

RESOLUTION R-2018-04

**A RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
WITH TOSHIBA AMERICA BUSINESS SOLUTIONS, INC., FOR COPIERS AND
MULTIFUNCTION DEVICES**

WHEREAS, the City of Wheaton, DuPage County, Illinois finds it reasonable and appropriate to enter into an agreement for copiers and multifunction devices; and

WHEREAS, the City conducted a Request for Proposal process and received and reviewed nine submittals for copiers and multifunction devices; and

WHEREAS, it is determined by the City that the proposal received from Toshiba America Business Solutions, Inc., meets the City's needs; and

WHEREAS, it is necessary for the City to enter into an agreement with Toshiba America Business Solutions, Inc., for the purpose of providing copiers and multifunction devices.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is hereby authorized to execute and the City Clerk is hereby directed to attest to an agreement between the City of Wheaton and Toshiba America Business Solutions, Inc., Irvine, California, for copiers and multifunction devices.

ADOPTED this 16th day of January 2018.


Mayor

ATTEST:


City Clerk

Roll Call Vote:

Ayes: Councilman Suess
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo

Nays: None
Absent: None
Motion Carried Unanimously

TERMS AND CONDITIONS (CONTINUED)

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 months 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. 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of equipment will be provided from the Start Date & Start Meter until this Contract is terminated or the equipment is withdrawn from the service.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 Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to Renewal Date.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 Units each billing period. If Customer uses more than the Minimum Number of Units in any billing period, Customer will pay an additional amount equal to the number of metered Units exceeding the agreed Minimum Included Units times the Excess 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 units result in less than the Minimum Number of Units in any billing period.

Your Toshiba system will come with two-way communication enabled. TBS will provide updates, system back ups, and meter collection automatically. Please advise if you do not wish to have this feature enabled. TBS may estimate the number of units used if requested Meter Readings are not received before a new billing period begins. TBS will adjust the estimated charge for Excess Units upon receipt of actual meter Readings. Notwithstanding any adjustment, the Customer will never pay less than the Minimum Payment. Customer will provide meter readings via an automated website. TBS may charge a fee to recover the cost of meter collections if meters are not submitted through the automated website.

Upon the first Renewal Date and each subsequent Renewal Date thereafter, TBS reserves the right to increase the Minimum Payment and/or Excess Unit Charge by the greater of either (i) fifteen (15%) percent or (ii) the then-current cost per unit for that model.

7. **CONSUMABLE SUPPLIES.** TBS agrees to furnish consumable supplies (ink, toner and toner collection containers) for the Term of the Contract, except as excluded in section 11 below. 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 Units and Excess Units metered. If TBS determines that the Customer has used more than fifteen percent (15%) supplies than normal for the number of metered units, 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 hereon.

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, batteries, ribbons, media, periodic maintenance on thermal printers 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 line/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. **CUSTOMER OWNED EQUIPMENT.** (a) TBS reserves the right to inspect the mechanical condition of all Customer Owned Equipment to be covered under this Agreement. Customer will be notified of Equipment found to require immediate repairs. Customer, at its option, may elect to have said Equipment repaired at the then current hourly service labor rate plus parts or elect to have the unit excluded from this Agreement. (b) To qualify for coverage under this Agreement each piece of Customer Owned Equipment must have an initial consumable supply level of at least 25% (twenty five percent) of its capacity. For any Equipment falling under that level, Customer will be responsible for replacing and/or purchasing the initial consumables required to restore the device to the 25% level. (c) Service of printers under this agreement will possibly include replacement parts that may have been used and/or reconditioned. Parts that have been replaced will remain the property of TBS. If Customer Owned Equipment becomes obsolete, or unserviceable, client is responsible for replacing the device, and TBS will remove obsolete device from current agreement.

13. **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.

EXCEPT 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."

14. **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 taking 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.

**AMENDMENT NO. 1 TO AIMS MAINTENANCE CONTRACT MA 2.0.0
FOR AGREEMENT #
(CITY OF WHEATON, ILLINOIS)**

THIS AMENDMENT NO. 1 to the terms and conditions of the Aims Maintenance Contract MA 2.0.0 #----- ("Maintenance Contract") is made and entered into this JANUARY 18th day of 2018, by and between Toshiba Business Solutions, a division of Toshiba American Business Solutions, Inc. ("TBS"), located at 5509 Belmont Road, Downers Grove, IL 60515, and the City of Wheaton, an Illinois home-rule municipality ("City") located at 303 W. Wesley Street, Wheaton, Illinois, 60187.

