

AGENDA ITEM FOR ADMINISTRATIVE MEETING

() Discussion only
(X) Action

FROM (DEPT/ DIVISION): Public Works
PROGRAM: 4530-60290 Equipment Miscellaneous
SUBJECT: Komatsu PC55MR-5 excavator

Background: The Public Works Department is requesting approval to purchase a Komatsu PC55MR-5 mini excavator. We leased this machine in October, 2021 to use for bridge repairs. Since then we have used it for sign placement, culvert installation and a number of other tasks. Currently Modern Machinery will credit 100 percent of the rent towards the purchase price of the machine. The Sourcewell contract price of the machine is \$90,844, we have invested \$24,000 in rent on the machine leaving a balance of \$67,344 for payoff with the addition of a \$500 document fee. Public Works has available funding in the equipment replacement portion of the budget.

ACTION REQUESTED:
Authorization to Purchase a Komatsu PC55MR-5 mini excavator from Modern Machinery for \$67,344

ATTACHMENTS: Proposal from Modern Machinery
Date: (3/22/22) Submitted By: (Tom Fellows)

*****For Internal Use Only*****

Checkoffs:

- () Exec. Asst.
- () Dept. Head (copy)
- () Human Resources (copy)
- () Budget (copy)
- () Fiscal
- () Legal (copy)
- () (Other - List)

To be notified of Meeting:

Needed at Meeting:

PLEASE RETURN THIS FORM AND ATTACHMENTS TO Executive Assistant

Scheduled for meeting on: April 6, 2022

Action taken:



Contract 30432

Rental Contract Payoff for: Umatilla County Road Dept

Manufacturer Komatsu
 Model # PC55MR-5
 Serial #
 Machine # 1350643
 Rental Start Date 10/12/2021
 Original Contract Balance \$90,844
 Monthly Payment \$4,000
 Interest Rate 0.00%
 Sales Tax Rate 0.00%
 Sales Tax State OR

Rental Applied @ Sale	
100%	Mo. 1-6 Rent
80%	Mo. 7+ Rent

SUMMARY	
Contract Price	90,844
Less : Paid Rentals	(24,000)
Add : Interest	0
Capitalized Repairs	0
Subtotal	66,844
Less : Net Trade	0
Subtotal	66,844
Add : Sales Tax if Applicable	0
Add : Document Fee	500
Contract Balance	\$67,344

Invoice #	Rental Activity		Date Payment Received	Days Since Last Payment	Amount To Apply	Calculated Interest	Accumulated Interest	Applied to Interest	Unpaid Interest	Applied to Principal	Contract Balance
	From	To									
64941	10/12/2021	11/8/2021	12/1/2021	50	4,000	0	0	0	0	4,000	86,844
65448	11/9/2021	12/6/2021	#####	30	4,000	0	0	0	0	4,000	82,844
66019	12/7/2021	1/3/2022	2/1/2022	32	4,000	0	0	0	0	4,000	78,844
66337	1/4/2022	1/31/2022	2/22/2022	21	4,000	0	0	0	0	4,000	74,844
**66694	2/1/2022	2/28/2022	3/15/2022	21	4,000	0	0	0	0	4,000	70,844
to be invoiced	3/1/2022	3/28/2022	4/15/2022	31	4,000	0	0	0	0	4,000	66,844
	3/29/2022	4/25/2022	4/15/2022	0	0	0	0	0	0	0	66,844
	4/26/2022	5/23/2022	4/15/2022	0	0	0	0	0	0	0	66,844
	5/24/2022	6/20/2022	4/15/2022	0	0	0	0	0	0	0	66,844
	6/21/2022	7/18/2022	4/15/2022	0	0	0	0	0	0	0	66,844
	7/19/2022	8/15/2022	4/15/2022	0	0	0	0	0	0	0	66,844
	8/16/2022	9/12/2022	4/15/2022	0	0	0	0	0	0	0	66,844
	9/13/2022	10/10/2022	4/15/2022	0	0	0	0	0	0	0	66,844
**Bold denotes unpaid rentals assumed paid at sale date				185	24,000	0		0	0	24,000	66,844
				Proof ----->	185						

Unpaid Rental Activity			Rental	Unpaid Interest
Invoice #	Start Date	Stop Date	Amount	See abv balance due
**66694	2/1/2022	2/28/2022	4,000	0
to be invoiced	3/1/2022	3/28/2022	4,000	66,844
				Equity 26%

Unpaid Rentals included above \$ 8,000

Sales Tax Note : In ID, tax is not calculated on interest or doc fees.
 In WA, tax is not calculated on doc fees
 In WY, both are taxed.



