RESOLUTION NO. 2015-52

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, APPROVING A FAIR MARKET VALUE LEASE AGREEMENT BETWEEN THE CITY OF HIALEAH, AS LESSEE, AND TOSHIBA FINANCIAL SERVICES, AS LESSOR, FOR A TERM OF THREE YEARS, COMMENCING ON MAY 1, 2015 AND ENDING ON APRIL 30, 2018, IN AN ANNUAL AMOUNT NOT TO EXCEED $2,292.24, PAYABLE IN EQUAL MONTHLY INSTALLMENTS OF $191.02; AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO EXECUTE THE LEASE AGREEMENT, THE SALES ORDER, THE MAINTENANCE CONTRACT, ALL ADDENDA, ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", AND ANY OTHER DOCUMENT IN FURTHERANCE HEREOF.

WHEREAS, the City desires to enter into a Lease Agreement with Toshiba Financial Services to provide for the delivery, installation, training, supplies, service and maintenance of two (2) black and white Toshiba 257 copiers with itemized equipment as described and specified on the Sales Order and Lease Agreement for use at JFK Memorial Library; and

WHEREAS, it is in the best interest of the health, safety and welfare of the City of Hialeah and its residents to enter into a Lease Agreement with Toshiba Financial Services to improve the services provided to the community at the JFK Memorial Library.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby approves a Fair Market Value Lease Agreement between the City of Hialeah, as lessee, and Toshiba Financial Services, as lessor, for a term of three years, commencing on May 1, 2015 and ending on April 30, 2018, in an annual amount not to exceed $2,292.24, payable in equal monthly installments of $191.02; and

authorizing the Mayor and the City Clerk, as attesting witness, on behalf of the City, to execute the Lease Agreement, the Sales Orders, the Maintenance Contract, all addenda, attached hereto and made a part hereof as Exhibit "1" and any other document in furtherance hereof.

PASSED AND ADOPTED this 14 day of April, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 17 day of April, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

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Resolution was adopted by a 6-0-1 vote with Council Members Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez, & Lozano voting "Yes", & Councilmember Caragol, absent.

TOSHIBA BUSINESS SOLUTIONS

SALES ORDER

S0-1.0.0

CUSTOMER NUMBER	ORDER DATE
	12/18/2014

Sales Representative:

CUSTOMER INFORMATION

Bill to Number:	Ship to Number:
Customer Name: Hialeah - JFK Memorial Library	Customer Name: Hialeah - John F. Kennedy Memorial Library
Billing Address:	Shipping Address:
Address 2: 190 W. 49 Street	Address 2: 190 W. 49 Street
City: Hialeah State: Fl Zip: 33012	City: Hialeah State: Fl Zip: 33012
Phone #: 3/821-2700 Ext. Fax #:	Phone #: (305) 821 2700 Ext. Fax #:
Contact: eMail:	Contact: eMail:
Customer PO #: Business Type:	Delivery Date: ASAP Ship: Term: 36

MOVEMENT STATUS

Delivery Contact: Grisel Tomalbas	Movement:
Telephone #: 786-209-4317	
Delivery Hours: M-T 12:00-8:00 pm	
Stairs:	

EQUIPMENT AND SUPPLIES

QTY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	257				
2	Platen Cover	KA 1640PC			
2	Stand	Stand 355/455			
2	Harness	GQ1180			
2	Jamex Coin Up				
2	57 Base				

QTY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

36 months $191.02

Sub Total	$ -
[illegible]	
[illegible]	
Taxable Total	$ -
[illegible]	
[illegible]	$ -
[illegible]	
[illegible]	
Total	$ -
[illegible]	

Model Trade-in:	Serial Number:	Equip. ID:
Sales Manager:	Office Branch:	Date:
Customer Name (Please Print):	Customer Name (Signature):	

TERMS AND CONDITIONS

You hereby acknowledge and agree that your electronic signature above shall constitute an enforceable and original signature for all purposes.

By signing this agreement, the customer acknowledges that he/she has read and understood the terms and conditions of this agreement.

1. Limited Warranty. The seller warrants that the goods to be delivered will be of the kind and quality described in this Agreement and will be free of defects in workmanship or material. Should any failure to conform to this warranty appear within ninety (90) days after the initial date of installation in the case of new goods, or thirty (30) days after the initial date of installation in the case of used or reconditioned goods, the seller at it's option, shall correct such defects by suitable repair or replacement at its own expense, upon notification thereof and substantiation that the goods have been stored, installed, maintained, and operated in accordance with the Seller's recommendations or standard industry practice. The foregoing warranty does not apply to consumable parts such as, but not limited to, drums, cleaning brushes, filters, developer, toner, heat and oiler tubes, pressure pads, lamps, lenses and fuses.

This warranty is exclusive and is in lieu of any warranty of merchantability, fitness for a particular purpose or other warranty of quality, whether express or implied, except of title and against patent infringement. Correction of non-conformities, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Seller to the Customer with respect to, or arising out of the goods, whether based on contract, negligence, strict tort liability of otherwise.

EXHIBIT

"1"

1. ACCEPTANCE. ALL PURCHASE ORDERS FOR ANY MATERIALS, PRODUCTS AND/OR ANY OTHER ITEMS (HEREIN THE GOODS) AND ACCEPTANCES OF GOODS BY ANY CUSTOMER (HEREIN BUYER) ARE EXPRESSLY SUBJECT TO AND GOVERNED BY THE TERMS AND CONDITIONS PRINTED HEREIN, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE STATED HEREIN ARE BINDING ON TOSHIBA BUSINESS SOLUTIONS (HEREIN THE SELLER) UNLESS AGREED TO IN WRITING BY THE SELLER. BUYER CONSENTS TO THESE TERMS AND CONDITIONS.

2. Title and Risk of Loss. Title and risk of loss or damage to the Goods shall pass to the Buyer upon tender of delivery F.O.B. Seller's warehousing facility. Seller will have and retain a first and superior security interest in the Goods until full payment has been made. Goods purchased under extended term or contract will have a UCC financing statement filed with the State of California. Buyer will be charged and shall pay the then applicable UCC filing fee. Buyer agrees upon request to do all things and acts necessary to perfect and maintain said security interest and shall protect the Seller's interest by adequately insuring the Goods against loss or damage from any cause. Buyer appoints Seller as Buyer's attorney-in-fact to execute any and all documents on Buyer's behalf and in Buyer's name to perfect and maintain Seller's security interest in the Goods.

3. Price, Taxes and Interest Charges. Prices quoted are F.O.B.. Seller's warehousing facility, and the amount of any local, state or federal taxes on the Goods shall be added to the price and paid by Buyer. Buyer represents that Buyer is solvent and can and will pay for the Goods in accordance with the terms hereof. All shipments shall be subject to the approval of Seller's credit department. Seller reserves the right to require payment in cash or obtain security for payment prior to making any delivery and if Buyer fails to comply with such requirement. Seller may terminate any contract with Buyer affected thereby. An interest charge of the lesser of one percent monthly (12% annual rate) or the maximum allowed by state law, will be paid by Buyer on all past due amounts.

