agreement ("Agreement") is entered into in connection with any existing financing ("Financing") provided by U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("Lessor/Secured Party") to County of Mariposa ("Customer") evidenced, secured and/or supported by one or more leases, loan agreements, notes, security agreements, guaranties, and/or other documents, together with any and all schedules and riders thereto and any and all other agreements executed and delivered by Customer in connection therewith, being hereinafter referred to as the "Financing Documents."

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto (collectively, the "Parties") agree as follows:

1. Any and all disputes, claims and controversies arising out of the Financing Documents or the transactions contemplated thereby (including, but not limited to, actions arising in contract or tort and any claims by a Party against Lessor/Secured Party related in any way to the Financing) (individually, a "Dispute") that are brought before a forum in which pre-dispute waivers of the right to trial by jury are invalid under applicable law shall be subject to the terms of this Agreement in lieu of the jury trial waivers otherwise provided in the Financing Documents.

2. Any and all Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure Sections 638 et seq.

3. The referee shall be a retired California state court judge or an attorney licensed to practice law in the State of California with at least ten (10) years' experience practicing commercial law. The Parties shall not seek to appoint a referee that may be disqualified pursuant to California Code of Civil Procedure Section 641 or 641.2 without the prior written consent of all Parties.

4. If the Parties are unable to agree upon a referee within ten (10) calendar days after one Party serves a written notice of intent for judicial reference upon the other Party or Parties, then the referee will be selected by the court in accordance with California Code of Civil Procedure Section 640(b).

5. The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the California Code of Civil Procedure, the Rules of Court, and California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of California Code of Civil Procedure Sections 644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.

6. Nothing in this Agreement shall be deemed to apply to or limit the right of Lessor/Secured Party (a) to exercise self help remedies such as (but not limited to) setoff, (b) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (c) to obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver), or (d) to pursue rights against a Party in a third-party proceeding in any action brought against Lessor/Secured Party (including actions in bankruptcy court). Lessor/Secured Party may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during or after the pendency of any judicial reference proceeding. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies or the opposition to any such provisional remedies shall constitute a waiver of the right of any Party, including, but not limited to, the claimant in any such action, to require submission to judicial reference the merits of the Dispute occasioning resort to such remedies. No provision in the Financing Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Financing Document for judicial reference of any of Dispute.

7. If a Dispute includes multiple claims, some of which are found not subject to this Agreement, the Parties shall stay the proceedings of the Disputes or part or parts thereof not subject to this Agreement until all other Disputes or parts thereof are resolved.

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

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in accordance with this Agreement. If there are Disputes by or against multiple parties, some of which are not subject to this Agreement, the Parties shall sever the Disputes subject to this Agreement and resolve them in accordance with this Agreement.

8. During the pendency of any Dispute which is submitted to judicial reference in accordance with this Agreement, each of the Parties to such Dispute shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Agreement. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing party shall be entitled to reasonable court costs and legal fees, including customary attorney fees, expert witness fees, paralegal fees, the fees of the referee and other reasonable costs and disbursements charged to the party by its counsel, in such amount as is determined by the Referee.

9. In the event of any challenge to the legality or enforceability of this Agreement, the prevailing Party shall be entitled to recover the costs and expenses from the non-prevailing Party, including reasonable attorneys' fees, incurred by it in connection therewith.

10. THIS AGREEMENT CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN OR AMONG THE PARTIES WITHIN THE MEANING OF AND FOR PURPOSES OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

IN WITNESS WHEREOF, Lessor/Secured Party and Customer have each caused this California Judicial Reference Agreement to be duly executed of ______, 20____.

________________________________________  
Lessor/Secured Party

________________________________________  
Customer

________________________________________  
Signature

County of Mariposa

Signature

X

Title

Date

Date

Title

Board Chair 11-16-16

APPROVED AS TO FORM:

__________________________
STEVEN W. DAHELM
COUNTY COUNSEL

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.
The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (a) you have been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted Payments in each appropriation period, from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make contracted Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

**TITLE TO THE EQUIPMENT:** If the selected purchase option for this Agreement is $1.00 or $101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: “You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document.”

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: “This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed.”
Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement or be named on the vehicle title to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of the Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition."

Any provision in the Agreement stating that you shall pay our attorneys’ fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys’ fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

U.S. Bank Equipment Finance

County of Mariposa

[Lessor]

[Customer]

Name: [Chester]

Name: [John Costa]

Signature: [Diana L. Coyle]

Signature: [X]

Title: [Director of Finance]

Title: [Chairman]

Date: [12/3/14]

Date: [11-16-16]

APPROVED AS TO FORM:

[Steven W. Dahlem]

[County Counsel]

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10162 REV 01/14
TWO OF 2 SERIALLY NUMBERED, MANUALLY EXECUTED COUNTERTALKS OF THIS AGREEMENT TO THE EXTENT THAT THIS AGREEMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, AS IN EFFECT IN ANY APPLICABLE JURISDICTION, NO SECURITY INTEREST IN THIS AGREEMENT MAY BE PERFECTION THROUGH TRANSFER AND POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NO. 1.
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