



R-25-56

RESOLUTION APPROVING PROCUREMENT AND LIQUIDATION AGREEMENT WITH UNIFIED FLEET SERVICES, LLC, CONCERNING SOURCING AND PROCURING VEHICLES FOR LEASING; AND, GRANTING AUTHORITY TO THE COUNTY MANAGER, DEPUTY COUNTY MANAGER, SHERIFF AND UNDERSHERIFF TO EXECUTE RELATED LEASING CONTRACTS

WHEREAS, the Clear Creek County Board of County Commissioners (“Board”) finds it to be in the best interests of the County to ensure that its fleet of vehicles remains safe and efficient, in the most cost-effective manner, to ensure the safety and well-being of drivers and the public; and

WHEREAS, engaging in lease vehicle cycling accomplishes the above-mentioned goals; and

WHEREAS, Unified Fleet Services, LLC, sources and procures vehicles for leasing; and

WHEREAS, Unified Fleet Services has been selected as the most reliable and responsive company to provide leasing services in accordance with the County’s procurement policy; and

WHEREAS, the Board desires to enter into the Procurement and Liquidation Agreement (“Agreement”) with Unified Fleet Services, LLC, attached to this Resolution as Exhibit “A,” to source vehicles for leasing and to dispose of County-owned or vehicles; and

WHEREAS, the Board further desires that proceeds from vehicle disposals be used solely for the initiation of new leases for like-for-like replacement vehicles; and

WHEREAS, the Board desires to authorize the County Manager, Deputy County Manager, Sheriff and Undersheriff to execute leasing contracts, a template sample of which is attached as Exhibit “B” to this Resolution, to accomplish the Board’s intent, allowing those individuals to sell leased or owned vehicles through the Unified Fleet Services vehicle disposal process without securing additional Board approval; and

WHEREAS, all other methods of vehicle disposal—including donation, cash sales, or auction—must receive prior approval from the Board; and

WHEREAS, the overall fleet size may not increase beyond the 2025 baseline fleet size without Board approval; and

WHEREAS, the disposal of leased vehicles with more than \$5,000 in net negative equity must receive Board approval.

NOW, THEREFORE, BE IT RESOLVED, by the Clear Creek County Board of County Commissioners, that the Procurement and Liquidation Agreement between Unified Fleet Services, LLC, and the County, attached as Exhibit “A” to this Resolution, is hereby approved.



BE IT FURTHER RESOLVED, that the County Manager, Deputy County Manager, Sheriff and Undersheriff are authorized to execute leasing contracts, template sample of which is attached as Exhibit “B” to this Resolution.

BE IT EVEN FURTHER RESOLVED, that all other methods of vehicle disposal—including donation, cash sales, or auction—must receive prior approval from the Board; that overall fleet size may not increase beyond the 2025 baseline fleet size without Board approval; and that the disposal of leased vehicles with more than \$5,000 in net negative equity must receive Board approval.

ADOPTED this 17th day of June, 2025, at a regularly scheduled meeting of the Clear Creek County Board of County Commissioners, effective the date hereof.


George Marlin, Chair


Jodie Hartman-Ball, Commissioner


Rebecca Lloyd, Commissioner

ATTEST:


Deputy Clerk and Recorder
For Brenda L. Corbett
Clear Creek County Clerk and Recorder

EXHIBIT "A"

Procurement and Liquidation Agent Agreement

This Procurement and Liquidation Agent Agreement (this "Agreement"), dated as of the date it is fully executed by the Parties (the "Effective Date"), is entered into by and between Unified Fleet Services, LLC, a Utah limited liability company ("UFS"), and Clear Creek County Board of County Commissioners ("Client"), and together with UFS, the "Parties", and each, a "Party") in coordination with "Partner Banks" (including financial partners introduced by UFS now or in the future).