4. Terms/Cash Sales. Seller's payment terms are Cash unless other terms are agreed upon by Seller and Buyer. Seller's Authorized signers are the only personnel of Seller authorized to approve special terms or conditions.

5. Extended Terms/Contracts. Extended terms/contract sales are as agreed upon by Seller and Buyer. Extended payment terms and contracts on individual sales vary and are determined by Buyer and Seller. It is the Buyer's responsibility to fully review prior to accepting specific terms and conditions on individual extended payment terms and contract sales. Seller's Authorized signers are the only personnel authorized to approve any special terms or conditions on extended payment terms or contract sales.

6. Delivery. Any delivery schedules which may be specified for shipment of the Goods are only estimates and the Seller shall not incur any liability, either directly or indirectly, nor shall any order be canceled because or as a result of delays in meeting such dates or schedules. In no event shall Seller be liable for any claims for labor or for any consequential damages or any other damages resulting from failure or delay in delivery. No delivery dates are guaranteed.

7. Force Majeure. Seller shall not be liable for any act, omission, result or consequence, of any delay in delivery or failure of performance which is (i) due to any act of God; any government order; any order bearing priority rating or placed under any allocation program (mandatory or voluntary) established pursuant to law; local labor shortage; fire; flood; casualty; governmental regulation or requirement; terrorism or terrorist threat; shortage or failure of raw material, supply, fuel; power or transportation; breakdown of equipment; or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

8. Laws, Ordinance and Regulations. Seller shall utilize reasonable efforts to cause the Goods to comply with its interpretation of federal safety, health and environmental regulations and insurance codes of a national scope. However, Seller shall not be responsible for compliance with local interpretations of such federal regulations or insurance codes nor with any local laws, ordinances, codes and/or regulations which may at any time be in effect at any location where the Goods are to be utilized, unless such responsibility shall be expressly assumed by the Seller in writing.

9. Changes in Design. Seller reserves the right to discontinue the supply or sale of any model, style or type of the Goods, or of any parts or accessories thereto, and the right to change or alter the design or composition of the Goods, parts or accessories without notice to Buyer, and the Seller shall incur no liability thereby nor any obligation to furnish or install any replacement Goods, parts or accessories which were purchased or sold prior to the making of any alterations or changes in design.

10. Off Quality and Goods Made to Buyer's Specifications. Seller makes no warranty whatsoever, express or implied except as to title, with respect to Goods manufactured, compounded and/or designed to Buyer's own specifications, or if Buyer has requested off-quality Goods or seconds. Buyer shall at its own expense defend and save Seller harmless from and against any claim, suit, expense or otherwise, which shall be asserted or brought against Seller by reason of its manufacture, design or sale of such Goods.

11. Warranty. Except as described in paragraph 10 above, Seller warrants that the Goods (a) are in accordance with the provisions of any product-specific written warranty published and delivered to Buyer from Seller, or (b) in the absence of a product-specific warranty, are in accordance with the Seller's published specifications at the time of order and that Seller will repair or replace, at Seller's option, such Goods as fail to conform to its published specifications, provided notice of claim under this warranty is given within a period of thirty (30) days following shipment. In all cases, Buyer shall be responsible for the cost of field labor and/or charges incurred by Buyer's return of any Goods to the Seller for repair or replacement. No return of Goods shall be made without prior written consent of the Seller.

12. Returns. Returns for any reason (other than return provisions described in paragraph 11 above - Warranty) will be subject to an appropriate restocking fee determined by Seller, not to exceed a maximum of 20% of the purchase price of the returned Goods. No returns of Goods shall be made without prior written consent of the Seller.

13. EXCLUSION OF OTHER WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN PARAGRAPH 11 ABOVE, BUYER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE WHICH APPLY TO THE GOODS, THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE GOODS AND THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE GOODS, BUYER AGREES THAT BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY STATEMENT, REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT OF SELLER EXCEPT AS EXPRESSLY SET FORTH HEREIN. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF THE SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE EXPRESS WARRANTY OR ANY OTHER TERMS AND CONDITIONS HEREOF.

14. Technical Advice. Seller shall not be responsible for the results of any technical advice provided by Seller in connection with the design or installation or use of the Goods for any particular purpose. Buyer assumes sole responsibility for the proofing of and acceptability of Goods and services of Seller prior to purchase by Buyer. Contracted integration of Seller's products are limited to scope of work for connectivity of supplier provided hardware and installation/configuration of supplier provided Solution Software on Buyer's network. Seller assumes no liabilities for configuration of Desktop Operating Systems and/or Server Network Operating Systems. Further, Seller does not warrant or ensure interoperability of supplier provided hardware and/or Solutions Software with future releases of newer versions of Operating Systems, Network Operating Systems or Application Software products. Upon installation/configuration, Buyer shall sign acceptance and work completion form provided by Seller. Any reconfiguration and installation by Seller that occurs on Buyer's network of hardware/software due to Buyer network changes shall be billed by Seller to Buyer at the then prevailing integration service rate.

15. LIABILITY LIMITATION. SELLER'S LIABILITY HEREUNDER SHALL BE LIMITED TO THE OBLIGATION TO REPAIR OF REPLACE THE GOODS PURSUANT TO PARAGRAPH 14 ABOVE. SELLER'S TOTAL CUMULATIVE LIABILITY IN ANY WAY ARISING FROM OR PERTAINING TO ANY GOODS SOLD OR REQUIRED TO BE SOLD UNDER ANY CONTRACT SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE PAID BY THE BUYER FOR SUCH GOODS. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR OR ANY CONSEQUENTIAL DAMAGES OF ANY OTHER TYPE, REGARDLESS IF WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S EXCLUSIVE REMEDIES.

16. Cancellation or Changes of Order. No order may be withdrawn or cancelled by the Buyer, nor may delivery or shipment of Goods be deferred when ready, unless Seller shall first be paid a cancellation or deferral charge of a reasonable amount acceptable to the Seller. In the event, that Buyer shall request changes in its order after receipt thereof by Seller, Buyer shall be responsible for and pay all charges reasonably assessed by Seller with respect to such changes.

17. Set-Offs. Neither Buyer nor any affiliated company or assignee shall have the right to claim compensation or to setoff against any amounts which become payable to the Seller under any contract or otherwise.

18. No Protection from Claim of Infringement. Seller makes no representation of warranty that the delivery or subsequent use of the Goods shall be free of the claim of any third party by way of infringement.

19. APPLICABLE LAW. THE TERMS AND CONDITIONS APPLICABLE TO ANY SALE OF GOODS OR SERVICES BY THE SELLER SHALL BE DETERMINED AND CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. THE BUYER AND SELLER AGREE TO SUBMIT TO THE JURISDICTION OF THE STATE OR FEDERAL COURT OF ORANGE COUNTY WITHIN CALIFORNIA IN CONNECTION WITH ANY DISPUTE OR CONTROVERSY BETWEEN SELLER AND BUYER.