Umatilla County Public Works
3920 Westgate
Pendleton Ore.

09-04-2021

4428 E Trent
Spokane WA 99212

Phone: (509) 535-1654
Toll Free: (800) 541-0754
Fax: (509) 534-6754
Web Site: www.modernmachinery.com

Attn: Tom Fellows

Tom, Modern Machinery is pleased to offer the following for your consideration.

SPEC ARRANGEMENT B	
PC55MR-5 BASE MACHINE CAB	\$ 80,594
ROPS Cab	\$ 11,224
55 Amp Alternator	IN BASE
Boom 9'6" (2900mm) with +1 piping	\$ 5,106
Arm 5'5" (1640mm) with +1 piping	\$ 3,579
Foot control for aux hydraulics	IN BASE
Standard dozer assembly	IN BASE
*Road liner shoes 16" (400mm) (ILOS)	\$ 3,521

Controls (S1)

Foot control for aux hydraulics IN BASE
Proportional Control Lever \$1,462
(In Lieu of foot control)

Total List price	\$105,486.00
Sourcwell discount factor .67 Sourcwell net	\$70,675.62
Dealer Adds:	
Freights	\$3,300.00
Prep	\$1,800.00

Options:

Manual coupler	\$1,527.90
Labor on coupler	\$1,000.00
Hydraulic thumb	\$2,100.00
Labor on thumb	\$1,400.00
12" bucket	\$1,260.00
24" bucket	\$1,530.00
48" bucket	\$1,750.00
Auxiliary hydraulics for attachments	\$2,100.00
Top Plate for MBX15 Hammer to fit PC55	\$2,400.00

Option: RPO at \$4,000.00 per month with 100% of paid rental applied to purchase in the first 6 months.
Please feel free to call with any questions.

Thank you
Jim Holland



Sales Agreement

Customer: Umatilla County Public Works

Customer #:

PO #:

Address: 3920 Westgate

City: Pendleton

State: Or

Zip: 97801

Phone #: (541) 278-5424

Buyer's Name: Tom Fellows

Salesman: Jim Holland

Delivery Address/Point of Possession: County Shops

Service Meter Reading 10.00

Expected Delivery Date 10/05/2021

Equip #	Make	Model	Description	Serial #	Price
1350643	Komatsu	PC55MR-5	Mini Excavator with QC, thumb and 3 buckets		\$90,843.52
					0.00
					0.00
					0.00
				Freight	0.00
				Extended Warranty	0.00
				Rentals Applied	-24,000.00
				Interest	0.00
				Doc Fees	0.00
					0.00

Trade-in Allowance:

				0.00
				0.00

Less Amount Owed to:

Finance Company Name

Loan Balance

0.00

Subtotal

66,843.52

Sales Tax:

Taxable	
State	
County	
City - Tax Code	
Rate	
Tax Amount	
Down Payment	
Amount Due	\$66,843.52

Financing Options:	<u>Annual %</u>
24 months	
36 months	
48 months	
Other:	

Comments:

EQUIPMENT WARRANTY

Warranty coverage on the equipment covered by this order, if any, has been explained to Customer. The warranty coverage is outlined below and indicated by the box checked.

NEW — Manufacturer Warranty subject to qualification. If qualified, the following terms apply only if box at left is checked. Purchaser acknowledges He/She has read and received a copy of this entire order and acknowledges the DISCLAIMER OF WARRANTIES AND WAIVER OF CLAIMS on Page 2 of this Agreement.

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USED — When the equipment covered by this order is used equipment. THE CUSTOMER STATES THAT HE/SHE HAS EXAMINED THE EQUIPMENT and is buying the equipment AS IS and with NO REPRESENTATION OR WARRANTIES, unless otherwise specified in writing below:

NO AGREEMENTS OTHER THAN THOSE EITHER PRINTED OR WRITTEN ON THIS ORDER ARE BINDING ON EITHER PARTY OF THIS CONTRACT. This order is subject to the terms and conditions set forth on pages 1 and 2 of this document, including the applicable manufacturer's warranty. Only a branch manager or senior officer of Modern Machinery are authorized to sign this Agreement on Modern Machinery's behalf. THIS AGREEMENT IS NOT BINDING ON EITHER PARTY UNTIL FULLY EXECUTED. I agree to grant Modern a purchase money security interest in all equipment described in this agreement until complete satisfaction of the purchase price. I certify that any equipment traded as part of any transaction related hereto is free and clear of all liens and encumbrances. I understand and acknowledge that my account is subject to a finance charge of 1.5 per month (18% per year) on any unpaid balance commencing 10 days after invoice date. PURCHASER ACKNOWLEDGES HE/SHE HAS READ (BOTH PAGES) AND RECEIVED A COPY OF THIS ENTIRE AGREEMENT.