WHEREAS, UFS is in the business of sourcing and procuring vehicles and equipment for municipalities under a limited power of attorney on behalf of the Client; and

WHEREAS, the Client is a municipality that is currently or will be leasing vehicles from Partner Banks that were sourced and procured by UFS acting as an agent for Partner Banks; and

WHEREAS, the Client desires UFS to sell and liquidate certain leased vehicles that have reached lease maturity, and UFS is willing to assist the Client with liquidating its leased vehicles, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, UFS and the Client agree as follows:

1. Appointment. The Client hereby appoints and engages UFS, and UFS hereby accepts such appointment and engagement, to liquidate the leased vehicles identified in the Partner Banks' lease schedules (the "Vehicles"). Any additional vehicles that the Client desires UFS to liquidate shall be evidenced by a schedule identifying the vehicles, and such transactions shall be governed by this Agreement.
2. Authorization. The Client authorizes UFS to access its lease information with Partner Banks, including contract numbers, payment status, and lease payoff amounts. The Client further authorizes UFS to facilitate lease and lien payoffs for vehicles liquidated by UFS.
3. Limited Power of Attorney. The Client shall issue a Limited Power of Attorney authorizing UFS to purchase, register, and subsequently sell vehicles and equipment as requested and authorized by the Client in writing.
4. Liquidation. At the Client's written request, UFS shall act as the Client's agent in selling the Vehicles. The Client shall provide UFS with a power of attorney in the form required by UFS for the sale of the Vehicles and the collection of proceeds to pay off the Client's lease balance for the Vehicles. UFS does not guarantee or represent the future sales price of the Vehicles, as market conditions may rapidly change.

The Client authorizes UFS to sell the Vehicles at or above the Client's designated minimum sale price. If a Vehicle fails to sell at the designated minimum sale price, UFS may sell the Vehicle at the prevailing market price, subject to the Client's approval of the final sales price prior to accepting a purchaser's offer.

UFS will provide the Client with an itemized invoice detailing:

1. The Vehicle's sales price;

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2. Related selling fees;
3. Costs of repairs, detailing, and deferred maintenance; and
4. The total lease payoff amount.

UFS shall coordinate with Partner Banks and/or existing financial arrangements of the Client to ensure that payment proceeds are applied to the balance due on the related financing or leasing contracts. UFS makes no representations or commitments regarding the accuracy of payoff amounts for non-Partner Banks.

5. Fees and Expenses In consideration of the services provided by UFS, the Client shall pay UFS a liquidation fee ("Liquidation Fee") determined by UFS for each Vehicle liquidated. Unless otherwise specified in a signed writing, the Liquidation Fee shall be:
 - The greater of \$500 or 10% per Vehicle surplussed on behalf of the entity;
 - Up to \$500 per Vehicle replaced by a newly leased vehicle with UFS acting as the agent; or
 - \$2,000 per Vehicle not being replaced by a newly leased vehicle with UFS acting as the agent.

The Liquidation Fee shall be payable within thirty (30) days of the sale or deducted from the sales price of the equipment. Late payments shall bear interest at a rate of 6% per month. The Client shall reimburse UFS for all costs incurred in collecting late payments, including attorneys' fees.

6. Procurement The Client authorizes UFS to utilize any available government discounts in procuring, ordering, and purchasing units to be leased to the Client. As directed by the Client, UFS is authorized to place orders on behalf of the Client to secure vehicle or equipment allocations to the best of UFS' ability. UFS makes no representation or guarantee regarding the availability or pricing of units for the Client. UFS is prohibited from ordering or purchasing units under the Client's name for any purpose other than for the Client's benefit.
7. Term This Agreement shall commence on the Effective Date and shall remain in effect for three (3) years, with automatic one-year renewals unless terminated by either Party. Either Party may terminate this Agreement by providing written notice to the other Party.
8. Entire Agreement This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements, representations, and understandings, whether written or oral.
9. Amendments No amendment or modification of this Agreement shall be effective unless in writing and signed by both Parties.
10. Relationship of the Parties The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall create any agency, partnership, joint venture, or fiduciary relationship between the Parties, and neither Party shall have the authority to bind or obligate the other Party.



11. Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, United States of America, without regard to its conflict of laws principles.
12. Jurisdiction and Venue Each Party agrees to submit to the exclusive jurisdiction of the courts of the State of Utah sitting in Salt Lake County for any legal proceedings arising out of or relating to this Agreement. A final judgment in such proceedings shall be enforceable in other jurisdictions.
13. Counterparts This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A signed copy delivered electronically shall have the same legal effect as delivery of an original signed copy.
14. Non-Appropriation Notwithstanding anything to the contrary contained in this Agreement, Client shall have no obligations under this Agreement, nor shall any payment be made to UFS, with respect to any period or services performed after any December 31 of each calendar year during the term of this Agreement, without an appropriation therefor by Client in accordance with a budget adopted by the Client in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. § 29-1-101 *et seq.*), and the TABOR Amendment (Colorado Constitution, Article X, Sec. 20). In the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge Client's obligations, that failure (i) shall act to terminate this Agreement at the time as the then-existing and available appropriations are depleted, and (ii) neither that failure nor termination shall constitute a default or breach of this Agreement by the Client.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date by their duly authorized representatives.