20. Service Delivery. Seller's service delivery terms are as agreed upon by Seller and Buyer and contracted. Hardware Repair/Service Support/Integration Services contract's terms and conditions vary on individual sales and are determined by Buyer and Seller. It is the Buyer's responsibility to fully review and signoff on specific terms and conditions on individual Hardware Repair/Service Support/Integration Services contract's purchases. Seller's Authorized signers are the only personnel authorized to approve any special terms or conditions on extended terms or contract sales.

21. Buyer Declination of Service Contract. If Buyer declines service coverage, Seller will file appropriate forms noting declination of service. If service is provided by Seller on Goods not covered by a service contract with Seller, Buyer shall pay the then prevailing rates for labor and parts supplied for repair, which will be billed (time and materials) Net Payable.

22. Freight. Buyer assumes responsibility for freight charges on orders placed with Seller.

23. Severability. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

24. Amendment and Waiver. No amendment of these terms or conditions and no waiver by Seller will be effective unless it is in writing and signed by Seller. No waiver by Seller will operate as a waiver on a future occasion.

25. Parties Bound. All rights of Seller will inure to the benefit of Seller's successors and assigns. All rights and obligations of Buyer will inure to the benefit and be binding upon Buyer and Buyer's successors.

26. Further Assurances. The parties agree to promptly execute and deliver all further instruments and documents and take all further action necessary to effect these terms and conditions.

Customer Initials: _____

ADDENDUM

THIS ADDENDUM entered into by and between the CITY OF HIALEAH ("CITY-Buyer") and TOSHIBA BUSINESS SOLUTIONS ("TBS-Seller") on this _____ day of _____, 2015 and is made part of the Sales Order between the Parties of even date. The words "you" and "your" refer to the Buyer and the words "we", "us" and "our" refer to the Seller. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Sales Order.

WHEREAS, the Parties have entered into a Sales Order Agreement for the services described in the Agreement; and

WHEREAS, this Addendum intends to modify, amend and supersede the terms of the Sales Order as provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties agree to amend the Sales Order Agreement as follows:

A. The Parties agree to amend Paragraph 2. Title and Risk of Loss by substituting the terms of Paragraph 2 with the following language:

"Title and risk of loss or damage to the Goods shall pass to the Buyer upon tender of delivery by Seller at Buyer's place of business. Seller will have and retain a first and superior security interest in the Goods until full payment has been made. Buyer agrees upon request to do all things and acts necessary to perfect and maintain said security interest and shall protect the Seller's interest by adequately insuring the Goods against loss or damage from any cause. Buyer appoints Seller as Buyer's attorney-in-fact to execute any and all documents on Buyer's behalf and in Buyer's name to perfect and maintain Seller's security interest in the Goods. Any obligation upon Buyer to insure the Goods may be met by providing coverage through a self-insurance program maintained in accordance with State law."

B. The Parties agree to amend Paragraph 3. Price, Taxes and Interest Charges by deleting the following language:

"Prices quoted are F.O.B., Seller's warehousing facility, and"

and further, by deleting the following language:

"An interest charge of the lesser of one percent monthly (12% annual rate) or the maximum allowed by state law, will be paid by Buyer on all past due amounts.

C. The Parties agree to amend Paragraph 19. Applicable Law by replacing the following language:

"California" with "Florida"

and by further replacing the following language:

"Orange County" with "Miami-Dade County"

Except as expressly provided for herein, no other term, condition, provision or covenant of the Sales Order is changed, modified, amended or altered, nor are any of Sellers' or its assigns' rights or remedies under the Sales Order, at law or equity, modified, waived, discharged or forgiven.

A facsimile copy of this Addendum containing Buyer's signature may be treated as an original and be admissible in court as evidence of this Addendum.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be duly executed by their authorized representative as of the date first above written.

Agreed and Accepted:

City of Hialeah, Florida	Toshiba Business Solutions
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title

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TOSHIBA
BUSINESS SOLUTIONS

AIMS MAINTENANCE CONTRACT

MA-1.0.0

Sales Representative: _____

Customer agrees to purchase and Toshiba Business Solutions agrees to provide parts, labor, ink, toner, and toner collection containers (the "Maintenance Services") for the equipment listed below in accordance with the terms and conditions of this contract. The Maintenance Services exclude paper, staples and all other parts and services listed under the Exclusion section on page two of the contract. A Connectivity & Security Options Agreement must be attached and executed for Network Integration Support.

CUSTOMER INFORMATION

Customer Name: Hialeah JFK Memorial Library		Bill to Number:	
Billing Address: 190 W. 49 Street		Phone #: 3/821 2700 Ext.	Fax #:
Address 2:		Contact:	Customer PO #:
City: Hialeah	State: Fl Zip: 33012	email:	

INVOICE / METER COLLECTION INFORMATION

Meter Collection:	Electronic Invoicing:	Invoice Location:

SEE ATTACHED MAINTENANCE CONTRACT SCHEDULE FOR DEVICE DETAILS

TRANSACTION TERMS (Consolidated Minimums Per Pool)

257	B+W	Ø	Clicks	$0.00	Monthly	.00721	.00721 Monthly

DECLINATION

☐ Customer is declining maintenance on the equipment listed above.

Printed Name:		Signature:
Title:	Date:	

ACCEPTANCE

THE TERMS AND CONDITIONS HEREOF ARE PART OF THIS SERVICE AGREEMENT. BY SIGNING THIS CONTRACT, THE CUSTOMER ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTAND THESE TERMS.

Customer agrees to pay the Minimum Payment per transaction terms, plus any Excess Per Click Charges for the term of this Contract. When this Contract is signed by Customer and TBS, it shall constitute a binding contract and is non-cancelable. This Contract will begin on the date signed by TBS below. You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.

Customer:		**Toshiba Business Solutions**	
Printed Name:		Printed Name:	
Signature:		Signature:	
Title:	Date:	Title:	Effective Date:

TERMS AND CONDITIONS (CONTINUED) Customer Initials

1. ACCEPTANCE. This Contract shall not be effective unless signed by the authorized TBS representative (Effective Date) within 30 days from the Customer's signing of this Contract.

2. TERM. This Contract will remain in force for one (1) year from the Effective Date (Renewal Date) and will then be automatically renewed for annual period(s) unless either party provides notice of termination not less than thirty (30) days prior to the Renewal Date. For each piece of equipment under this Contract there will be a Start Date & Start Meter which is shown on the face of this Contract. Service for each piece of equipment will be provided from the Start Date & Start Meter until this Contract is terminated or the equipment is withdrawn from the service.

Customer may withdraw individual equipment by providing thirty (30) day written notice prior to the Renewal Date. Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to Renewal Date.

3. SERVICE AVAILABILITY. TBS will provide service during TBS's normal service hours while the equipment is located within TBS's designated service area. Service outside TBS's designated area, if available and accepted by TBS is subject to a Trip Charge, which shall be based on reasonable travel expense for TBS's personnel. It is the responsibility of the Customer to notify TBS prior to relocating equipment.