WHEREAS, TBS and City desire to amend the terms and conditions of the Maintenance Contract regarding the service of the equipment leased by the City from TBS, upon and subject to the terms and conditions of this Amendment No. 1; and

WHEREAS, the terms and conditions of the Maintenance Contract are only acceptable to the City as modified by this Amendment No. 1.

NOW, THEREFORE, for good and valuable consideration, intending to be legally bound, the parties hereto agree as follows:

1. This Amendment is incorporated into and made a part of the Maintenance Contract, effective as of the same day as the Maintenance Contract. This Amendment and the Maintenance Contract together constitute the entire agreement between the parties with respect to the subject matter hereof and thereof. The terms and conditions of the Maintenance Contract and the provisions thereof, unless specifically modified herein, shall remain in full force and effect and shall apply to this Amendment as though they were expressly set forth herein.
2. In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the terms and conditions of the Maintenance Contract, the provisions of this Amendment shall in all respects govern and control.
3. **Term.** Section 2 of the Maintenance Contract is deleted in its entirety and replaced with the following:

"2. Term. This Contract will remain in force for 60 months from the effective date and will then continue on a month-to-month basis unless either party provides thirty (30) days notice of termination. For each piece of equipment under this Contract there will be a Start Date & Start Meter. 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) days written notice. Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to the initial 60 month term of the Contract. After the expiration of the initial 60 month term, the City may terminate this Contract at any time by giving TBS written notice twenty-one (21) days prior to the effective date of the termination and Customer shall pay TBS an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services TBS was to perform under this Contract, less payments previously made to TBS under this Contract."
4. **Invoicing – Late Charges.** Section 5 of the Maintenance Contract is deleted in its entirety and replaced with the following: "5. Invoicing – Late Charges. Monthly Minimum Payments will not be due until Customer receives an invoice (bill). Customer shall make payments in accordance

with the Illinois Local Government Prompt Payment Act ("Act") which states that any bill approved for payment shall be paid within thirty (30) days after the date of approval. Penalties for late payments shall be assessed in accordance with that Act, in an amount equal to the higher of ten percent (10%) of the amount due or \$22 (not to exceed the maximum allowed by law) as reasonable collection costs. 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."

5. **Usage.** The final sentence of Section 6 of the Maintenance Contract, "USAGE," is deleted in its entirety.

6. **Taxes.** Section 8 of the Maintenance Contract, "TAXES," is deleted in its entirety and is replaced with the following:

"8. Non-appropriation: This Contract is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Contract into a subsequent fiscal period is subject to the appropriation of funds. In the event no funds or insufficient funds are appropriated and budgeted by Customer's governing body or are otherwise unavailable in any fiscal year for the payment of amounts due under this Contract, this Contract shall terminate on the last day of the fiscal period for which appropriations were received, without liability to the Customer for damages, penalties or other charges on account of such termination. Such event shall not constitute an event of default and all payment obligations of Customer will cease upon the date of termination. The Customer, in its sole discretion shall determine sufficiency of funds, which shall be accepted by TBS and is final. Customer shall give TBS or its assignee written notice at least 45 days in advance of such occurrence. This paragraph shall not permit Customer to terminate the Maintenance Contract in order to acquire any other maintenance services or to allocate funds directly or indirectly to acquire other maintenance services.

7. **Indemnity and Disclaimer.** The first paragraph of Section 13 of the Maintenance Contract. "INDEMNITY AND DISCLAIMER," is deleted in its entirety and replaced with the following:

"TBS shall defend, hold harmless and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, judgments, settlements, costs or expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation including reasonable expert witness fees, and all causes of action of any kind or character, sustained by reason of, arising out of, or relating to (i) a breach of any of TBS's representations, promises or covenants herein; or (ii) any act, omission, neglect or default by TBS, its officers, employees or agents. All indemnifications shall be continuing and shall survive acceptance of the Equipment or termination of this Contract. Nothing in this Contract shall be construed as prohibiting the City, its officials, directors, officers, employees, agents or attorneys from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of or relating to this Contract. As between the parties, each party acknowledges and represents that it will be responsible, to the extent of its negligence, for liability arising from personal injury or damage to persons or property occasioned by its employees or agents. The liability of the City shall be subject in all cases to the immunities and

limitations of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., and any amendments thereto."

The following shall be added to the last sentence of Section 12 of the Maintenance Contract:

"TBS will extend to Customer all Equipment warranties provided by any manufacturer or supplier and guarantees to keep all Equipment in operation in accordance with manufacturer's specifications."