Client (CLEAR CREEK COUNTY BOARD OF COUNTY COMMISSIONERS)

By: 

Name: George Marlin

Title: Chair

Date: 6-17-25

Unified Fleet Services, LLC

By: 

Name: John Scott

Title: CEP

Date: 5/31/2025

PLEASE NOTE: This, presented upon your request, may or may not contain the same language as the contract proposed after credit approval is obtained. As such, no negotiation of contract terms will occur until after credit approval and issuance of formal contract.

GOVERNMENT OBLIGATION CONTRACT

Obligor

Obligee

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Dated as of

This Government Obligation Contract dated as of the date listed above is between Obligee and Obligor listed directly above. Obligee desires to finance the purchase of the Equipment described in Exhibit A to Obligor and Obligor desires to have Obligee finance the purchase of the Equipment subject to the terms and conditions of this Contract which are set forth below.

I. Definitions

Section 1.01 Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Additional Schedule" refers to the proper execution of additional schedules to Exhibit A and Exhibit B, as well as other exhibits or documents that may be required by the Obligee all of which relate to the financing of additional Equipment.

"Budget Year" means the Obligor's fiscal year.

"Commencement Date" is the date when Obligor's obligation to pay Contract Payments begins.

"Contract" means this Government Obligation Contract and all Exhibits attached hereto, all addenda, modifications, schedules, refinancings, guarantees and all documents relied upon by Obligee prior to execution of this Contract.

"Contract Payments" means the payments Obligor is required to make under this Contract as set forth on Exhibit B.

"Contract Term" means the Original Term and all Renewal Terms.

"Exhibit" includes the Exhibits attached hereto, and any "Additional Schedule", whether now existing or subsequently created.

"Equipment" means all of the items of Equipment listed on Exhibit A and any Additional Schedule, whether now existing or subsequently created, and all replacements, restorations, modifications and improvements.

"Government" as used in the title hereof means a State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended ("Code"), or a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.

"Obligee" means the entity originally listed above as Obligee or any of its assignees.

"Obligor" means the entity listed above as Obligor and which is financing the Equipment through Obligee under the provisions of this Contract.

"Original Term" means the period from the Commencement Date until the end of the Budget Year of Obligor.

"Renewal Term" means the annual term which begins at the end of the Original Term and which is simultaneous with Obligor's Budget Year and each succeeding Budget Year for the number of Budget Years necessary to comprise the Contract Term.

"State" means the state in which Obligor is located.

II. Obligor Warranties

Section 2.01 Obligor represents, warrants and covenants as follows for the benefit of Obligee or its assignees:

- (a) Obligor is an "issuer of tax exempt obligations" because Obligor is the State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended, (the "Code") or because Obligor is a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.
- (b) Obligor has complied with any requirement for a referendum and/or competitive bidding.
- (c) Obligor has complied with all statutory laws and regulations that may be applicable to the execution of this Contract; Obligor, and its officer executing this Contract, are authorized under the Constitution and laws of the State to enter into this Contract and have used and followed all proper procedures of its governing body in executing and delivering this Contract. The officer of Obligor executing this Contract has the authority to execute and deliver this Contract. This Contract constitutes a legal, valid, binding and enforceable obligation of the Obligor in accordance with its terms.
- (d) Obligor shall use the Equipment only for essential, traditional government purposes.
- (e) Should the IRS disallow the tax-exempt status of the interest portion of the Contract Payments as a result of the failure of the Obligor to use the Equipment for governmental purposes, or should the Obligor cease to be an issuer of tax exempt obligations, or should the obligation of Obligor created under this Contract cease to be a tax exempt obligation for any reason, then Obligor shall be required to pay additional sums to the Obligee or its assignees so as to bring the after tax yield on this Contract to the same level as the Obligee or its assignees would attain if the transaction continued to be tax-exempt.
- (f) Obligor has never non-appropriated funds under a contract similar to this Contract.
- (g) Obligor will submit to the Secretary of the Treasury an information reporting statement as required by the Code.
- (h) Upon request by Obligee, Obligor will provide Obligee with current financial statements, reports, budgets or other relevant fiscal information.
- (i) Obligor shall retain the Equipment free of any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. as amended and supplemented.
- (j) Obligor hereby warrants the General Fund of the Obligor is the primary source of funds or a backup source of funds from which the Contract Payments will be made.
- (k) Obligor presently intends to continue this Contract for the Original Term and all Renewal Terms as set forth on Exhibit B hereto. The official of Obligor responsible for budget preparation will include in the budget request for each Budget Year the Contract Payments to become due in such Budget Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Budget Year sufficient to pay the Contract Payments coming due therein. Obligor reasonably believes that moneys can and will lawfully be appropriated and made available for this purpose.
- (l) Obligor has selected both the Equipment and the vendor(s) from whom the Equipment is to be purchased upon its own judgment and without reliance on any manufacturer, merchant, vendor or distributor, or agent thereof, of such equipment to the public.
- (m) Obligor owns free and clear of any liens any additional collateral pledged, subject only to the lien described herein; Obligor has not and will not, during the Contract Term, create, permit, incur or assume any liens, liens or encumbrances of any kind with respect to the Equipment and any additional collateral except those created by this Contract.

Section 2.02 Escrow Agreement. In the event both Obligee and Obligor mutually agree to utilize an Escrow Account, then immediately following the execution and delivery of this Contract, Obligee and Obligor agree to execute and deliver and to cause Escrow Agent to execute and deliver the Escrow Agreement. This Contract shall take effect only upon execution and delivery of the Escrow Agreement by the parties thereto. Obligee shall deposit or cause to be deposited with the Escrow Agent for credit to the Equipment Acquisition Fund the sum of N/A, which shall be held, invested and disbursed in accordance with the Escrow Agreement.

III. Acquisition of Equipment, Contract Payments and the Purchase Option Price

Section 3.01 Acquisition and Acceptance. Obligor shall be solely responsible for the ordering of the Equipment and for the delivery and installation of the Equipment. Execution of the Certificate of Acceptance or, alternatively, Payment Request and Equipment Acceptance Form, by a duly authorized representative of Obligor, shall constitute acceptance of the Equipment on behalf of the Obligor.

Section 3.02 Contract Payments. Obligor shall pay Contract Payments exclusively to Obligee or its assignees in lawful, legally available money of the United States of America. The Contract Payments shall be sent to the location specified by the Obligee or its assignees. The Contract Payments shall constitute a current expense of the Obligor and shall not constitute an indebtedness of the Obligor. The Contract Payments, payable without notice or demand, are due as set forth on Exhibit B. Obligee shall have the option to charge interest at the highest lawful rate on any Contract Payment received later than the due date for the number of days that the Contract Payment(s) were late, plus any additional accrual on the outstanding balance for the number of days that the Contract Payment(s) were late. Obligee shall also have the option, on monthly payments only, to charge a late fee of up to 10% of the monthly Contract

Payment that is past due. Furthermore, Obligor agrees to pay any fees associated with the use of a payment system other than check, wire transfer, or ACH. Once all amounts due Obligor have been received, Obligor will release any and all of its rights, title and interest in the Equipment

SECTION 3.03 Contract Payments Unconditional. Except as provided under Section 4.01, THE OBLIGATIONS OF OBLIGOR TO MAKE CONTRACT PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS CONTAINED IN THIS CONTRACT SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SETOFF, OR SUBJECT TO DEFENSE OR COUNTERCLAIM.

Section 3.04 Purchase Option Price. Upon thirty (30) days written notice, Obligor shall have the option to pay, in addition to the Contract Payment, the corresponding Purchase Option Price which is listed on the same line on Exhibit B. This option is only available to the Obligor on the Contract Payment date and no partial prepayments are allowed. If Obligor chooses this option and pays the Purchase Option Price to Obligor then Obligor will transfer any and all of its rights, title and interest in the Equipment to Obligor.