By: _____ Date: _____

Signed: _____

Modern Machinery Co., Inc.

By: _____ Date: April 6, 2022

Signed: John M. Shafer

Title: Chair, Board of Commissioners

Customer

Sales AGREEMENT (“AGREEMENT”) – TERMS AND CONDITIONS

Equipment Sales - Limited Warranty

1. Unless otherwise indicated on Page 1 of this Agreement, the warranty on any and all new equipment sold by Modern is limited to only such warranty as is issued by the manufacturer. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No other warranty is authorized to be made on behalf of Modern and MODERN MAKES NO WARRANTIES OF ITS OWN OF ANY KIND WHATSOEVER REGARDING ANY NEW EQUIPMENT SOLD HEREUNDER.

Limitation of Liability

3. MODERN SHALL IN NO EVENT BE LIABLE by reason of the equipment sold hereunder, or by reason of any negligence or other liability in tort, for ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, such as, but not limited to, damages or loss of other property or personal injury to any person, LOSS OF PROFITS OF ANY KIND, down time of men or equipment, cost of replacement equipment, or claims of customers or other parties contracting with Customer. Modern shall in no event be liable in damages for any amount greater than the purchase price paid by Customer to Modern.

Acceptance and Delivery

5. By signing this Agreement, Customer grants a security interest to Modern for the purpose of securing full payment and performance of the obligations arising hereunder. Customer agrees to do whatever is necessary under applicable law to perfect and continue Modern's security interest in the equipment. This security interest and any certificate of title attaching to the equipment shall remain with Modern until the purchase price has been paid in full. Prior to paying the purchase price in full, Customer will not allow any adverse lien, security interest, or encumbrance to attach to the equipment without the express prior written approval of Modern.

6. Modern will not be liable for any delays in delivery caused by circumstances beyond its control including but not limited to strikes, accidents, civil disorder, natural disaster, or the unavailability of parts or material.

Costs

7. Customer agrees to pay the purchase price as shown in this Agreement. The price includes an estimate of applicable taxes, payment of which is the responsibility of Customer.

Default

10. Default occurs when the Customer fails to pay Modern or perform its obligations according to the terms of this Agreement or becomes insolvent. A waiver by Modern of any default does not constitute a waiver of any subsequent default.

11. Upon default, the obligations secured by this Agreement and all supplemental security agreements shall immediately become due and payable in full without further notice or demand.

12. In the event of default and upon the written demand of Modern, the Customer will peacefully surrender the equipment to Modern. If Customer fails to peacefully surrender the Equipment, Modern shall have the right, without notice or resort to judicial proceedings, to enter upon the premises of the Customer or any agent of the Customer where the equipment may be or where Modern believes the equipment may be, and disassemble, render unusable and/or repossess all or a portion of the equipment. If Modern requests, the Customer shall fully assemble the equipment, make the equipment available at a reasonably convenient location designated by Modern, and authorize Modern to take full possession of the equipment at that location.

Modern, in its sole discretion, shall have the right to file UCC liens against any equipment subject to a finalized sales contract.

13. If repossessed, the equipment may be sold at a private sale and Customer agrees that this is a commercially reasonable means of resale.

Miscellaneous

14. This Agreement is a contract containing the entire agreement between the parties and supersedes all other agreements between the parties regarding the equipment. This Agreement may not be changed in any way except in writing, signed by both parties, and attached to this Agreement. If any part of this Agreement is found to be invalid, the remaining provisions will remain in effect.

15. If this Agreement is signed by more than one person on behalf of the Customer, all signers are jointly and severally liable hereunder with the Customer.

16. Modern's rights and remedies under this Agreement and any other agreements are cumulative. Modern may exercise its rights either singly, concurrently, or both. The listing of any rights in this Agreement does not constitute a waiver of any other rights permitted by law.