The service to keep the equipment in or restore the equipment to good working order includes Emergency Service Calls and Periodic Maintenance (PM's). PM's may be performed during the course of an Emergency Service Call and are based upon the specific needs of the individual equipment as determined by TBS. Maintenance will include lubrication, adjustments and replacement of maintenance parts deemed necessary by TBS. Maintenance parts will normally be either new or equivalent to new in performance when installed in the equipment. Maintenance parts will be furnished on an exchange basis and the replaced parts become the property of TBS. Service provided under this Contract does not assure the uninterrupted operation of the equipment.

If the Customer requests service to be performed at a time outside TBS's normal service hours, there will be no additional charge for maintenance parts, however, the service, if available, will be furnished at TBS's applicable hourly rates and terms then in effect. Nothing herein shall be construed to require TBS to provide service outside its normal service hours and TBS hereby reserves the right to accept or reject such requests.

In the event there is a substantial increase in the cost of fuel, Customer agrees to pay a fuel surcharge. "Substantial" shall be defined as a 10% or more change over a six month period in the average national fuel cost as reported by the United States Energy Information Administration. If there is a substantial decline in the cost of fuel, the fuel surcharge, if applied by TBS pursuant to this provision, may be decreased accordingly. The benchmark will be the national average fuel cost as reported by the United States Energy Information Administration on the Effective Date of this Agreement.

4 . NETWORK INTEGRATION SUPPORT. Support of print controllers and print/scan enablers that permit the integration of the device onto a Customer's network is covered under the terms of a properly executed Connectivity & Security Options Agreement. The Connectivity & Security Options Agreement is an amendment to this contract and must be attached and/or on file for this optional service support.

5. INVOICING - LATE CHARGES. The first Minimum Payment is due upon receipt of an invoice. Thereafter, Minimum Payments will be due on the same date each month during the Term of this Contract whether or not Customer receives an invoice. Customer's obligation to pay the Minimum Payment is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. Excess Click Charge, if applicable, will be invoiced based on the billing period selected on the face of this contract.

If any part of a payment is not made by the Customer when due, Customer agrees to pay TBS a Late Charge of the higher of $25 or two percent (2%) of each such late payment, but not more than permitted by law. Customer agrees to pay TBS the Late Charge not later than one (1) month following the date of the original Minimum Payment.

6. USAGE. In return for the Minimum Payment, Customer is entitled to use the Minimum Number of Clicks each billing period. If Customer uses more than the Minimum Number of Clicks in any billing period, Customer will pay an additional amount equal to the number of metered clicks exceeding the agreed Minimum Number of Clicks times the Excess Click Charge as shown on the face of this Contract. In no event shall the Customer be entitled to any refund or rebate of the Minimum Payment if metered clicks result in less than the Minimum Number of Clicks in any billing period.

Customer will provide meter readings via an automated website when requested by TBS. TBS may estimate the number of clicks used if requested Meter Readings are not received before a new billing period begins. TBS will adjust the estimated charge for Excess Clicks upon receipt of actual Meter Readings. Notwithstanding any adjustment, the Customer will never pay less than the Minimum Payment. TBS may charge a fee to recover the cost of meter collections if meters are not submitted through the automated website.

The Minimum Payment, and Excess Click Charge are subject to increase each year during the Term of this Contract by an amount not to exceed fifteen percent (15%) of the Minimum Payment and Excess Click Charge in effect at the end of the prior annual period, or the maximum percentage permitted by law, whichever is lower.

7. CONSUMABLE SUPPLIES. TBS agrees to furnish consumable supplies (ink, toner and toner collection containers) for the Term of the Contract. Customer is responsible for ordering supplies to assure ample time for delivery. TBS may charge you a supply freight fee to cover our cost of shipping supplies to you. TBS will determine the number of supplies to be shipped based on the Minimum Number of Clicks and Excess Clicks metered. If TBS determines that the Customer has used more than fifteen percent (15%) supplies than normal for the number of metered clicks, based on yields published by the manufacturer, Customer agrees to pay TBS's customary charges for all excess supplies.

All supplies delivered as part of this Contract remain the property of TBS until and unless they are consumed by the equipment in the performance of this Contract. Any supplies not consumed as specified and not surrendered to TBS upon expiration or termination of this Contract will be invoiced to the Customer at TBS's then current prices. Customer agrees to provide insurance coverage for supplies in case of loss under any circumstances. Notwithstanding the foregoing, the risk of loss of the consumable supplies shall be transferred from TBS to Customer if such consumable supplies are stored at Customer's facility.

8. TAXES. In addition to the charges due under this Contract, the Customer agrees to pay amounts equal to any taxes resulting from this Contract, or any activities hereunder, exclusive of taxes based upon net income.

9. INSTALLATION AND ACCESS TO EQUIPMENT. Customer agrees to provide adequate space, environment and appropriate electrical requirements including, if required, a dedicated 120 volt or 220 volt electrical line, as published in the Operator and Service Manuals for the operation and maintenance of the equipment. If TBS has installed a power filter/surge protector on the equipment, it must at all times remain continuously installed. If it is removed Customer agrees to purchase a replacement from TBS immediately. TBS shall have full and free access to the equipment to provide service thereon.

If persons other than TBS representatives install conversions, feature additions, accessories or perform service on equipment and as a result further repair by TBS is required, such repairs shall be made at TBS's applicable Time and Material rates and terms then in effect. If such additional repair is required, TBS may immediately withdraw the equipment from this Contract.

10. KEY OPERATOR - END-USER TRAINING. Customer agrees to designate a Key Operator for training on the use, applications and features of the equipment. The Key Operator will be responsible for normal Key Operator activities as detailed in the Operators Manual and for training additional end-users. If the Key Operator assignment changes Customer agrees to designate a new Key Operator immediately. TBS agrees to provide training for the designated Key Operator and to provide initial training for end-users on the use, applications and features of the equipment. Additional training requested by Customer after thirty (30) days from Installation will be at TBS normal hourly rates.

11. EXCLUSIONS. Service under this Contract does not include:

(a) Furnishing paper, staples, replacement print heads or any of the following:

_____;

(b) Service of equipment if moved outside of TBS's designated service area;

(c) Repair of damage or increase in service time caused by accident, misuse, negligence, abuse or disaster;

(d) Service of accessories, attachments or click control devices other than those of the same manufacturer as the equipment;

(e) Painting or refinishing of the equipment;

(f) Making specification changes;

(g) overhaul; when TBS determines an overhaul is necessary because normal repair and parts replacement cannot keep the equipment in satisfactory operating condition, TBS will submit a cost estimate to Customer and TBS will not commence work until Customer has approved cost;

(h) Performing key operator functions as described in the operator manual;

(i) Moving equipment, repair of damage or increase in service time caused by the use of the equipment for other than the ordinary use for which designed;

(j) Repair of damage caused by electrical surges or lightning strikes, if equipment is connected to a TBS supplied power filter/surge protector repairs will be included;

(k) Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment as defined by the manufacturer, with all the facilities prescribed by TBS including, but not limited to, adequate space, electrical power, air conditioning or humidity control.