Section 3.05 Contract Term. The Contract Term shall be the Original Term and all Renewal Terms until all the Contract Payments are paid as set forth on Exhibit B except as provided under Section 4.01 and Section 9.01 below. If, after the end of the budgeting process which occurs at the end of the Original Term or any Renewal Term, Obligor has not non-appropriated as provided for in this Contract then the Contract Term shall be extended into the next Renewal Term and the Obligor shall be obligated to make all the Contract Payments that come due during such Renewal Term.

Section 3.06 Disclaimer of Warranties. OBLIGEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER WARRANTY WITH RESPECT TO THE EQUIPMENT. OBLIGEE IS NOT A MANUFACTURER, SELLER, VENDOR OR DISTRIBUTOR, OR AGENT THEREOF, OF SUCH EQUIPMENT; NOR IS OBLIGEE A MERCHANT OR IN THE BUSINESS OF DISTRIBUTING SUCH EQUIPMENT TO THE PUBLIC. OBLIGEE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF THE INSTALLATION, OPERATION, POSSESSION, STORAGE OR USE OF THE EQUIPMENT BY OBLIGOR.

IV. Non-Appropriation

Section 4.01 Non-Appropriation. If insufficient funds are available in Obligor's budget for the next Budget Year to make the Contract Payments for the next Renewal Term and the funds to make such Contract Payments are otherwise unavailable by any lawful means whatsoever, then Obligor may non-appropriate the funds to pay the Contract Payments for the next Renewal Term. Such non-appropriation shall be evidenced by the passage of an ordinance or resolution by the governing body of Obligor specifically prohibiting Obligor from performing its obligations under this Contract and from using any moneys to pay the Contract Payments due under this Contract for a designated Budget Year and all subsequent Budget Years. If Obligor non-appropriates, then all obligations of the Obligor under this Contract regarding Contract Payments for all remaining Renewal Terms shall be terminated at the end of the then current Original Term or Renewal Term without penalty or liability to the Obligor of any kind provided that if Obligor has not delivered possession of the Equipment to Obligor as provided herein and conveyed to Obligor or released its interest in the Equipment by the end of the last Budget Year for which Contract Payments were paid, the termination shall nevertheless be effective but Obligor shall be responsible for the payment of damages in an amount equal to the amount of the Contract Payments thereafter coming due under Exhibit B which are attributable to the number of days after such Budget Year during which Obligor fails to take such actions and for any other loss suffered by Obligor as a result of Obligor's failure to take such actions as required. Obligor shall immediately notify the Obligor as soon as the decision to non-appropriate is made. If such non-appropriation occurs, then Obligor shall deliver the Equipment to Obligor as provided below in Section 9.04. Obligor shall be liable for all damage to the Equipment other than normal wear and tear. If Obligor fails to deliver the Equipment to Obligor, then Obligor may enter the premises where the Equipment is located and take possession of the Equipment and charge Obligor for costs incurred.

V. Insurance, Damage, Insufficiency of Proceeds

Section 5.01 Insurance. Obligor shall maintain both property insurance and liability insurance at its own expense with respect to the Equipment. Obligor shall be solely responsible for selecting the insurer(s) and for making all premium payments and ensuring that all policies are continuously kept in effect during the period when Obligor is required to make Contract Payments. Obligor shall provide Obligor with a Certificate of Insurance which lists the Obligor and/or assigns as a loss payee and an additional insured on the policies with respect to the Equipment.

- Obligor shall insure the Equipment against any loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Obligor in an amount at least equal to the then applicable Purchase Option Price of the Equipment. Alternatively, Obligor may insure the Equipment under a blanket insurance policy or policies.
- The liability insurance shall insure Obligor from liability and property damage in any form and amount satisfactory to Obligor.
- Obligor may self-insure against the casualty risks and liability risks described above. If Obligor chooses this option, Obligor must furnish Obligor with a certificate and/or other documents which evidences such coverage.
- All insurance policies issued or affected by this Section shall be so written or endorsed such that the Obligor and its assignees are named additional insureds and loss payees and that all losses are payable to Obligor and Obligor or its assignees as their interests may appear. Each policy issued or affected by this Section shall contain a provision that the insurance company shall not cancel or materially modify the policy without first giving thirty (30) days advance notice to Obligor or its assignees. Obligor shall furnish to Obligor certificates evidencing such coverage throughout the Contract Term.