17. This Agreement shall be governed by the laws of the state of the Modern branch location that is selling the equipment. The Customer agrees to pay all reasonable court costs and attorney fees incurred by Modern to enforce the terms of this Agreement.

Customer Initials _____



Rental Purchase Option Agreement

Customer: Umatilla County Public Works

Customer #:

PO #:

Address: 3920 Westgate

City: Pendleton

State: OR

Zip: 97801

Phone #: (541) 278-5424

Buyer's Name: Tom Fellows

Salesman: Jim Holland

Delivery Address/Point of Possession: County Shops

Job Location: Various

This is a Rental Purchase Option Agreement ("Agreement") for a term not to exceed 12 months beginning on the rental start date. If you (the "Customer") choose to exercise the purchase option during the first six months of this Agreement, the Rental Purchase Option Price ("RPO Price") noted below shall be decreased by 100% of all rents paid and interest will not be charged. If you choose to exercise the purchase option after the first six months of this Agreement, the RPO Price will be reduced by 80% of all rents paid for months 7-12 and interest at the "Prime Rate" plus three percent will be charged on the declining balance back to the rental start date. In all cases the RPO Price does not include applicable sales, use and property taxes or other assessments, license fees and any outstanding invoices for non-warranty repairs that were made by Modern Machinery to the equipment, all of which remain your responsibility.

RPO Price \$90,843.52

Service Meter Reading 5.00

Ship Date 10/04/2021

Rental Start Date 10/05/2021

Equip. #	Make	Model	Description	Serial #	Rental Amount
1350643	Komatsu	PC55MR-5	Mini with cab, air, heat, QC, thumb, roadliner pads, aux. hydraulics for hammer		\$4,000.00
			12" 24" digging bucket and 48" CU bucket		
4 Week Rental (160 hours)					4,000.00

Additional Charges:

Freight Out		
Freight In		
Fuel	per gallon	\$6.00
DEF	per jug	\$30.00
Other		

Daily Rate	\$444.44
Weekly Rate	\$1,333.33
Overtime Rate	\$25.00

Sales Tax: Taxable	Yes
State	
County	
City - Tax Code	
Rate	2.00%
Tax Amount	80.00
Amount Due	\$4,080.00

Comments:

To be put on RPO.

- > If fuel and DEF tanks are not full when returned, charges will apply.
- > For billing purposes, 3 weeks equals a month and 3 days equals a week.
- > **MAINTENANCE OF EQUIPMENT:** Customer is responsible for all maintenance of this equipment while in their possession. Customer must check machine fluid levels daily. Any damage to this equipment arising from any source whatsoever will be charged to the Customer. Recommended service intervals for this equipment are set forth in the operations manual. Customer is responsible for the physical cleanliness of rental equipment and in the event unclean equipment is returned it will be cleaned by Modern Machinery at the Customer's expense.
- > Physical Damage Insurance is NOT provided by Modern Machinery and must be provided by Customer
- > **NAME OF AGENT & PHONE #:**
- > If coverage is provided by Customer, a loss payable binder must be provided to Modern Machinery Co., Inc. within 10 days after the commencement of the rent. **LIABILITY INSURANCE:** Customer at its own expense, shall carry adequate public liability insurance as approved by Modern Machinery against bodily injury including death, and against property damage.
- > All equipment is FOB Modern Machinery's yard unless otherwise agreed to by the parties in writing.

NO AGREEMENTS OTHER THAN THOSE EITHER PRINTED OR WRITTEN ON THIS ORDER ARE BINDING ON EITHER PARTY OF THIS CONTRACT. This order is subject to the terms and conditions set forth on pages 1 and 2 of this document, including the applicable manufacturer's warranty. CUSTOMER ACKNOWLEDGES HE/SHE HAS READ (BOTH PAGES) AND RECEIVED A COPY OF THIS ENTIRE ORDER.

By:

Date:

Signed:

By: George L. Murdock

Date:

Signed: *George L. Murdock*

Title: Chair, Board of Commissioners

Customer

Modern Machinery Co., Inc.



RPO # 2/11/2021

RENTAL PURCHASE-OPTION AGREEMENT ("AGREEMENT") – TERMS AND CONDITIONS

USAGE – Customer agrees to pay the rental price listed on the front page of the Agreement. Rental amounts do not include applicable taxes, included but not limited to sales, income, property, and use taxes, payment of which is the Customer's responsibility. The Agreement shall extend beyond the term at the same rental rate if the Customer holds the equipment over the specified term of this Agreement. Double shift rates (150% of single shift) are based on 320 hours of usage (as determined by the service meter hours reading) per month and triple shift rates (200% of single shift) are based on 480 hours per month.

