RESOLUTION - ACTION REQUESTED 2017-118

MEETING: March 7, 2017

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Approve a Lease Agreement with Toshiba Financial Services for the Human Services Department

RECOMMENDATION AND JUSTIFICATION:
Approve a Lease Agreement with Toshiba Financial Services 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 39 months at a monthly payment of $1,635.48 for a total amount not to exceed $63,783.72 plus sales tax. This equipment will be supplied by Zoom Imaging Solutions, Inc., in Roseville, California.

This Lease Agreement provides for 2 new replacement copiers to update the Human Services Center machines with faster equipment. The new copiers are approximately twice as fast as our existing equipment, and the existing equipment has been down for repairs several times in recent months.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The existing 63-month Agreement was signed by the Board of Supervisors on January 28, 2014 by Resolution 2014-40.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this Agreement is not approved, Human Services will continue to use the existing, slower equipment and forego upgrading the copiers until the units become unserviceable.

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. There is no impact to the County General Fund.

ATTACHMENTS:
Mariposa County Lease Contract 2017 (PDF)
Mariposa County Sales Invoice 2017 (PDF)
PL CA Judicial Ref Agr A595 Mariposa County Lease (PDF)
PL SLG Add Mariposa County lease doc (PDF)
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Menetrey, Smallcombe, Jones, Long, Cann
**Invoice Number:** 1775628491  
**Date:** 2/9/2017

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**Notes:**
- Contract includes cancelation of current lease #500-0391996-000 pick up and return of 2-E-3555C (ID# C35924 and C35923) Copier systems to the lease company. The County will also take ownership of existing E-2507 (ID# C35192) copier system as a part of this new agreement.
- Maintenance Agreement (Excludes Paper & Staples)
  - Copier - Black & White Maintenance
    - Black Images Included: 1,981
    - Base B&W Charge: $0.0050 Monthly
    - Excess B&W Image Charge: $0.0050
  - Copier - Color Maintenance
    - Color Images Included: 6,266
    - Base Color Charge: $0.0050 Monthly
    - Excess Color Image Charge: $0.0050
  - Printer - Black & White Maintenance
    - Black Images Included: n/a
    - Base B&W Charge: n/a
    - B&W Imaging Frequency: n/a
    - Excess B&W Image Charge: n/a
  - Printer - Color Maintenance
    - Color Images Included: n/a
    - Base Color Charge: n/a
    - Color Imaging Frequency: n/a
    - Excess Color Image Charge: n/a

**Maintenance Agreement:**
- By signing below, customer acknowledges & accepts sole financial responsibility for current remaining contractual obligations with any other company than Zoom Imaging Solutions, Inc.

**Approval:**
- Signed by Steven W. Dahlke, County Counsel
- Approved as of 2/16/2017 1:43 PM V12.02
Contract Effective The Date of Installation

Zoom provides labor, travel, parts that are necessary to maintain the copier in working condition and supplies including photoconductor drums, toner, developer, two waste toner bags per contract year and all requested periodic preventive and corrective maintenance. The following are not included and are the responsibility of the customer to pay: Cassettes, exit trays, additional waste toner bags and paper. Network calls are not covered under this Maintenance Contract and will be billed to your account at the going rates. Sales tax and freight charges will be charged upon invoicing of these items.

All plans are subject to the terms and conditions below.

1. **Term:** This Copier Maintenance Contract (“Contract”) shall be for an initial 12 month period of service (effectice installation). This Contract shall automatically be renewed for successive one year terms unless terminated sooner by either party with 30 days prior written notice to the other party. A rate increase may be incurred at the time of renewal. Any unused supplies such as toner, developer, and drum kits, become the property of Zoom Imaging Solutions, Inc. and should be returned to avoid additional charges.

2. **Key Operator Access to Copier:** Customer shall provide Zoom with a “Key operator” contact who will perform basic duties and responsibilities as described and instructed by Zoom on a as needed basis. For example, but not by way of limitation, the key operator is responsible to notify Zoom of the need for required periodic preventive maintenance inspections. Such inspections may be performed at the discretion of Zoom at the time of an emergency call. Customer is responsible for providing meter reads for contract billing when requested by Zoom. Customer’s facility must meet Zoom’s and copier manufacturer’s recommended electrical requirements and Zoom shall have full access to the copier at any given time. For all copiers under maintenance contract, Zoom reserves the right to have the copier automatically report the meter reads by fax and/or email. Upon request from customer, Zoom will have a copy of the meter reads sent to the customer’s email address on file. The Customer agrees to allow Zoom to install data collection software for the purpose of automating the capture of device counts and other pertinent information used in managing the account. The information collected is limited to device serial number, IP address, meter, supply usage rates, juice location and service alerts.