(l) Repair of equipment that has been designated as obsolete by the manufacturer and genuine OEM parts are no longer available.

(m) Repair of damage or increase of service time caused by Customer's use of media outside the specifications as described in the operator manual.

12. INDEMNITY AND DISCLAIMER. TBS shall not be responsible for any injuries, damages, penalties, claims or losses including legal expenses incurred by Customer or any other person caused by the installation, selection, ownership, possession, maintenance, condition or use of the Equipment. Customer agrees to reimburse TBS for and to defend TBS against any claims for such losses, damages, penalties, claims, injuries or expenses. This indemnity shall continue even after this Contract has expired.

IN NO EVENT WILL TBS BE LIABLE FOR LOST PROFITS, CONSEQUENTIAL, EXPECTANCY OR INDIRECT DAMAGES EVEN IF TBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXECPT AS OTHERWISE SET FORTH HEREIN, TBS DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REPRESENTATION OR WARRANTY ARISING OUT OF USAGE AND TRADE, COURSE OR DEALING OR COURSE OR PERFORMANCE. EXCEPT AS PROVIDED HEREIN, THE PARTS AND SERVICES ARE PROVIDED "AS IS."

13. GENERAL. Subject to the terms of the following paragraph, TBS may modify the terms and conditions of this Contract effective on the Renewal Date by providing the Customer with prior written notice.

Any such modification will apply unless the Customer withdraws the equipment affected by such modification from this Contract. Otherwise this Contract can only be modified by a written agreement duly signed by persons authorized to sign contracts on behalf of the Customer and of TBS. Variance from the terms and conditions of this Contract in any Customer order or other written modification will be of no effect.

The Customer represents that the Customer is the owner of the equipment under this Contract, or, if not the owner, is the lessee or renter of the equipment. Customer will execute a maintenance agreement for the equipment with a Toshiba authorized dealer or Customer will waive certain rights under Toshiba's manufacturer's warranty.

This Contract is not assignable, its right, duties and obligations may not be assigned or transferred by the Customer without the prior written consent of TBS. Any attempt to assign or transfer any of the rights, duties or obligations of this Contract without such consent is void.

TBS's service provided outside the scope of this Contract will be furnished at TBS's applicable time and material rates and terms then in effect.

TBS is not responsible for failure to render service due to causes beyond its control.

This Contract will be governed by the laws of the state where the Customer executed this Contract. If either party fails to comply with the terms and conditions of this Contract, the non-breaching party shall notify the breaching party in writing using certified mail to the address on the face of this Contract. The breaching party shall have thirty (30) days to cure any breach of this Contract prior to the non-breaching party takes the legal action. No action, regardless of form, arising out of this Contract may be brought by either party more than one year after the cause of action has arisen, or, in the case of non-payment, more than two years from the date of the last payment.

ADDENDUM

THIS ADDENDUM entered into by and between the CITY OF HIALEAH ("CITY") and TOSHIBA BUSINESS SOLUTIONS ("TBS") on this _____ day of _____, 2015 and is made part of the AIMS Maintenance Contract Agreement between the parties of even date. The words "you" and "your" refer to the CITY and the words "we", "us" and "our" refer to TBS. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the AIMS Maintenance Contract.

WHEREAS, the parties have entered into a AIMS Maintenance Contract for the services described in the Maintenance Contract; and

WHEREAS, this Addendum intends to modify, amend and supersede the terms of the Maintenance Contract as provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties agree to amend the AIMS Maintenance Contract as follows:

A. The Parties agree to amend Paragraph 2. Terms by substituting the terms of Paragraph 2 with the following language:

"This Contract will remain in force for one (1) year from the Effective Date. For each piece of equipment under this Contract there will be a Start Date and Start Meter which is shown on the face of this Contract. Service for each piece of equipment will be provided from the Start Date and Start Meter until this Contract is terminated or the equipment is withdrawn from service. Customer may withdraw individual equipment by providing thirty (30) day written notice at any time during the Term of the Contract."

B. The Parties agree to amend Paragraph 3. Service Availability by increasing the percentage change from 10% to 20% in the definition of "Substantial".

C. The Parties agree to amend Paragraph 5. Invoicing-Late Charges by deleting the following language:

"whether or not Customer receives an invoice."

and further, by including the following language:

"Customer will be billed monthly."

and further, by deleting the following language:

"If any part of a payment is not made by the Customer when due, Customer agrees to pay TBS a Late Charge of the higher of $25 or two percent (2%) of each such late payment, but not

more than permitted by law. Customer agrees to pay TBS the Late Charge no later than one (1) month following the date of the original Minimum Payment."

D. The Parties agree to amend Paragraph 7. Consumable Supplies by deleting the following language:

"Customer agrees to provide insurance coverage for supplies in case of loss under any circumstances."

E. The Parties agree to amend Paragraph 12. Indemnity and Disclaimer by adding the following language:

"Customer agrees to indemnify TBS for any claims for such losses, damages, penalties, claims, injuries or expenses, unless such losses, damages, penalties, claims, injuries or expenses are caused by the negligence of TBS."

and further, by including the following language:

"Any indemnity provided by Customer in this Contract is subject to the limitations on partial waiver of sovereign immunity as provided by Florida Statute §768.28 and shall not exceed the value of this Contract."

Except as expressly provided for herein, no other term, condition, provision or covenant of the Maintenance Contract is changed, modified, amended or altered, nor are any of TBS' or its assigns' rights or remedies under the Maintenance Contract, at law or equity, modified, waived, discharged or forgiven.

A facsimile copy of this Addendum containing City's signature may be treated as an original and be admissible in court as evidence of this Maintenance Contract.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be duly executed by their authorized representative as of the date first above written.

Agreed and Accepted:

City of Hialeah, Florida	Toshiba Business Solutions
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title

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TOSHIBA
BUSINESS SOLUTIONS

FMV LEASE AGREEMENT

TOSHIBA
FINANCIAL SERVICES

APPLICATION NUMBER	AGREEMENT NUMBER

The words Lessee, you, and your refer to the customer. The words Lessor, we, us and our refer to Toshiba Financial Services. The Toshiba Equipment is covered by the terms of the Toshiba Quality Commitment, a copy of which may be obtained from your Toshiba Business Solutions (TBS) provider. We own the Equipment (excluding software) and you have the right to use it under the terms of this Lease.