Section 5.02 Damage to or Destruction of Equipment. Obligor assumes the risk of loss or damage to the Equipment. If the Equipment or any portion thereof is lost, stolen, damaged, or destroyed by fire or other casualty, Obligor will immediately report all such losses to all possible insurers and take the proper procedures to obtain all insurance proceeds. At the option of Obligor, Obligor shall either (1) apply the Net Proceeds to replace, repair or restore the Equipment or (2) apply the Net Proceeds to the applicable Purchase Option Price. For purposes of this Section and Section 5.03, the term Net Proceeds shall mean the amount of insurance proceeds collected from all applicable insurance policies after deducting all expenses incurred in the collection thereof.

Section 5.03 Insufficiency of Net Proceeds. If there are no Net Proceeds for whatever reason or if the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement of the Equipment, then Obligor shall, at the option of Obligor, either (1) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds or (2) apply the Net Proceeds to the Purchase Option Price and pay the deficiency, if any, to the Obligor.

Section 5.04 Obligor Negligence. Obligor assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property whether such injury or death be with respect to agents or employees of Obligor or of third parties, and whether such property damage be to Obligor's property or the property of others (including, without limitation, liabilities for loss or damage related to the release or threatened release of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or similar or successor law or any State or local equivalent now existing or hereinafter enacted which in any manner arise out of or are incident to any possession, use, operation, condition or storage of any Equipment by Obligor), which is proximately caused by the negligent conduct of Obligor, its officers, employees and agents.

Section 5.05 Indemnification. Obligor hereby assumes responsibility for and agrees to reimburse Obligor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Obligor that in any way relate to or arise out of a claim, suit or proceeding, based in whole or in part upon the negligent conduct of Obligor, its officers, employees and agents, or arose out of installation, operation, possession, storage or use of any item of the Equipment, to the extent permitted by Colorado law.

VI. Title and Security Interest

Section 6.01 Title. Title to the Equipment shall vest in Obligor when Obligor acquires and accepts the Equipment. Title to the Equipment will automatically transfer to the Obligor in the event Obligor non-appropriates under Section 4.01 or in the event Obligor defaults under Section 9.01. In such event, Obligor shall execute and deliver to Obligor such documents as Obligor may request to evidence the passage of legal title to the Equipment to Obligor.

Section 6.02 Security Interest. To secure the payment of all Obligor's obligations under this Contract, as well as all other obligations, debts and liabilities, plus interest thereon, whether now existing or subsequently created, Obligor hereby grants to Obligor a security interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit A, including any and all additional collateral listed on any other Exhibit A. The security interest established by this section includes not only all additions, attachments, repairs and replacements to the Equipment but also all proceeds therefrom. Obligor authorizes Obligor to prepare and record any Financing Statement required under the Uniform Commercial Code to perfect the security interest created hereunder. Obligor agrees that any Equipment listed on Exhibit A is and will remain personal property and will not be considered a fixture even if attached to real property.

VII. Assignment

Section 7.01 Assignment by Obligor. All of Obligor's rights, title and/or interest in and to this Contract may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees by Obligor at any time without the consent of Obligor. No such assignment shall be effective as against Obligor until the assignor shall have filed with Obligor written notice of assignment identifying the assignee. Obligor shall pay all Contract Payments due hereunder relating to such Equipment to or at the direction of Obligor or the assignee named in the notice of assignment. Obligor shall keep a complete and accurate record of all such assignments.

Section 7.02 Assignment by Obligor. None of Obligor's right, title and interest under this Contract and in the Equipment may be assigned by Obligor unless Obligor approves of such assignment in writing before such assignment occurs and only after Obligor first obtains an opinion from nationally recognized counsel stating that such assignment will not jeopardize the tax-exempt status of the obligation.



VIII. Maintenance of Equipment

Section 8.01 Equipment. Obligor shall keep the Equipment in good repair and working order, and as required by manufacturer's and warranty specifications. If Equipment consists of copiers, Obligor is required to enter into a copier maintenance/service agreement. Obligor shall have no obligation to inspect, test, service, maintain, repair or make improvements or additions to the Equipment under any circumstances. Obligor will be liable for all damage to the Equipment, other than normal wear and tear, caused by Obligor, its employees or its agents. Obligor shall pay for and obtain all permits, licenses and taxes related to the ownership, installation, operation, possession, storage or use of the Equipment. If the Equipment includes any titled vehicle(s), then Obligor is responsible for obtaining such title(s) from the State and also for ensuring that Obligor is listed as First Lienholder on all of the title(s). Obligor shall not use the Equipment to haul, convey or transport hazardous waste as defined in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. Obligor agrees that Obligor or its Assignee may execute any additional documents including financing statements, affidavits, notices, and similar instruments, for and on behalf of Obligor which Obligor deems necessary or appropriate to protect Obligor's interest in the Equipment and in this Contract. Obligor shall allow Obligor to examine and inspect the Equipment at all reasonable times.

IX. Default

Section 9.01 Events of Default defined. The following events shall constitute an "Event of Default" under this Contract:

- (a) Failure by Obligor to pay any Contract Payment listed on Exhibit B for fifteen (15) days after such payment is due according to the Payment Date listed on Exhibit B.
- (b) Failure to pay any other payment required to be paid under this Contract at the time specified herein and a continuation of said failure for a period of fifteen (15) days after written notice by Obligor that such payment must be made. If Obligor continues to fail to pay any payment after such period, then Obligor may, but will not be obligated to, make such payments and charge Obligor for all costs incurred plus interest at the highest lawful rate.
- (c) Failure by Obligor to observe and perform any warranty, covenant, condition, promise or duty under this Contract for a period of thirty (30) days after written notice specifying such failure is given to Obligor by Obligor, unless Obligor agrees in writing to an extension of time. Obligor will not unreasonably withhold its consent to an extension of time if corrective action is instituted by Obligor. Subsection (c) does not apply to Contract Payments and other payments discussed above.
- (d) Any statement, material omission, representation or warranty made by Obligor in or pursuant to this Contract which proves to be false, incorrect or misleading on the date when made regardless of Obligor's intent and which materially adversely affects the rights or security of Obligor under this Contract.
- (e) Any provision of this Contract which ceases to be valid for whatever reason and the loss of such provision would materially adversely affect the rights or security of Obligor.
- (f) Except as provided in Section 4.01 above, Obligor admits in writing its inability to pay its obligations.
- (g) Obligor defaults on one or more of its other obligations.
- (h) Obligor becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies for or consents to the appointment of a receiver, trustee, conservator, custodian, or liquidator of Obligor, or all or substantially all of its assets, or a petition for relief is filed by Obligor under federal bankruptcy, insolvency or similar laws, or is filed against Obligor and is not dismissed within thirty (30) days thereafter.

Section 9.02 Remedies on Default. Whenever any Event of Default exists, Obligor shall have the right to take one or any combination of the following remedial steps:

- (a) With or without terminating this Contract, Obligor may declare all Contract Payments and other amounts payable by Obligor hereunder to the end of the then current Budget Year to be immediately due and payable.
- (b) With or without terminating this Contract, Obligor may require Obligor at Obligor's expense to redeliver any or all of the Equipment and any additional collateral to Obligor as provided below in Section 9.04. Such delivery shall take place within fifteen (15) days after the Event of Default occurs. If Obligor fails to deliver the Equipment and any additional collateral, Obligor may enter the premises where the Equipment and any additional collateral is located and take possession of the Equipment and any additional collateral and charge Obligor for costs incurred. Notwithstanding that Obligor has taken possession of the Equipment and any additional collateral, Obligor shall still be obligated to pay the remaining Contract Payments due up until the end of the then current Original Term or Renewal Term. Obligor will be liable for any damage to the Equipment and any additional collateral caused by Obligor or its employees or agents.
- (c) Obligor may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights. Obligor shall be responsible to Obligor for all costs incurred by Obligor in the enforcement of its rights under this Contract including, but not limited to, reasonable attorney fees.

Section 9.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to Obligor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or shall be construed to be a waiver thereof.

Section 9.04 Return of Equipment and Storage.