3. **Maintenance Service:** Zoom agrees to provide maintenance service Monday through Friday, from 8:00 a.m. to 5:00 p.m. excluding holidays, and keep the copier in working order in accordance with Zoom’s specifications at no extra charge. Zoom shall have no obligation to provide maintenance if it is commercially impracticable due to a cause beyond Zoom’s control. Parts may be new or used; however, all used parts shall meet or exceed manufacturer’s specifications.

4. **Extra Charges:** All service calls made before or after Zoom’s service hours set forth in paragraph 3, on weekends and holidays and/or to locations other than the installation address, shall be invoiced to customer at Zoom’s then prevailing rates. These rates shall be subject to change without notice. Any third party fees that Zoom incurs as a result of this contract will be the responsibility of the customer. As a means of calculating fees, Zoom has created a table to assist in calculating the cost of such service.

5. **Technological Enhancements to Copier:** If customer implements any technological enhancements including but not limited to, connecting a digital copier to personal computer(s), using the copier as a network printer and scanner, customer agrees to strictly comply with all hardware and software specifications and any amendments which Zoom furnishes. If customer does not comply with the specifications, Zoom may immediately terminate this Contract. Customers who add any technological enhancements are solely responsible and liable for the maintenance of any computers, software and any computer network. Customer is also solely liable for any third party who performs services in connection with any technological enhancement. Zoom shall not be responsible for any damage to copiers, software, or any other related technology when repairing or maintaining a copier. Customer agrees to not reverse engineer or decompile any of the licensed Software that is not in source code format or assist or otherwise facilitate others to do so, except as and only to the extent expressly permitted to do so by applicable law for the purposes of interoperability, error correction, and security testing. In the event customer intends to reverse engineer or decompile the licensed Software to the extent permitted by statute or Customer may have, Customer must notify Zoom and Manufacturer in writing prior to doing so.

6. **Exclusions:** Maintenance service is contingent upon proper use of the copier. This Contract does not include:
   A. Electrical work.
   B. Repair, paying damages, overhauls or services resulting from: accident, transportation, negligence, fire, theft, water damage, flood damage, acts of God, misuse or other than ordinary use, failure of electrical power, failure of telecommunication line, unauthorized modification of equipment (including supplies not supplied or authorized by Zoom), work performed by other than Zoom representatives or malfunction of affiliated equipment not covered by this Contract.
   C. Repairs resulting from unauthorized relocation of the copier by anyone other than Zoom. Zoom reserves the right to terminate this contract based upon damage to the copier, or charge Customer at prevailing rates to repair damages.
   D. Networking and Connectivity work, defined herein as: Any and all work related to data flow between the covered copier and customer’s computers, software or computer network, or work on customer’s computers, software or computer network independent of the copier. All network support beyond the initial installation will be chargeable at Zoom’s then prevailing network rates, unless covered by a separate network support agreement.
   E. Making specification changes or performing services connected with the relocation of equipment and adding or removing accessories, attachments or other devices.
   F. Service which Zoom determines is impractical due to alterations in the copier or the connection by mechanical or electrical means to another machine or device.
   G. Service which Zoom determines is impractical due to alterations in the copier or the connection by mechanical or electrical means to another machine or device.

7. **Oversizes and Cost Adjustments:** Customer agrees to any billing procedures designated by Zoom, including notification of the meter reading at the end of each billing cycle. One page is equal to a single sided 8.5” x 11” copy or print. Any equipment delivered on or between the 26th of the month and the 1st of the next month shall begin billing effective the 2nd of the month. Scans in excess of pages are subject to charge. If Customer has multiple machines at the installation address, which use the same supplies provided under this Contract, all machines using the same supplies must be covered under an active Contract. If Customer does not have all machines capable of using the same supplies covered under a Contract, Zoom reserves the right to cancel the Contract or require the Customer to place the additional machine(s) under Contract immediately.

8. **Hard Drive Information:** All information processed and stored on the copier is the property and responsibility of the customer. To ensure data security the customer will have the opportunity to purchase a “Data Security Service” option through Zoom. If the customer does not wish to purchase one of these options the customer is fully responsible for the cleaning, erasing, destruction, and/or the replacement of the copier hard drive. “Data Security Service” is not covered under this contract.

