



Meeting Date: 7/12/2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s) _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s) _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Bruce Dandy *B Dandy*

Agenda Item No. I-5

Reviewed By: City Manager *[Signature]*

City Attorney *[Signature]*

Finance *[Signature]*

Other (Specify)

DATE: June 28, 2011

TO: City Council

FROM: Bruce Dandy *B Dandy*
Finance

SUBJECT: Lease Agreement with Toshiba America Business Solutions

RECOMMENDATION

That City Council approve and authorize the Mayor to execute agreement A-7411 with Toshiba America Business Solutions for an amount not to exceed \$325,000 for the replacement of 29 copiers.

DISCUSSION

A 5-year equipment lease agreement with Toshiba America Business Solutions for 29 copiers is set to expire the end of August, 2011. These copiers are part of our fleet of 58 copiers used throughout the City and covered under 4 equipment agreements. In October, 2010 the City issued a formal request for proposal (RFP) that involved 9 companies. Now in 2011, a five year lease covering 29 copiers is expiring and staff recommends awarding the replacement of the copiers to Toshiba America Business Solutions. Staff's recommendation is based upon the prior bid, technical specifications of the equipment, current IS operating systems, and cost. Toshiba has offered a buy-out and replacement lease that will save the City \$94,355 over the prior five year lease.

The equipment lease is proposed to not exceed \$325,000. The agreement is for a 5 year term. The not to exceed prices allow for some configuration changes over the term of the agreements, consistent with the experiences staff has had in prior lease agreements. This agreement represents the best alternatives and value to the City.

FINANCIAL IMPACT

Copier expenses are charged to operating departments/divisions based upon usage on a quarterly basis in arrears. Clearing account 101-0000-101-7200 is used to record the expenses and department charges. Sufficient funds exist in department operating accounts. The anticipated result is a cost reduction of \$94,000 over five years.

Attachment #1: Agreement A-7411

TOSHIBA

FINANCIAL SERVICES

Equipment Lease Agreement
SLG Commercial Pricing

Agreement # _____

EQUIPMENT

Equipment Model & Description

Serial Number

Accessories

see Schedule A

See attached schedule for additional Equipment / Accessories

Equipment Location (if different from Billing Address) _____

SUPPLIER

TBS CA/NV

Name

9008 Research Dr

Address

Irvine

CA

92618

City

State

Zip

PURCHASE OPTION AT END OF TERM

Fair Market Value

TRANSACTION TERMS

Lease Payment \$ 11,775.00 Term 60 months
(plus applicable taxes)

Billing Period (monthly if not checked)

Monthly Quarterly Semi-Annually Annually

The following additional payments are due on the date this Agreement is signed by you:

SECURITY DEPOSIT \$ 0

ADVANCE PAYMENT **\$ 0 **Applied to: first last
(plus applicable taxes)

DOCUMENT FEE \$ 75.00

YOU HAVE SELECTED THE EQUIPMENT. THE SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY THE TERMS OF THIS LEASE. YOU ARE AWARE OF THE NAME OF THE MANUFACTURER OF EACH ITEM OF EQUIPMENT AND YOU WILL CONTACT EACH MANUFACTURER FOR A DESCRIPTION OF YOUR WARRANTY RIGHTS. WE MAKE NO WARRANTIES TO YOU, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, OR OTHERWISE. WE PROVIDE THE EQUIPMENT TO YOU AS-IS. WE SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES.

EXCEPT AS PROVIDED IN SECTION 3, YOUR PAYMENT OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION OR SETOFF FOR ANY REASON WHATSOEVER. BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL.

BY SIGNING THIS LEASE, YOU ACKNOWLEDGE RECEIPT OF PAGE 2 OF THIS LEASE, AND AGREE TO THE TERMS ON BOTH PAGES 1 AND 2. ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU AND US FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

LESSOR ("We" "Us")

Toshiba America Business Solutions, Inc.
1961 Hirst Drive, Moberly, MO 65270

By: _____

Name: _____

Title: _____

Date: _____

LESSEE ("You")

City of Oxnard

Full Legal Name

300 West Third St

Billing Address

Oxnard

CA

93030

City

State

Zip

Bruce Dandy

805-385-7478

Contact Name

Phone

E-mail Address

By: X _____
Signature of Authorized Signer

Name: _____
Please Print

Title: _____

Date: _____ Fed Tax ID 956000756

Date of Signature

For Supplier Use Only

Visit us at <http://toshiba.leasesource.com>

Documentation Checklist:

- Invoice
- Purchase Order
- Tax Exemption Certificate
- Certificate of Insurance
- Other _____

Other supporting documents as requested:

- Delivery and Acceptance
- Copy of Bid and Award
- Opinion of Counsel
- Assignment
- Other _____
- UCC Financing Statements
- Copy of Board Minutes
- Amendment (for certain states)
- Cert of Incumbency/Resolution

TBS 1657(b) 03/05

ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

1. **COMMENCEMENT OF LEASE.** Commencement of this Lease and acceptance of the Equipment shall occur upon delivery of the Equipment to you. You agree to inspect the Equipment upon delivery and verify by telephone or in writing such information as we may require. If you signed a purchase order or similar agreement for the purchase of the Equipment, by signing this Lease you assign to us all of your rights, but none of your obligations under it. All attachments, accessories, replacements, replacement parts, substitutions, additions and repairs to the Equipment shall form part of the Equipment under this Lease.

2. **SECURITY DEPOSIT.** The Security Deposit will be held by us, without interest, and may be commingled (unless otherwise required by law), until all obligations under this Lease are satisfied, and may be applied at our option against amounts due under this Lease. The Security Deposit will be returned to you upon termination of the Lease, provided you are not in default, or applied to the last Lease Payment or to the amount we may quote for any purchase or upgrade of the Equipment.

3. **LEASE PAYMENTS.** You agree to remit to us the Lease Payment and all other sums when due and payable each Billing Period at the address we provide to you from time to time. Lease Payments are due whether or not you are invoiced. You authorize us to adjust the Lease Payments by not more than 15% to reflect any reconfiguration of the Equipment or adjustments to reflect applicable sales taxes or the cost of the Equipment by the manufacturer/supplier.

NON-APPROPRIATION OF FUNDS. You intend to remit to us all Lease Payments and other payments for the full Term if funds are legally available. In the event you are not granted an appropriation of funds at any time during the Term for the Equipment or for equipment which is functionally similar to the Equipment and operating funds are not otherwise available to you to pay Lease Payments and other payments due and to become due under this Lease, and there is no other legal procedure or available funds by or with which payment can be made to us, and the non-appropriation did not result from an act or omission by you, you shall have the right to return the Equipment in accordance with Section 12 of this Lease and terminate this Lease on the last day of the fiscal period for which appropriations were received without penalty or expense to you, except as to the portion of the Lease Payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of your fiscal period, your chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the fiscal period, (b) such non-appropriation did not result from any act or failure to act by you, and (c) you have exhausted all funds legally available to pay Lease Payments. If you terminate this Lease because of a non-appropriation of funds, you may not purchase, lease, or rent, during the subsequent fiscal period, equipment performing the same functions as, or functions taking the place of, those performed by the Equipment provided, however, that these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Lease. This Section 3 shall not permit you to terminate this Lease 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.

4. **LEASE CHARGES.** You agree to: (a) pay all costs and expenses associated with the use, maintenance, servicing, repair or replacement of the Equipment; (b) pay all premiums and other costs of insuring the Equipment; (c) reimburse us for all costs and expenses (including reasonable attorneys' fees and court costs) incurred in enforcing this Lease; and (d) pay all other costs and expenses for which you are obligated under this Lease. **NOTWITHSTANDING THE FACT THAT YOU MAY BE EXEMPT FROM THE PAYMENT OF PERSONAL PROPERTY TAXES,** you acknowledge that as the Owner of the Equipment, WE may be required to pay personal property taxes, and you agree, at our discretion, to either (1) reimburse us annually for all personal property and other similar taxes and governmental charges associated with the ownership, possession or use of the Equipment which we are required to pay, or (2) remit to us each Billing Period our estimate of the pro-rated equivalent of such taxes and governmental charges. You agree to pay us an administrative fee for the processing of taxes, assessments or fees which may be due and payable under this Lease. We may take on your behalf any action required under this Lease which you fail to take, and upon receipt of our invoice you will promptly pay our costs (including insurance premiums and other payments to affiliates), plus reasonable processing fees. Restrictive endorsements on checks you send to us will not reduce your obligations to us. We may charge you a return check or non-sufficient funds charge of \$25.00 for any check which is returned by the bank for any reason (not to exceed the maximum amount permitted by law).

5. **LATE CHARGES.** For any payment which 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 \$22.00 (not to exceed the maximum amount permitted by law) as reasonable collection costs.