8. **General.** The last paragraph of Section 14 of the Maintenance Contract, "GENERAL," is replaced with the following:

"This Contract will be governed by the laws of the State of Illinois with exclusive jurisdiction for any litigation in relation to any matter arising under this Contract in the Eighteenth Judicial Circuit Court, DuPage County, Illinois. 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 taking legal action."

The City agrees that TBS may accept a facsimile copy of this Amendment No. 1 as an original, and that such facsimile copy will be treated as an original for all purposes.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment on the dates set forth below but effective as of the effective date of the Lease, as set forth above.

City of Wheaton:

By:

Printed Name:

Title:

Date:

Toshiba Business Solutions

By:

Printed Name:

Title:

Date:

Michael J. Grest
MICHAEL J. GREST
MAYOR
January 18, 2018

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: City of Wheaton Fed. Tax ID #:
 Contact Person: Linda Styczen Bill-To Phone: 630-260-2184 Bill-To Fax:
 Billing Address: 303 W Wesley City, State-Zip: Wheaton, IL 60187
 Equipment Location: City, State-Zip:
 (if different from above)

TBS LOCATION

Contact Name: Subsidiary Location:

ITEM DESCRIPTION

ITEM DESCRIPTION	MODEL NO.	SERIAL NO.
4 - Estudio 5506ac		
7 - Estudio 3005ac		

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

LEASE TERM & PAYMENT SCHEDULE

Number of Payments: 60 of \$1,309.38 (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 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: Richard J. Gries Signature: X Title: Mayor Date: 1/18/18

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 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:

TERMS AND CONDITIONS

SEE PAGE 2 FOR ADDITIONAL TERMS AND CONDITIONS

TEST FMV LEASE AGREEMENT 050110

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.

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 completed 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 your 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 so 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.

**AMENDMENT NO. 1 TO FMV LEASE AGREEMENT
FOR AGREEMENT #
(CITY OF WHEATON, ILLINOIS)**

THIS AMENDMENT NO. 1 to the terms and conditions of the FMV Lease Agreement #9676225-001 ("Lease") is made and entered into this JANUARY 18th day of 2018, by and between Toshiba Financial Services, ("Lessor"), and the City of Wheaton, an Illinois home-rule municipality ("Lessee") located at 303 W. Wesley Street, Wheaton, Illinois, 60187.

WHEREAS, Lessor and Lessee desire to amend the terms and conditions of the Lease, upon and subject to the terms and conditions of this Amendment No. 1; and

WHEREAS, all capitalized terms not otherwise defined herein will have the meanings set forth in the Lease.

NOW, THEREFORE, for good and valuable consideration, intending to be legally bound, the parties hereto agree as follows:

1. This Amendment is incorporated into and made a part of the Lease, effective as of the same day as the Lease. This Amendment and the Lease together constitute the entire agreement of the parties with respect to the subject matter hereof and thereof. The terms and conditions of the Lease and that the provisions thereof, unless specifically modified herein, shall remain in full force and effect and shall apply to this Amendment as —though they were expressly set forth herein.
2. In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the terms and conditions of the Lease, the provisions of this Amendment shall in all respects govern and control.
3. **Lease Agreement.** Section 1 of the Lease shall be amended in its entirety to read as follows:

"1. Lease Agreement: You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any Schedule (hereinafter, with all replacement parts, repairs, additions, and accessories, referred to as the "Equipment") and modified by Supplements to this Lease from time to time 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. -Lease payments shall not increase at any time prior to and during the term of the Lease."
4. **Lease Commencement.** Section 2 of the Lease shall be amended in its entirety to read as follows:

"2. Lease Commencement: The supplier or equipment manufacturer that you have contracted with for the supply of the Equipment shall deliver and install each piece of Equipment. Upon delivery and installation and prior to acceptance, Lessee shall have the absolute right to reject any unit or item of Equipment that does not properly function. This Lease will commence upon Lessee's acceptance of the applicable Equipment which acceptance shall be irrevocable. When Lessee receives the Equipment, Lessee agrees to inspect it and verify acceptance by telephone or, at Lessor's request, by delivery of written evidence of acceptance satisfactory to Lessor. Lessee shall make payments in accordance with the Illinois Local Government Prompt Payment Act("Act") which states that any bill approved for payment shall be paid within thirty (30) days

after the date of approval. Penalties for late payments shall be assessed in accordance with that Act, in an amount equal to the higher of ten percent (10%) of the amount due or \$22 (not to exceed the maximum allowed by law) as reasonable collection costs."