9. **Refunds:** Charges related to this Contract are not refundable either partially or fully. However, if cancellation is effected by Zoom then any refund shall be prorated. Upon cancellation, all unused supplies, if not returned to Zoom will be billed to customer and shall be immediately due and payable.

10. **Contract Transfer:** This contract shall not be assignable or transferable by Customer without Zoom’s prior written consent. Zoom may terminate this contract if copier is sold or transferred to a third party. Zoom reserves the right to cancel the contract not to be liable for any damages for any alleged failure to make repairs and/or maintain the copier including any claim that the repair or maintenance was not timely. For example, but not by way of limitation, Zoom is not responsible for any damages for loss of use of the copier. Such excluded damages would include a customer paying a third party to make copies or if customer is unable to make copies because of a copier breakdown.

11. **Limited Remedies:** In no event shall Zoom be liable for special, consequential, exemplary, indirect or incidental damages beyond the cost to repair or replace a defective part and maintenance service. While Zoom endeavors to promptly address any emergency and maintain the copier which is the subject of this Contract, Zoom shall not be liable for any damages for any alleged failure to make repairs and/or maintain the copier including any claim that the repair or maintenance was not timely. For example, but not by way of limitation, Zoom is not responsible for any damages for loss of use of the copier. Such excluded damages would include a customer paying a third party to make copies or if customer is unable to make copies because of a copier breakdown.

12. **Payment/Default:** Customer shall pay Zoom within 30 days of the date of the invoice. If customer breaches this Contract including failing to timely pay Zoom’s invoice, Zoom at its sole discretion may in addition to any other legal remedies (i) immediately terminate this Contract or (ii) suspend service until payment is made in full and Zoom is assured to its satisfaction that (a) future payments will be made or (b) that the default is cured. In addition to the other remedies provided in this Contract, if the customer fails to pay Zoom’s invoice within 60 days from the date of the invoice and Zoom has not terminated this Contract, Zoom may require customer to authorize an electronic funds transfer to Zoom. All remedies provided in this Contract are cumulative and Zoom’s failure to exercise any of the remedies shall not be deemed a waiver of such remedy for any future or continuing default. Upon receipt of the first payment, customer is agreeing to all terms & conditions stated herein.

13. **Forum Selection:** Any dispute that arises under or relates to this Contract (whether contract, tort or both) shall be resolved in the State courts of Placer County, California which shall be the exclusive venue for the resolution of any disputes. By signing this Contract, customer submits to the jurisdiction of the Placer County Courts. This is a material term of Contract.

14. **Miscellaneous:** This Contract constitutes the final, complete and exclusive statement of the Terms of the Contract between the parties pertaining to maintenance of the copier and supersedes all prior and contemporaneous understandings or agreements of the parties. A signed facsimile or copy of this Contract shall be deemed as effective as an original. This Contract may be supplemented, amended or modified only by the written agreement of both parties. Any delay or omission on the part of Zoom in exercising any right shall not operate as a waiver of such right or any other right, and no prior waiver or any course of dealing shall constitute a waiver of Zoom’s rights or customer’s obligations as to any future transactions. Zoom reserves the right to change terms & conditions herein without notice. In any action to enforce any provision of this Contract, the losing party shall pay the prevailing party’s attorney’s fees (recovered as an item of cost) and any other costs. Further, customer shall be liable to pay Zoom’s pre-litigation attorney’s fees such as demand letters and negotiations with respect to enforcing this Contract.
LEASE WITH MAINTENANCE AGREEMENT

CUSTOmer Contact Information

Legal Company Name: Mariposa County  
Fed. Tax ID #: 94-6006880

Contact Person: Joe Lynch  
Bill-To Phone: 209-966-2000

Billing Address: P.O.Box 99  
City, State-Zip: Mariposa CA 95338

Equipment Location: 5362 Lemme Lane  
City, State-Zip: Mariposa CA 95338

SteveN W. DahleM  
COunTy COunsel

Location: 4603 W. Jennifer Fresno Ca 93722

EQUIPMENT WITH CONSOLIDATED MINIMUMS

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LEASE TERM & PAYMENT SCHEDULE

- Number of Payments: 39  
- Payment includes:  
  - 10,981 B&W Images Per Month - Excess Images at $0.005 Per B&W Image  
  - 6,266 Color Images Per Month - Excess Images at $0.05 Per Color Image  
  - Scan Images Per Month - Excess Images at $0 Per Scan Image  
  - Black Print Images Per Month - Excess Images at $0 Per Black Print Image  
  - Color Print Images Per Month - Excess Images at $0 Per Color Print Image  
- Excess Images Billed:  
  - Option of $1635.48  
  - Security Deposit: $0  
- Payment Includes:
  - $75.00 (Includ ed in First Invoice)

End-of-Lease Options:
  - You will have the following options at the end of your original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing:
    - 1. Purchase the Equipment at Fair Market Value
    - 2. Renew the Lease per Section 16
    - 3. Return Equipment

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT. THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED.