CUSTOMER CONTACT INFORMATION

Legal Company Name: Hialeah John F Kennedy Memorial Library Fed. Tax ID #:

Contact Person: Bill-To Phone: Bill-To Fax:

Billing Address: 190 W. 49 Street City, State-Zip: Hialeah, Fl 33012

Equipment Location: (if different from above) City, State-Zip:

TBS LOCATION

Contact Name: Subsidiary Location:

ITEM DESCRIPTION	MONTHLY	TOTAL
257 (2)		
Platen Cover (2)		
Stand (2)		

☐ See attached form (Schedule "A") for Additional Equipment

LEASE TERM & PAYMENT SCHEDULE

Number of Payments: 36 of $191.02 (plus applicable taxes)

Security Deposit: $ - ☐ Received

Documentation Fee: $75.00 *(included in First Invoice)*

Lease payment period is monthly unless otherwise indicated. 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 | Title: | Date:

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 in Lessor's possession shall constitute chattel 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 chattel paper under the UCC. If Lessee 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. Lessee agrees that the facsimile or other electronic transmission of this Lease manually signed by Lessor, when attached to the facsimile or other electronic copy signed by Lessee, shall constitute the original agreement for all purposes, including, without limitation, those outlined above in this Section. Without limiting and subject 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, Lessee, who executed this Lease and transmitted its signature by facsimile, or other electronic transmission shall provide the counterpart of this Lease containing Lessee'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 a party to this Lease.

Name: Signature: X Title: Date:

PERSONAL GUARANTY

To induce us to enter into this Lease and any supplement, the undersigned jointly and severally unconditionally guarantee to us the prompt payment when due of all Lessee's obligations to us under this 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 of all other notices or demands of any kind to which the undersigned may be entitled. The undersigned consents to any extensions or modifications granted to us and the release and/or compromise of any obligations of lessee or any other obligors and guarantors without in 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 bankruptcy, and the undersigned agrees not to seek to be repaid by lessee in the event the undersigned must pay us. 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 or for the benefit of any assignee or successor of us. The undersigned and we waive insofar as permitted by law any trial by jury 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 are expressly consenting to receiving communication (for NON-Marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, 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.

Print Name of 1st Guarantor Signature: X Date:

Print Name of 2nd Guarantor Signature: X Date:

SEE PAGE 2 FOR ADDITIONAL TERMS AND CONDITIONS

TERMS AND CONDITIONS

1. **Lease Agreement:** You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any attached Schedule (hereinafter, with all replacement parts, repairs, additions and accessories, referred to as the "Equipment") and as modified by Supplements to this Lease from time to time signed by you and us. You authorize us to insert or correct missing information on this Lease, including your accurate legal name, serial numbers and any other information describing the Equipment. You authorize us to change the amount of each lease payment by not more than 15% due to changes in the equipment configuration which may occur prior to our acceptance of this lease or adjustments to reflect applicable sales taxes. We will send you copies of any changes. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignees or third parties having an economic interest in this Lease or the Equipment.

2. **Lease Commencement:** This Lease will commence upon your acceptance of the applicable Equipment. When you receive the Equipment, you agree to inspect it and verify your acceptance by telephone or, at our request, by delivery of written evidence of acceptance satisfactory to us. Upon acceptance, your obligations under this Lease will become absolute and unconditional, and are not subject to cancellation, reduction or setoff for any reason whatsoever. All payments will be made to us in accordance with the applicable Schedule at our address or at such other place as we may designate in writing. You agree to pay an Interim rent payment equal to 1/30th of the monthly rental, multiplied by the number of days between rent commencement date and the date of the beginning of the first rental period. For any payment that is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or $22 (not to exceed the maximum allowed by law) as reasonable collection costs.

3. **Security Deposit:** The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you in, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions are fully complied with and provided you have not ever been in default of the Agreement in the Default section, the security deposit will be refunded to you after the return of the equipment in accordance with the Return of Equipment section.

4. **WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT AND TBS BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU LEASE THE EQUIPMENT "AS IS". NO REPRESENTATION OR WARRANTY OF TBS WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR OBLIGATIONS HEREUNDER. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS LEASE.

5. **Statutory Finance Lease:** You agree that this Lease qualifies as a statutory finance lease under Article 2A of the Uniform Commercial Code. To the extent you are permitted by applicable law, you waive all rights and remedies conferred upon a lessee by Article 2A (sections 508-522) of the Uniform Commercial Code.

6. **Security Interest:** You authorize us to file a financing statement with respect to the equipment. If this Lease is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all your obligations under this Lease.

7. **Use Maintenance and Repair of Equipment:** YOU WILL USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES. You will not move the Equipment from the equipment location listed on the schedule without our advance written consent. You will give us reasonable access to the Equipment so that we can check the Equipment's existence, condition and proper maintenance. At your cost, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You will not make any permanent alterations to the Equipment. You will keep the Equipment free and clear of all liens. You assign to us all of your rights, but none of you obligations, under any purchase agreement for the Equipment. We assign to you all our rights under any TBS warranties, so long as you are not in default.

8. **Taxes and Lease Charges:** You agree to pay all taxes, costs and expenses incurred by us as a consequence of the ownership, sale, lease or use of the Equipment, including all sales, use and documentary stamp taxes. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.

9. **Indemnity:** You will indemnify and hold us harmless from any and all liability, damages, losses or injuries including reasonable attorney's fees, arising out of the ownership, use, condition or possession of the Equipment, except to the extent directly caused by our gross negligence or willful misconduct. We reserve the right to control the defense and to select or approve defense counsel. This indemnity will survive the termination of this Lease.

10. **Risk or Loss; Insurance:** You are responsible for risk of loss or for any destruction of or damage to the equipment. No such loss or damage shall relieve you from the payment obligations under this Lease. You agree to keep the Equipment fully insured against loss until this Lease is paid in full and to have us and our assigns named as loss payee. You also agree to maintain public liability insurance covering both personal injury and property damage and you shall name us and our assigns as additional insured. Upon request, you agree to provide us certificates or evidence of insurance acceptable to us. If you do not provide evidence of acceptable insurance, (a) we have the right but no obligation to obtain insurance covering our interest (and only our interest) in the Equipment for the Lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. You will be required to pay us an additional amount each month for the insurance and administrative fee. The cost may be more than the cost of obtaining your own insurance and we may make a profit. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims, or (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the total stream of payments to cover our credit risk, administrative costs and other costs and in which we may make a profit. Once an acceptable certificate or evidence of insurance is submitted, any such fees will be discontinued. If any of the Equipment is lost, stolen or damaged you will at your option and cost, either (a) repair the item or replace the item with a comparable item reasonably acceptable to us, or (b) pay us the sum set forth in the Remedies section.

11. **Right to Perform:** If you fail to comply with any provision of this Lease, we may, at our option, perform such obligations on your behalf. Upon invoice you will reimburse us for all costs incurred by us to perform such obligations.

12. **Representations:** (a) You represent and warrant to us that (1) you have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease have been duly authorized to do so on your behalf, (3) you will provide us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business or there is a change in your name state of formation, or ownership, and (6) you will take any action we reasonably request to protect our rights in the Equipment. (b) We represent and warrant to you that (1) we have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease have been duly authorized to do so on our behalf.

13. **Default:** You will be in default under this Lease if: (a) we do not receive any payment due under that Lease within ten (10) days after its due date, (b) you fail to meet any of your obligations in the Lease (other than payment obligations) and do not correct such default within 10 days after we send you written notice of such default, (c) you become insolvent, are liquidated or dissolved, merge, transfer a material portion of your ownership interest or assets, stop doing business, or assign rights or property for the benefit of creditors, (d) a petition is filed by or against you under any bankruptcy or insolvency law, (e) any representation made by you is false or misleading in any material respect, or (f) you default on any other agreement with us or our assigns.