6. **OWNERSHIP, USE, MAINTENANCE AND REPAIR.** We own the Equipment and you have the right to use the Equipment under the terms of this Lease. If this Lease is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all of your obligations under this Lease. You hereby assign to us all of your rights, but none of your obligations, under any purchase agreement for the Equipment. We hereby assign to you all our rights under any manufacturer or supplier warranties, so long as you are not in default hereunder. You must keep the Equipment free of liens. You may not remove the Equipment from the address indicated on the front of this Lease without first obtaining our approval. You agree to: (a) keep the Equipment in your exclusive control and possession; (b) **USE THE EQUIPMENT IN THE MANNER FOR WHICH IT WAS INTENDED;** (c) use the Equipment in conformity with all insurance requirements, manufacturer's instructions and manuals; (d) keep the Equipment repaired and maintained in good working order and as required by the manufacturer's warranty, certification and standard full service maintenance contract; and (e) give us reasonable access to inspect the Equipment and its maintenance and other records.

7. **INDEMNITY.** You are responsible for all losses, damage, claims, infringement claims, injuries and attorneys' fees and costs ("Claims"), incurred or asserted by any person, in any manner relating to the Equipment, including its use, condition or possession. You agree to defend and indemnify us against all Claims, although we reserve the right to control the defense and to select or approve defense counsel. This indemnity continues beyond the termination of this Lease, for acts or omissions which occurred during the Term of this Lease. You also agree that this Lease has been entered into on the assumption that we will be entitled to certain tax benefits available to the owner of the Equipment. You agree to indemnify us for the loss of any income tax benefits caused by your acts or omissions inconsistent with such assumption or this Lease. In the event of any such loss, we may increase the Lease Payments and other amounts due to offset any such adverse effect.

8. **LOSS OR DAMAGE.** If any item of 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 of: (i) all past due and current Lease Payments and Lease Charges, (ii) the present value of all remaining Lease Payments and Lease Charges for the item, discounted at the rate of 6% per annum (or the lowest rate permitted by law, whichever is higher) and (iii) the Fair Market Value of the Equipment. We will then transfer to you all our right, title and interest in the Equipment AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION,

TITLE OR VALUE. Insurance proceeds shall be applied toward repair, replacement or payment hereunder, as applicable. In this Lease, "Fair Market Value" of the Equipment means its fair market value at the end of the Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by us.

9. **INSURANCE.** You agree, at your cost, to: (a) keep the Equipment insured against all risks of physical loss or damage for its full replacement value, naming us as loss payee; and (b) maintain public liability insurance, covering personal injury and Equipment damage for not less than \$300,000 per occurrence, naming us as additional insured. The policy must be issued by an insurance carrier acceptable to Lessor, must provide us with not less than 15 days' prior written notice of cancellation, non-renewal or amendment, and must provide deductible amounts acceptable to us.

10. **DEFAULT.** You will be in default under this Lease if: (a) you fail to remit to us any payment within ten (10) days of the due date or breach any other obligation under this Lease; (b) a petition is filed by or against you under any bankruptcy or insolvency law; or (c) you default under any other agreement with us.

11. **REMEDIES.** If you default, we may do one or more of the following: (a) recover from you, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of: (i) all past due and current Lease Payments and Lease Charges, (ii) the present value of all remaining Lease Payments and Lease Charges due and payable for the current fiscal period, discounted at the rate of 6% per annum (or the lowest rate permitted by law, whichever is higher) and (iii) the Fair Market Value of the Equipment; (b) declare any other agreements between us in default; (c) require you to return all of the Equipment in the manner outlined in Section 12, or take possession of the Equipment, in which case we shall not be held responsible for any losses directly or indirectly arising out of, or by reason of the presence and/or use of any and all proprietary information residing on or within the Equipment, and to lease or sell the Equipment or any portion thereof, and to apply the proceeds, less reasonable selling and administrative expenses, to the amounts due hereunder; (d) charge you interest on all amounts due us from the due date until paid at the rate of 1-1/2% per month, but in no event more than the lawful maximum rate; (e) charge you for expenses incurred in connection with the enforcement of our remedies including, without limitation, repossession, repair and collection costs, attorneys' fees and court costs. These remedies are cumulative, are in addition to any other remedies provided for by law, and may be exercised concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any other right or future right.

12. **END OF TERM OPTIONS; RETURN OF EQUIPMENT.** At the end of the Term and upon 30 days prior written notice to us, you shall either (a) return all of the Equipment, or (b) purchase all of the Equipment AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE, for the Fair Market Value, plus applicable sales and other taxes. This Lease shall continue on a month-to-month basis and you shall pay us the same Lease Payments and Lease Charges as applied during the Term until the Equipment is returned to us or you pay us the applicable purchase price (and taxes). If you are in default, (or a non-appropriation of funds occurs) or you do not purchase the Equipment at the end of the Term (or any month-to-month renewal term), you shall return all of the Equipment, freight and insurance prepaid at your cost and risk, to wherever we indicate in the continental United States, with all manuals and logs, in good order and condition (except for ordinary wear and tear from normal use), packed per the shipping company's specifications, and pay an inspection, restocking and handling fee of \$100, not to exceed the maximum permitted by law, as reasonable compensation for our costs in processing returned equipment. You will pay us for any loss in value resulting from the failure to maintain the Equipment in accordance with this Lease or for damages incurred in shipping and handling.

13. **ASSIGNMENT.** You may not assign or dispose of any rights or obligations under this Lease or sub-lease the Equipment, without our prior written consent. We may, without notifying you, (a) assign this Lease or our interest in the Equipment; and (b) release information we have about you and this Lease to the manufacturer, supplier or any prospective investor, participant or purchaser of this Lease. If we do make an assignment under subsection 13(a) above, our assignee will have all of our rights under this Lease, but none of our obligations. You agree not to assert against our assignee claims, offsets or defenses you may have against us.

14. **MISCELLANEOUS.** Notices must be in writing and will be deemed given 5 days after mailing to your (or our) address. You represent that: (a) you are the entity indicated in this Lease; (b) any documents required to be delivered in connection with this Lease (collectively, the "Documents") have been duly authorized by you in accordance with all applicable laws, rules, ordinances, and regulations; (c) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of your governing body, and hold the offices indicated below their signatures; (d) the Equipment is essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and shall be used during the Term only by you and only to perform such function; (e) you intend to use the Equipment for the entire Term and shall take all necessary action to include in your annual budget any funds required to fulfill your obligations each fiscal period during the Term; (f) you have complied fully with all applicable law governing open meetings, public bidding and appropriations, required in connection with this Lease and the debt under applicable state law; (g) your obligations to remit Lease Payments under this Lease constitutes a current expense and not a debt under applicable state law; (h) this Lease is binding on you and your successors and assigns; and (i) all financial information you have provided is true and a reasonable representation of your financial condition. You authorize us or our agent to be your attorney-in-fact for the sole purpose of filing UCC financing statements. Any claim you have against us must be made within two (2) years after the event which caused it. If a court finds any provision of this Lease to be unenforceable, all other terms shall remain in effect and enforceable. You authorize us to insert or correct missing information on this Lease, including your proper legal name, serial numbers and any other information describing the Equipment. If you so request, and we permit the early termination of this Lease, you agree to pay a fee for such privilege. **THE PARTIES INTEND THIS TO BE A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE ("UCC"). YOU WAIVE ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC.**

15. **TOSHIBA QUALITY COMMITMENT.** The Equipment is covered by the terms of the Toshiba Quality Commitment, a copy of which may be obtained from an authorized Toshiba Copier Dealer.

AMENDMENT TO EQUIPMENT LEASE AGREEMENT

THIS AMENDMENT TO EQUIPMENT LEASE AGREEMENT ("Amendment") is made effective as of _____, 2011 by and between the CITY OF OXNARD, a body corporate, ("You") and TOSHIBA AMERICA BUSINESS SOLUTIONS, INC. ("We", "Us").

BACKGROUND

- A. By that certain Equipment Lease Agreement No. _____ dated _____, 2011 by and between You and Us (the "Lease"), We agree to extend financing to You upon and subject to the terms and conditions set forth in the Lease.
- B. We and You desire to amend the terms and conditions of the Lease, upon and subject to the terms and conditions of this Amendment.
- C. All capitalized terms not otherwise defined herein will have the meanings set forth in the Lease.

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

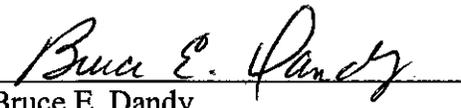
1. **Insurance.** Section 9 of the Lease is deleted in its entirety and replaced to read as follows:
"You maintain a self-insurance program (**Program**) for general liability, loss or damage to the Equipment and other claims in accordance with Government Code §989 and §990. As of the date of execution of this Lease, Program consists of a self-insurance retention of \$1 million and excess coverage of \$24 million provided through membership in Big Independent cities Excess Pool (BICEP), a risk-sharing pool for liability, loss, or damage and other claims. You agrees to add Us as an additional insured to its BICEP policy and provide certificates or other evidence of coverage at our request. We shall be given thirty days notice of any proposed cancellation of your BICEP policy. You shall retain the right to alter the Program from time to time."
2. **Default.** In Section 10 of the Lease, the following is inserted as the last sentence:
"If You fail to cure any default within ten (10) days of receipt of notice of such default, We shall have the right to pursue any of all of the remedies outlined in Section 11."
3. **Default.** Section 10 (c) of the Lease is deleted in its entirety as follows:
"or (c) you default under any other agreement with us."
4. **Assignment.** The second sentence in Section 13 of the Lease is replaced in its entirety with the following:
"We shall notify You prior to the sale, assignment, or transfer of this Lease and our interests in the Equipment to a third party assignee."

5. **Effective Date.** This Amendment is executed to be effective the same day as the Lease, and is incorporated into and made a part of the Lease.
6. **Effect Of Amendment.** All terms and condition of the Lease not expressly modified hereby remain in full force and are hereby ratified by the parties.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment as of the date first above written

CITY OF OXNARD

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC.



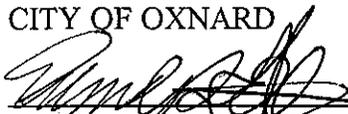
Bruce E. Dandy
Accounting Manager

SCHLESBACH BUSINESS SOLUTIONS

DEPARTMENT	EQUIPMENT ID#	Toshiba Model	Serial #	RADF	# of Paper Trays	Stapling Finisher	Large Capacity Paper Tray	Network Print & Scan	Fax	Lease #	Installation Date	black CPC	color CPC
PRE SCHOOL		255		X	3	X	X	X	X			0.012	n/a
YOUTH Dev / CITY CORP		355		X	3	X	X	X	X			0.012	n/a
WWTP ADMIN		3540C		X	3	X	X	X	X			0.012	0.05
FLEET SERVICES - PARKS		3540C		X	3	X	X	X	X			0.012	0.05
FLEET SERVICES - OFFICE		2540C		X	3	X	X	X	X			0.012	0.05
AFFORDABLE HOUSING		3540C		X	3	X	X	X	X			0.012	0.05
LIBRARY		4540C		X	3	X	X	X	X			0.012	0.05
WILSON CENTER		3540C		X	3	X	X	X	X			0.012	0.05
CITY CLERK		2540C		X	3	X	X	X	X			0.012	0.05
DEL NORTE RRC		2540C		X	3	X	X	X	X			0.012	0.05
DEL NORTE RRC		3540C		X	3	X	X	X	X			0.012	0.05
RIVER RIDGE GC		255		X	3	X	X	X	X			0.012	n/a
CARNEGIE		2540C		X	3	X	X	X	X			0.012	0.05
COMM DEV		3540C		X	3	X	X	X	X			0.012	0.05
ENGINEERING		2540C		X	3	X	X	X	X			0.012	0.05
RECREATION		4540C		X	3	X	X	X	X			0.012	0.05
RECREATION		4540C		X	3	X	X	X	X			0.012	0.05
IS - 2ND FLOOR		3540C		X	3	X	X	X	X			0.012	0.05
WATER		2540C		X	3	X	X	X	X			0.012	0.05
DEL NORTE RRC/TRAILER		3540C		X	3	X	X	X	X			0.012	0.05
GIS		2540C		X	3	X	X	X	X			0.012	0.05
PUBLIC WORKS INSP		3540C		X	3	X	X	X	X			0.012	0.05
BUILDING INSPECTORS		3540C		X	3	X	X	X	X			0.012	0.05

EQUIPMENT LEASE AGREEMENT
Contract No. 6962828-0__

CITY OF OXNARD

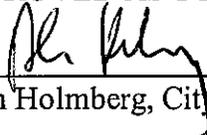


Edmund F. Sotelo, City Manager

VENDOR

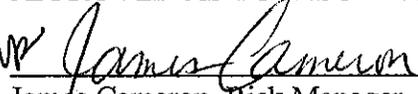
Toshiba America Business Solutions, Inc.

APPROVED AS TO FORM:



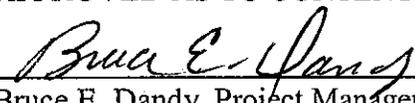
Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:



James Cameron, Risk Manager

APPROVED AS TO CONTENT:



Bruce E. Dandy, Project Manager

This counterpart number 2 of 2 shall not constitute chattel paper for purpose of the Uniform Commercial Code.