SAFETY – Customer acknowledges that it and its operators are familiar with the operation of the rented equipment and that all necessary and proper safety equipment is in place and they agree not to permit any such safety equipment to be removed or tampered with, that they are aware of the limitations of the equipment and agree not to exceed such limitations. Customer agrees that they are responsible for ensuring that all operators read all warnings and operating instructions; Customer agrees not to allow use by any operator not properly trained in the use of operation of the equipment or who fails to use equipment in accordance with all safety procedures. Customer agrees to comply with all laws, ordinances and regulations relating to the possession, use or maintenance of the equipment, and that they are solely responsible to advise any person operating the equipment or near the equipment of all safety operating procedures and safety precautions.

MAINTENANCE AND EQUIPMENT CONDITION – This equipment is understood to be in good working order at the time of shipment and upon receipt. If the Customer finds it otherwise, Modern shall be notified within 24 hours after arrival and Modern has the right to put the same in good working order at its expense. MODERN MAKES NO WARRANTIES EXPRESS OR IMPLIED AS TO THE CONDITION OF THE EQUIPMENT NOR AS TO DEFECTS IN MATERIAL WORKMANSHIP, OR CAPACITY OF THE EQUIPMENT. Customer is responsible for the cost of all maintenance of this equipment (except for machines covered under Komatsu Care) and will pay for all wear parts, fuel, oil and filters used during the term of this Agreement and will MAINTAIN PROPER OIL, COOLANT, DEF AND OTHER FLUID LEVELS AT ALL TIMES. Recommended service intervals for the equipment are set forth in the operator's manual. Any damage to this equipment arising from any source whatsoever will be charged to the Customer. Any repairs which become necessary to said equipment shall be done by Modern unless permission has been given in writing to the Customer to do such repairs. The cost of repairs for normal use is to be borne by Modern. If Customer returns equipment with less than a full tank of fuel or DEF, it will be refilled and charged to Customer. Customer shall not expose the equipment to any hazardous material or waste. In the event the equipment is exposed to any hazardous material or waste, Customer shall immediately (1) notify Modern, (2) remove the equipment from such exposure and (3) completely clean and decontaminate the equipment. If the equipment cannot be completely cleaned, decontaminated and otherwise discharged from all adverse effects of such exposure, Customer shall pay Modern the full value of the equipment. Customer indemnifies and holds Modern harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the equipment to hazardous material or waste. This indemnification survives and continues after the term of this Agreement. The Customer agrees and guarantees to return the equipment in as good a condition as received or to pay the expense of putting it in such condition, less ordinary wear incident to normal use in the hands of a competent operator, including physical cleanliness. This guarantee is absolute and may not be excused by theft, acts of God, or for any other reason whatsoever. If at any time, Modern in its sole discretion determines its rights to the equipment are endangered or that the equipment is in any manner improperly cared for or abused or if there shall be any default by Customer in the terms and conditions of this Agreement, Modern may without notice REPOSSESS the equipment and cancel this Agreement. The equipment shall be used solely by the Customer or Customer's agents.

SALE OF RENTED EQUIPMENT - Modern reserves the right to sell the equipment to a third-party buyer at the end of the 12-month RPO period, provided Customer has not exercised the purchase option and paid in full the Rental Purchase Option Price as listed on page 1. Modern shall provide Customer with written notice of its intent to sell the equipment and Customer shall have a right of first refusal on such a sale. If Customer chooses not to purchase the equipment or fails to respond to any sale notice within five (5) business days, Modern shall be authorized to sell the equipment. Modern, prior to the sale of the equipment, shall provide Customer with replacement rental equipment with equivalent operational capacity. Such replacement rental equipment shall be subject to the same terms and conditions contained herein.