14. **Remedies:** If you are in default, we may, at our option, do any or all of the following: (a) retain your security deposit, if any, (b) terminate this Lease, (c) require that you pay, as compensation for loss of our bargain and not as a penalty, the sum of (1) all amounts due and payable by you or accrued under this Lease, plus (2) the present value of all remaining payments to become due under this Lease (discounted at 4% or the lowest rate allowed by law), and (3)(i) the amount of any purchase option and, if none is specified, 20% of the original equipment cost, which represents our anticipated residual value in the Equipment or (ii) return the Equipment to a location designated by us and pay to us the excess, if any, of the amount payable under clause 3(i) above over the Fair Market Value of the returned Equipment as determined by us in our reasonable discretion, (d) recover interest on any unpaid balance at the rate of 4% per annum, and (e) exercise any other remedies available to us at law or in equity. You agree to pay our reasonable attorney's fees and actual court costs including any cost of appeal. If we have to take possession of the Equipment, you agree to pay the cost of repossession and we may sell or re-rent the equipment at terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds (after deducting any related expenses) to your obligations. You may remain liable for any deficiency with any excess being retained by us.

15. **Purchase Option:** At the end of the Term provided you are not in default, and upon 30 days prior written notice from you, you will either (a) return all the Equipment, or (b) purchase all the Equipment as is, without any warranty to condition, value or title for the Fair Market Value of the Equipment as determined by us in our reasonable discretion plus applicable sales and other taxes.

16. **Automatic Renewal:** This Lease will automatically renew on a month-to-month basis after the Term unless cancelled by either party upon 30 days prior written notice, and you shall pay us the same lease payments and lease charges as applied during the Term (and be subject to the terms and conditions of this Lease) until the Equipment is returned to us or you pay us the applicable purchase price (and taxes).

17. **Return of Equipment:** If (a) a default occurs, or (b) you do not purchase the Equipment at the end of the Term pursuant to a stated purchase option, you will immediately return the equipment to any location(s) we may designate in the continental United States. The Equipment must be returned in "Average Saleable Condition" and properly packed for shipment in accordance with our recommendations or specifications, freight prepaid and insured. "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party, other than you, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories.

18. **Assignment:** We may, without your consent, assign or transfer any Equipment or this Lease, or any rights arising under this Lease, and in such event our assignee or transferee will have the rights, power, privileges and remedies of lessor hereunder, but none of the obligations. Upon such assignment you agree not to assert, as against our assignee, any defense, setoff, recoupment, claim or counterclaim that you may have against us. You will not assign, transfer or sublease this Lease or any rights thereunder or any Equipment subject to this Lease without our prior written consent.

19. **Personal Property Tax (PPT):** You agree at our discretion to (a) reimburse us annually for all personal property and similar taxes associated with the ownership, possession or use of the Equipment or (b) remit to us each billing period our estimate of the prorated equivalent of such taxes. You agree to pay us an administrative fee for the processing of such taxes.

20. **Tax Indemnity:** You agree to indemnify us for the loss of any income tax benefit caused by your acts or omissions inconsistent with our entitlement to certain tax benefits as owner of the Equipment.

21. **Governing Law:** BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL. This Agreement and any supplement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under this Agreement, you irrevocably agree that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts of your state of residence, or in any other court having jurisdiction over you or your assets, all at the sole election of the Lessor or its Assignee. You hereby irrevocably submit generally and unconditionally to the jurisdiction of any such court as elected by Lessor or its Assignee in relation to such matters.

22. **Miscellaneous:** This Lease contains the entire agreement between you and us and may not be modified except as provided therein or in writing signed by you and us. We will not accept payment in cash. If you so request, and we permit the early termination of this Lease, you agree to pay a fee for such privilege. Notices must be in writing and will be deemed given five days after mailing to your or our mailing address. If a court finds any provision of this Lease to be unenforceable, all other terms of that Lease will remain in effect and enforceable. You agree that any delay or failure to enforce our rights under this Lease do not prevent us from enforcing any rights at a later time. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Time is of the essence. You agree that a facsimile copy of the Lease with facsimile signatures may be treated as an original and will be admissible as evidence of the Lease. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or supplier of the Equipment. It is the Lessee's sole and exclusive responsibility to assure that all data from all disk drives or magnetic media are erased of any lessee data and information.

FISCAL FUNDING ADDENDUM

LESSEE	
Full Legal Name	Hialeah JFK Memorial Library
DBA Name (If Any)	
Billing Address	190 W. 49 Street
Phone Number	
City	Hialeah
County	Dade
State	Fl
Zip Code	33012
Lease Number	
Lease Date	

Lessee warrants that it has funds available to pay all rents (the "Lease Payments") payable under the above - identified Lease until the end of Lessee's current appropriation periods. If Lessee's legislative body or other funding authority does not appropriate funds for Lease Payments for any subsequent appropriation period and Lessee does not otherwise have funds available to lawfully pay the Lease Payments (a "Non-Appropriation Event") Lessee may, subject to the conditions herein and upon prior written notice to Lessor (the "Non-Appropriation Notice"), effective sixty (60) days after the later of Lessor's receipt of same or the end of the Lessee's current appropriation period (the "Non-Appropriation Date"), terminate the Lease and be released of its obligation to make all Lease Payments due Lessor coming due after the Non-Appropriation Date. As a condition to exercising its rights under the Addendum Lessee shall (1) provide in the Non-Appropriation Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (2) deliver to Lessor an opinion of Lessee's counsel (addressed to Lessor) verifying that the Non-Appropriation Event as set forth in the Non-Appropriation Notice has occurred, (3) return the equipment subject to the Lease (the "Equipment") on or before the Non-Appropriation Date to Lessor or a location designated by Lessor, in the condition required by, and in accordance with the return provisions of, the Lease and at Lessee's expense, and (4) pay Lessor all sums payable to Lessor under the Lease up to the Non-Appropriation Date.

In the event of any Non-Appropriation Event, Lessor shall retain all sums paid hereunder or under the Lease by Lessee, including the Security Deposit (If any) specified in the Lease.

Lessee further represents, warrants and covenants for the benefit of Lessor that:

(a) Lessee is a municipal corporation and political subdivision duly organized and existing under the constitution and laws of the State.

(b) Lessee is authorized under the constitution and laws of the State, and has been duly authorized to enter into this Lease and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) This Lease constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(d) Lessee has complied with such public bidding requirements as may be applicable to this Lease.

(e) The Equipment described in this Lease is essential to the function of the Lessee or to the service Lessee provides to its citizens. The Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future.

(f) Lessee has never failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any lease, lease purchase, installment sale or other similar agreement.

This Addendum is not intended to permit Lessee to terminate the Lease at will or for convenience.