5. **Statutory Finance Lease.** The second sentence of Section 5 of the Lease shall be amended to read as follows:

"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 but not against the manufacturer and/or supplier of the Equipment."

6. **Taxes and Lease Charges.** Section 8 of the Lease shall be deleted in its entirety.

7. **Risk or Loss; Insurance.** The following language from subsection (b) of Section 10 of the Lease shall be deleted in its entirety:

"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 of evidence of insurance is submitted, any such fees will be discontinued."

8. **Representations.** Subsections (3) and (4) of the first sentence of Section 12 of the Lease, which reads as follows, shall be deleted in their entirety:

"(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,"

9. **Default.** Section 13 of the Lease shall be amended in its entirety to read as follows:

"13. Default: You will be in default under this Lease if: (a) we do not receive any payment due under that Lease within 30 days after the invoice/bill submitted to you for payment was approved by your governing body, (b) you fail to meet any of your obligations under the Lease (other than payment obligations) and do not correct such default within ten (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.

10. **Return of Equipment.** Section 17 of the Lease shall be amended in its entirety to read as follows:

"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 at our sole cost and expense. The Equipment must be returned in "Average Saleable Condition" and properly packed for shipment in accordance with our recommendations or specifications, and shall be insured. Lessor is responsible for all costs associated with the (i) destruction or erasure of data

contained in Equipment hard drives, (ii) deinstallation and (iii) hauling away of the Equipment, including, but not limited to, all freight and insurance costs. "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."

11. **Personal Property Tax (PPT).** Section 19 of the Lease shall be deleted in its entirety.
12. **Tax Indemnity.** Section 20 of the Lease shall be deleted in its entirety.
13. **Governing Law.** Section 21 of the Lease shall be amended in its entirety to read as follows:

"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 Illinois and shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation in relation to any matter arising under a Lease, any Schedule, and this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois or applicable United States Federal Court in Illinois with jurisdiction over such litigation."
14. **Miscellaneous.** The ninth (9th) sentence of Section 22 of the Lease shall be amended to read as follows:

"Miscellaneous: The parties agree that a facsimile or electronic copy of the Lease with facsimile or electronic signatures may be treated as an original and will be admissible as evidence of the Lease."
15. **Indemnification.** Section 9 of the Lease shall be deleted in its entirety and replaced with the following: "Liability. As between the parties, each party acknowledges and represents that it will be responsible to the extent of its negligence for liability arising from personal injury or damage to persons or property occasioned by its employees or agents. The liability of the City shall be subject in all cases to the immunities and limitations of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., and any amendments thereto."
16. **NON-APPROPRIATION OF FUNDS.** Notwithstanding any provisions of the Agreement, Customer's obligation to pay all amounts due under the Agreement, including but not limited to periodic rent payments, is contingent upon the approval of appropriation of funds by its governing body. Customer intends to remit all periodic payments and other sums when due and payable to Lessor/Owner for the full term of the Agreement (the "Term") if funds are legally available. In the event, despite Customer's good faith efforts and exhaustion of all administrative appeals, (i) Customer is not granted an appropriation of funds at any time during the Term of the Agreement for the Equipment or for other functionally similar equipment to the Equipment, and (ii) operating funds are not otherwise available to Customer to pay its obligations under the Agreement, and (iii) there is no other legal procedure or available funds by or with which payment can be made to Lessor/Owner, and (iv) the non appropriation did not result from an act or omission by Customer, then Customer shall have the right to terminate the Agreement as of the last day of the fiscal period for which appropriations were received ("Termination Date"). At least

thirty (30) days prior to the Termination Date, Customer's chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the following fiscal period, (b) such non appropriation did not result from any act or failure to act by Customer, and (c) Customer has exhausted all funds legally available for the payments due under the Agreement. Such termination shall be without penalty or expense to Customer, except that Customer shall remain obligated to pay any payments or sums due under the Agreement for which funds shall have been appropriated and budgeted, and Customer shall return the Equipment to Lessor/Owner on or prior to the Termination Date in accordance with the Equipment return provisions of the Agreement. If Customer terminates the Agreement because of non-appropriation of funds, Customer may not purchase, lease, or rent equipment performing functions similar to those performed by the Equipment for a period of twelve (12) months from the Termination Date. This paragraph shall not permit Customer to terminate the Agreement in order to acquire any other equipment or to allocate funds directly or indirectly to perform essentially the application for which the Equipment is intended.