INSURANCE REQUIREMENTS – Customer shall provide and maintain Commercial General Liability Insurance and other insurance necessary to protect Modern and its affiliates continuously during the life of this Agreement from any and all claims for bodily injury, death or property damage made or arising out of the operation, handling or transportation of the equipment rented under this Agreement with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and \$2,000,000 general aggregate. Such insurance shall be endorsed, without limitation, condition or exclusion, to include a waiver of rights of recovery against Modern

Machinery Co., Inc. or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Modern Machinery Co., Inc. or its insurers. Insurance shall also include contractual liability, name Modern Machinery Co., Inc. as an Additional Insured and provide that this insurance is primary and that any insurance purchased by Modern is non-contributory. Certificates of insurance for the coverages required above along with a copy of the additional insured endorsement, waiver of rights of recovery, waiver of subrogation and primary noncontributory language evidencing such insurance coverage shall be provided to Modern prior to Customer taking possession of the equipment. Customer will provide Modern with 30 days advance notice of cancellation or nonrenewal of all coverages required by this agreement.

Customer shall provide All Risk Physical Damage Insurance on all rented equipment, written to the full replacement value subject to a deductible acceptable to Modern and shall insure against but not be limited to the perils of fire, theft, vandalism, malicious mischief, overload, collapse, water damage and such other perils as may be required by Modern in its sole judgment. Modern shall be shown as loss payee. If the equipment is damaged while in the custody of the Customer, Customer is responsible for all costs of repair whether or not such costs are covered by insurance. Customer shall provide and maintain Workers Compensation Insurance written to comply with all state laws in which the equipment shall be used or operated by Customer.

INDEMNIFICATION – Customer agrees to indemnify and hold Modern and its affiliates harmless from all claims whatsoever relating to or arising from the transportation, use, maintenance or possession of the equipment, for injury to persons or damage to property, and from any and all expense incurred in the defense of any such claims. In no event shall Modern be held responsible for injury, delays or damages consequential or otherwise, resulting by reason of delays on the part of Modern or railroads or trucking companies in making delivery, or loss or damage to equipment in transit or from strikes or other contingencies beyond its control or from any cause whatsoever. Risk of loss of the equipment passes from Modern to the Customer when the equipment is delivered to the delivery address on the first page of the Agreement if transportation is arranged by Modern or when tendered to the Customer's trucking representative if transportation is arranged by the Customer. Customer shall have the risk of loss until the equipment is returned to Modern's yard or other location as mutually agreed or when tendered to Modern's trucking representative if return freight is arranged by Modern.

LIMITATION OF LIABILITY - MODERN SHALL IN NO EVENT BE LIABLE by reason of the equipment rented hereunder, or by reason of any negligence or other liability in tort, for ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, such as, but not limited to, damages or loss of other property or personal injury, LOST PROFITS OF ANY KIND, down time of men or equipment, cost of replacement equipment, or claims of customers or other parties contracting with Customer. Modern shall in no event be liable for damages in any amount greater than the rental payments made by Customer to Modern.

NO WARRANTY - OTHER THAN THE APPLICABLE MANUFACTURER'S WARRANTY, ALL EQUIPMENT RENTED BY MODERN IS RENTED "AS IS" AND WITH ALL FAULTS, AND MODERN MAKES NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, except as to clear title of the equipment. ANY OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. No other warranty is authorized to be made on behalf of Modern.

GOVERNING LAW - This Agreement shall be governed by the laws of the state of the Modern branch location that entered into this Agreement. Customer agrees to pay all reasonable court costs and attorney fees incurred by Modern to enforce the terms of this Agreement.

DEFAULT - Default occurs when Customer fails to pay Modern, becomes insolvent, or fails to perform its obligations according to the terms of this Agreement. A waiver by Modern of any default does not constitute a waiver of any subsequent default. Upon default, the obligations secured by this Agreement shall immediately become due and payable in full without further notice or demand. In the event of default and upon the written demand of Modern, the Customer will peacefully surrender the equipment to Modern. If Customer fails to peacefully surrender the equipment, Modern shall have the right, without notice or resort to judicial proceedings, to enter upon the premises of the Customer or any agent of the Customer where the equipment may be or where Modern believes the equipment may be, and disassemble, render unusable and/or repossess all or a portion of the equipment. If Modern requests, the Customer shall fully assemble the equipment, make the equipment available at a reasonably convenient location designated by Modern, and authorize Modern to take full possession of the equipment at that location. Customer shall secure access to property owned by third parties if necessary for Modern to exercise its repossession rights.

ASSIGNMENT - If Modern assigns this Agreement, Customer will make all remaining payments on this Agreement to the assignee third party and not to Modern. The assignee third party will have all of the rights of Modern, but will not be subject to any claims, set-offs, or defenses asserted by Customer. Customer may not assign its rights under this Agreement without the express written approval of Modern.

Customer Initials

RPO - 1/20/2020