YOU AGREE THAT A FACSIMILE COPY OF THIS DOCUMENT WITH FACSIMILE SIGNATURES MAY BE TREATED AS AN ORIGINAL AND WILL BE ADMISSIBLE AS EVIDENCE IN A COURT OF LAW.

LESSEE SIGNATURE	
Signature X	(MUST BE SIGNED BY AUTHORIZED REPRESENTATIVE OR OFFICER OF GOVERNMENT ENTITY)
Print Name	
Title	Date
Name of Governmental Entity	

ACCEPTED BY LESSOR	
Signature X	
Print Name	
Title	Date
Name of Corporation or Partnership	

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ADDENDUM

THIS ADDENDUM entered into by and between the CITY OF HIALEAH ("CITY-Lessee") and TOSHIBA FINANCIAL SERVICES ("TFS-Lessor") on this _____ day of _____, 2015 and is made part of the FMV Lease Agreement between the Parties of even date. The words "you" and "your" refer to the Lessee and the words "we", "us" and "our" refer to the Lessor. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Lease.

WHEREAS, the Parties have entered into a FMV Lease Agreement for the services described in the Agreement; and

WHEREAS, this Addendum intends to modify, amend and supersede the terms of the Lease Agreement as provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties agree to amend the FMV Lease Agreement as follows:

A. The Parties agree to amend Paragraph 1. Lease Agreement by substituting the terms of Paragraph 1 with the following language:

"You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any attached Schedule (hereinafter, will replacement parts, repairs, additions and accessories, referred to as the "Equipment") and as modified by Supplements to this Lease from time to time signed by you and us. You authorize us to insert or correct missing information on this lease, including your accurate legal name, serial numbers and any other information describing the Equipment. We will send you copies of any changes. You agree to provide updated annual financial statements to us upon request."

B. The Parties agree to amend Paragraph 2. Lease Commencement by deleting the following language:

"For any payment that is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or $22 (not to exceed the maximum allowed by law) as reasonable collection costs."

C. The Parties agree to delete the terms of Paragraph 3. Security Deposit in their entirety.

D. The Parties agree to amend Paragraph 5. Statutory Finance Lease by deleting the following language:

"To the extent you are permitted by applicable law, you waive all rights and remedies conferred upon a lessee by Article 2A (sections 508.522) of the Uniform Commercial Code.

E. The Parties agree to delete the terms of Paragraph 6. Security Interest in their entirety.

F. The Parties agree to amend Paragraph 10 Risk or Loss; Insurance by deleting the following language:

"and you shall name us and our assigns as additional insured."

and further, by deleting the following language:

"If you do not provide evidence of acceptable insurance, (a) we have the right but not the obligation to obtain insurance covering our interest (and only our interest) in the Equipment for the Lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. You will be required to pay us an additional amount each month for the insurance and administrative fee. The cost may be more than the cost of obtaining your own insurance and we may make a profit. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims, or (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the total stream of payments to cover our credit risk, administrative costs and in which we may make a profit. Once an acceptable certificate or evidence of insurance is submitted, any such fees will be discontinued.

G. The Parties agree to amend Paragraph 13 Default by increasing the number of days from the due date of payment after which failure to pay would be an event of default under subparagraph (a) from ten days to twenty days.

H. The Parties agree to amend Paragraph 17 Return of Equipment by substituting the terms of Paragraph 17 with the following language:

"Lessee agrees to remove all Equipment at its sole cost and expense at the end of the Term. All Equipment must be free of marking. You will pay us for any missing or defective parts or accessories."

I. The Parties agree to amend Paragraph 18 Assignment by deleting the following language:

"but none of the obligations. Upon such assignment you agree not to assert, as against our assignee, any defense, setoff, recoupment, claim or counterclaim that you may have against us."

J. The Parties agree to delete the terms of Paragraph 19 Personal Property Tax (PPT) in their entirety.

K. The Parties agree to amend the terms of Paragraph 21 Governing Law by substituting the terms of Paragraph 21 with the following language:

"BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL. This Agreement and any supplement shall be deemed fully executed and performed in the State of Florida and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall begin any judicial proceeding in relation to any matter arising under this Agreement, you irrevocably agree that any such matter may be adjudged or determined by any court or courts in the State of Florida, in any court or courts of the State of Florida, or in any court having jurisdiction over you or your assets. You hereby irrevocably submit generally and unconditionally to the jurisdiction of any such court."

Except as expressly provided for herein, no other term, condition, provision or covenant of the Lease is changed, modified, amended or altered, nor are any of Lessor's or its assigns' rights or remedies under the Lease, at law or equity, modified, waived, discharged or forgiven.

A facsimile copy of this Addendum containing Lessee's signature may be treated as an original and be admissible in court as evidence of this Addendum.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their authorized representative as of the date first above written.

Agreed and Accepted:

City of Hialeah, Florida	Toshiba Financial Services
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title

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TOSHIBA
BUSINESS SOLUTIONS
Florida

Municipal 30 Days Notification and Equipment Return Authorization

Date:_____

Lease Company_____ Attn:_____

Toshiba Business Solutions, Florida would like to return equipment, the customer is at the end of the lease. Please provide us the return quote and shipping instructions.

Lease #_____ Customer Name: Hialeah JFK Memorial Library

Customer Address: 190 W. 49 Street

_____ Ph#:_____

Model# 255SE **Serial #** F 6085

Model#_____ **Serial #**_____

Monthly Payment $_____ Lease Expiration Date:_____

Municipal Equipment Return Authorization

I understand that this equipment is:

_____Leased by customer with Toshiba Business Solutions, Florida. Customer understands they are responsible for any remaining payments owed on their account, as well as the "final meter billing", as per the original purchase order or letter of commitment.

COMMENTS:_____

_____

Contact:_____ **Phone #:**_____

_____ _____
Customer Signature/Title Date

_____ _____ _____
Sales Rep/Toshiba Business Solutions, Florida Date Phone#

Please Sign, Date & Fax Back to 954-427-7612

TOSHIBA
BUSINESS SOLUTIONS
Florida

Municipal 30 Days Notification and Equipment Return Authorization

Date:_____

Lease Company_____ Attn:_____

Toshiba Business Solutions, Florida would like to return equipment, the customer is at the end of the lease. Please provide us the return quote and shipping instructions.

Lease #_____ Customer Name: Hialeah JFK Memorial Library

Customer Address: 190 W 49 Street

_____ Ph#:_____

Model#_____ **Serial #** F6086

Model#_____ **Serial #**_____

Monthly Payment $_____ Lease Expiration Date:_____

Municipal Equipment Return Authorization

I understand that this equipment is:

_____Leased by customer with Toshiba Business Solutions, Florida. Customer understands they are responsible for any remaining payments owed on their account, as well as the "final meter billing", as per the original purchase order or letter of commitment.

COMMENTS:_____

_____

Contact:_____ **Phone #:**_____

_____ _____
Customer Signature/Title Date

_____ _____ _____
Sales Rep/Toshiba Business Solutions, Florida Date Phone#

Please Sign, Date & Fax Back to 954-427-7612