17. **SPECIAL REPRESENTATIONS AND WARRANTIES OF CUSTOMER.** Customer hereby represents and warrants to Lessor/Owner that as of the date of this Agreement, and throughout the Term thereof: (a) Customer is the entity indicated in the Agreement; (b) Customer is duly organized and existing under the Constitution and laws of the State in which it is located; (c) Customer is authorized to enter into and carry out its obligations under the Agreement, any documents relative to the acquisition of the Equipment and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents"); (d) the Documents have been duly authorized, executed and delivered by Customer in accordance with all applicable laws, rules, ordinances, and regulations, and person(s) signing the Documents have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine, and the Documents constitute the valid, legal, binding agreements of Customer, enforceable in accordance with their terms; (e) the Equipment is essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and shall be used during the Term of the Agreement only to perform such function; (f) Customer intends to use the Equipment for the entire Term and shall take all necessary action to include in its annual budget any funds required to fulfill its obligations for each fiscal year during the Term; (g) Customer has complied fully with all applicable law governing open meetings, public bidding and appropriations required in connection with the Agreement and the Equipment; (h) Customer's obligation to remit all amounts due and payable under the Agreement constitutes a current expense and not a debt under applicable state law, no provision of the Agreement constitutes a pledge of Customer's tax or general revenues, and any provision which is so construed by a court of competent jurisdiction is void from the inception of the Agreement; (i) all amounts due and to become due during Customer's current fiscal year are within the fiscal budget of such year, and are included within an unrestricted and unencumbered appropriation currently available for the use of the Equipment; (j) all financial information Customer has provided to Lessor/Owner is true and accurate and provides a good representation of Customer's financial condition; (k) no event of non-appropriation, as described herein, has occurred and it is not presently known that any such event will occur under any lease or other contract by which Customer is bound; and (l) If requested by Lessor/Owner, Customer will execute and deliver to Lessor/Owner in connection with the Agreement, a certificate of resolution and

incumbency and/or an opinion of counsel in form and substance satisfactory to Lessor/Owner.

18. **LIMITATIONS.** The parties intend that the collection of any damages, the exercise of any remedy, the enforceability of any indemnity, and any requirements of Customer relative to non-appropriation set forth in the Agreement or in this Addendum are subject to any limitations imposed by applicable law.

Lessee agrees that Lessor may accept a facsimile copy of this Amendment No. 1 as an original, and that such facsimile copy will be treated as an original for all purposes.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment on the dates set forth below but effective as of the effective date of the Lease, as set forth above.

City of Wheaton

By: 

Printed Name: Michael J. Smith

Title: Mayor

Date: January 18, 2018

Toshiba Financial Services

By: _____

Printed Name: _____

Title: _____

Date: _____

Assignment Notification

Date: 12/29/17

Lessee/Customer:
City of
Wheaton
303 W. Wesley Street
Wheaton, Illinois
60187

RE: Agreement No. 9676225-001 dated 1/18/18 (the "Agreement")

Dear Lessee/Customer:

Lessee/Customer hereby consents and acknowledges that Toshiba is assigning to Wells Fargo Vendor Financial Services ("WVFS"), all of Toshiba's rights, title and interest in and to (a) the equipment covered by the Agreement, including the obligation to provide the right to use the equipment, (b) all rights and remedies therein, including the right to collect rent due thereon, to repossess the property in the event of default by Lessee/Customer under the Agreement and the right to initiate and maintain such legal proceedings, and (c) Toshiba's rights as owner under the Agreement, including the right to receive equipment payments thereunder. None of Toshiba's obligations under the Agreement, however, are assumed by WVFS. Lessee/Customer agrees that WVFS' rights, as Toshiba's assignee, will not be subject to any claims, defenses, or setoffs that Lessee/Customer may have against Toshiba. Lessee/Customer and Toshiba further acknowledge that the assignment by Toshiba to WVFS shall not affect Toshiba's or Lessee/Customer's obligations under the assigned Agreement.

Please acknowledge the sufficiency of this notification and our consent to the same by signing in the space indicated below and fax an executed copy to your Toshiba sales representative.

Should you have any questions or comments, please contact our office.

Sincerely,

Toshiba Business Solutions, a division of Toshiba America Business Solutions,

Inc.

By: Martin Schopf

Name & Title: Martin Schopf VP/CM

Acknowledged and Agreed to this 17th day of Jan. 2018

Lessee/Customer: City of Wheaton

By: Michael J. Gresek

Name & Title: MICHAEL J. GRESEK

MAYOR