- (a) **Surrender:** The Obligor shall, at its own expense, surrender the Equipment, any Additional Collateral and all required documentation to evidence transfer of title from Obligor to the Obligor in the event of a default or a non-appropriation by delivering the Equipment and any Additional Collateral to the Obligor to a location accessible by common carrier and designated by Obligor. In the case that any of the Equipment and any Additional Collateral consists of software, Obligor shall destroy all intangible items constituting such software and shall deliver to Obligor all tangible items constituting such software. At Obligor's request, Obligor shall also certify in a form acceptable to Obligor that Obligor has complied with the above software return provisions and that they will immediately cease using the software and that they shall permit Obligor and/or the vendor of the software to inspect Obligor's locations to verify compliance with the terms hereto.
- (b) **Delivery:** The Equipment and any Additional Collateral shall be delivered to the location designated by the Obligor by a common carrier unless the Obligor agrees in writing that a common carrier is not needed. When the Equipment and any Additional Collateral is delivered into the custody of a common carrier, the Obligor shall arrange for the shipping of the item and its insurance in transit in accordance with the Obligor's instructions and at the Obligor's sole expense. Obligor at its expense shall completely sever and disconnect the Equipment and any Additional Collateral or its component parts from the Obligor's property all without liability to the Obligor. Obligor shall pack or crate the Equipment and any Additional Collateral and all of the component parts of the Equipment and any Additional Collateral carefully and in accordance with any recommendations of the manufacturer. The Obligor shall deliver to the Obligor the plans, specifications, operation manuals or other warranties and documents furnished by the manufacturer or vendor on the Equipment and any Additional Collateral and such other documents in the Obligor's possession relating to the maintenance and methods of operation of such Equipment and any Additional Collateral.
- (c) **Condition:** When the Equipment is surrendered to the Obligor it shall be in the condition and repair required to be maintained under this Contract. It will also meet all legal regulatory conditions necessary for the Obligor to sell or lease it to a third party and be free of all liens. If Obligor reasonably determines that the Equipment or an item of the Equipment, once it is returned, is not in the condition required hereby, Obligor may cause the repair, service, upgrade, modification or overhaul of the Equipment or an item of the Equipment to achieve such condition and upon demand, Obligor shall promptly reimburse Obligor for all amounts reasonably expended in connection with the foregoing.
- (d) **Storage:** Upon written request by the Obligor, the Obligor shall provide free storage for the Equipment and any additional collateral for a period not to exceed 60 days after the expiration of the Contract Term before returning it to the Obligor. The Obligor shall arrange for the insurance described to continue in full force and effect with respect to such item during its storage period and the Obligor shall reimburse the Obligor on demand for the incremental premium cost of providing such insurance.

X. Miscellaneous

Section 10.01 Notices. All notices shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business as first set forth herein or as the parties shall designate hereafter in writing.

Section 10.02 Binding Effect. Obligor acknowledges this Contract is not binding upon the Obligor or its assignees unless the Conditions to Funding listed on the Documentation Instructions have been met to Obligor's satisfaction, and Obligor has executed the Contract. Thereafter, this Contract shall inure to the benefit of and shall be binding upon Obligor and Obligor and their respective successors and assigns.

Section 10.03 Severability. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.04 Amendments, Addenda, Changes or Modifications. This Contract may be amended, added to, changed or modified by written agreement duly executed by Obligor and Obligor. Furthermore, Obligor reserves the right to directly charge or amortize into the remaining balance due from Obligor, a reasonable fee, to be determined at that time, as compensation to Obligor for the additional administrative expense resulting from such amendment, addenda, change or modification requested by Obligor.

Section 10.05 Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.06 Captions. The captions or headings in this Contract do not define, limit or describe the scope or intent of any provisions or sections of this Contract.

Section 10.07 Master Contract. This Contract can be utilized as a Master Contract. This means that the Obligor and the Obligor may agree to the financing of additional Equipment under this Contract at some point in the future by executing one or more Additional Schedules to Exhibit A and Exhibit B, as well as other exhibits or documents that may be required by Obligor. Additional Schedules will be consecutively numbered on each of the exhibits which make up the Additional Schedule and all the terms and conditions of the Contract shall govern each Additional Schedule.

Section 10.08 Entire Writing. This Contract constitutes the entire writing between Obligor and Obligor. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, conditions, or warranties, express or implied, which are not specified herein regarding this Contract, the Equipment or any additional collateral, financed hereunder. Any terms and conditions of any purchase order or other documents submitted by Obligor in connection with this Contract which are in addition to or inconsistent with the terms and conditions of this Contract will not be binding on Obligor and will not apply to this Contract.



Obligee and Obligor have caused this Contract to be executed in their names by their duly authorized representatives listed below.

Signature

Printed Name and Title


Signature
George Marlin Exec Chair
Printed Name and Title

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