LESSOR ACCEPTANCE

Toshiba Financial Services  
Signature: X

Dai Analyst  
Date: 3-30-17

CUSTOMER ACCEPTANCE

You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes. This Lease may be executed in counterparts. The executed counterpart which has Lessor's original signature and/or is Lessor's possession shall constitute chaled paper as that term is defined in the Uniform Commercial Code ("UCC") and shall constitute the original agreement for all purposes, including, without limitation, (i) any hearing, trial or proceeding with respect to this Lease and (ii) any determination as to which version of this Lease constitutes the single true original item of chaled paper under the UCC. If Lessor signs and transmits this Lease to Lessor by facsimile or other electronic transmission, the transmitted copy, upon execution by Lessor, shall be binding upon the parties. Lessor agrees that the facsimile or other electronic transmission of the Lease manually signed by Lessor when attached to the facsimile or other electronic copy signed by Lessor, shall constitute the original agreement for all purposes, including, without limitation, those outlined above in this Section. Without limiting and in addition to the foregoing, the parties further agree that for purposes of executing this Lease, (a) a document signed and transmitted by facsimile or other electronic transmission shall be treated as an original document, (b) the signature of any party on such document shall be considered as an original signature, (c) the document transmitted shall have the same effect as a counterpart thereof containing original signatures, and (d) at the request of Lessor, Lessor, who executed this Lease and transmitted its signature by facsimile, or other electronic transmission shall provide the counterpart of this Lease containing Lessor's original manual signature to Lessor. No party may raise as a defense to the enforcement of this Lease that a facsimile or other electronic transmission was used to transmit any signature of any party to this Lease.

PERSONAL GUARANTY

To induce us to enter into this Lease and any supplement, the undersigned jointly and severally unconditionally guarantees to us the prompt payment when due of all Lessee's obligations to us under the Lease and any supplement. We will not be required to proceed against the lessee or the Equipment or enforce any other remedy before proceeding against the undersigned. The undersigned agrees to pay all reasonable attorney's fees and other expenses incurred by us by reason of default by lessee or the undersigned. The undersigned waives notice of acceptance hereof and all of other notices or demands of any kind to which the undersigned may be entitled. The undersigned consents to any extensions or modification granted to us and the release and/or compromise of any obligations of Lessee or any other obligor and guarantor without any way releasing the undersigned from his or her obligations hereunder. The obligations of the undersigned shall continue even if the lessee becomes insolvent or bankrupt or is discharged from insolvency, and the undersigned agrees not to seek to be released by lessee in event the undersigned must pay. This is a continuing Guaranty and shall not be discharged or affected by death of the undersigned, shall bind the heirs, administrators, representatives, successors and assigns of undersigned, and may be enforced by us for the benefit of any assignee or successor of us. The undersigned and we waive notice as permitted by law at any time for any action between the parties. You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.

By providing a telephone number for a cellular phone or other wireless service, you expressly consent to receiving communication (for NON-Marketing or solicitation purposes) at that number, including, but not limited to, pre-recorded or artificial voice messages, calls, texts, and calls made by an automatic telephone dialing system from lessor and its affiliates and agents. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls. The calls and messages may incur fees from your cellular provider.
This California Judicial Reference Agreement ("Agreement") is entered into in connection with any existing financing ("Financing") provided by Toshiba Financial Services ("Lessor/Secured Party") to County of Mariposa ("Customer") evidenced, secured and/or supported by one or more leases, loan agreements, notes, security agreements, supplements, 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 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 parts thereof not subject to this Agreement until all other Disputes or parts thereof are resolved 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 attorneys' 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 as of 3-7-2017.

Toshiba Financial Services

Lessor/Secured Party

Signature

Title

Date

Mariposa County

Customer

Signature

Title

Date

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 IN THE AGREEMENT SPECIFICALLY STATED OTHERWISE.

A595 REV 12/13
Addendum to Agreement # [redacted], dated 3/3/17, between Mariposa County, as Customer and Toshiba Financial Services, as Lessor.

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.

Toshiba Financial Services

Lessor

Signature

Title

Date

Mariposa County

Customer

Signature

Title

Date

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.

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL