

**LEASE AND OPTION TO PURCHASE AGREEMENT**

**Dated as of July 12, 2021**

**Between**

**FIRST STATE BANK OF CHEYENNE, CHEYENNE,  
WYOMING  
as Lessor**

**and**

**CITY OF LARAMIE, WYOMING  
as Lessee**

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**LEASE AND OPTION TO PURCHASE AGREEMENT**

This LEASE AND OPTION TO PURCHASE AGREEMENT (the “Agreement”), made and dated as of July 12, 2021, between FIRST STATE BANK OF CHEYENNE, Cheyenne, Wyoming (together with its successors and assigns), as Lessor, and the CITY OF LARAMIE, Laramie, Wyoming, a Wyoming municipal corporation duly organized and existing under the laws of the State of Wyoming (together with its successors and assigns), as Lessee.

**W I T N E S S E T H:**

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the constitution and laws of the State of Wyoming to enter into this Agreement for the purposes set forth herein; and

WHEREAS, Lessor has determined that this Agreement constitutes an obligation of a political subdivision within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE, for and in consideration of the financing of the Equipment provided by Lessor, the payment of the rentals by Lessee hereunder, the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Lessor and Lessee, intending to be legally bound, do hereby agree as follows:

\* \* \* \* \*

## ARTICLE I

### DEFINITIONS

**SECTION 1.1.** Definitions. As used in this Agreement, unless a different meaning clearly appears from the context:

“Agreement” means this Lease and Option to Purchase Agreement, including the Exhibits attached hereto, as supplemented or amended from time to time in accordance with the terms hereof.

“Authorized Official” means the appropriate officer or officers of Lessee.

“Budget” means the budget of Lessee for any Fiscal Year during the Initial Term or any Renewal Term of this Agreement.

“Business Day” means any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions are authorized to close in the State.

“Certificate of Acceptance” means the Certificate of Acceptance of Equipment attached hereto as EXHIBIT B, whereby Lessee acknowledges receipt of the Equipment in good condition pursuant to the Purchase Agreement.

“Code” means the Internal Revenue Code of 1986, the regulations (whether proposed, temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section means that Section of the Code, including such applicable regulations and rulings.

“Commencement Date” means the date when the initial Term of this Agreement begins and Lessee’s obligation to make Rental Payments accrues, which date shall be July 12, 2021.

“Default” means an Event of Default as set forth in Article VI which has not been cured or waived.

“Due Date” for the Initial Term of this Agreement means September 15, 2021 and March 15, 2022 and for all Renewal Terms means the Fifteenth (15<sup>th</sup>) day of September and March and continuing through March 15, 2024.

“Equipment” means the personal property set forth in EXHIBIT C attached hereto which is the subject of this Agreement.

“Financing and Continuation Statements” means the U.C.C. financing and continuation statements perfecting the security interests granted by and including, but not limited to, this Agreement.

“Fiscal Year” means the fiscal year of Lessee, which on the date of the original execution of this Agreement is the period commencing on July 1 and ending on June 30 of the succeeding calendar year.

“Force Majeure” means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States of America or the State or any civil or military authority, insurrections, riots, acts of terrorists, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, droughts, civil disturbances, explosions and other unanticipated causes or events not reasonably within the control of Lessee.

“Full Insurable Value” means, with respect to the Equipment and at any particular time during the Lease Term, the full replacement value of the Equipment.

“Initial Term” or “Initial Term of this Agreement” means the period commencing July 12, 2021 and ending June 30, 2022.

“Lease Term” or “Term of this Agreement” means the Initial Term and all Renewal Terms.

“Optional Purchase Price” means the amount at any particular time during the Term of this Agreement which Lessee may, at its option, pay to Lessor in order to purchase the Equipment as set forth in EXHIBIT D attached hereto.

“Purchase Orders” means those purchase orders attached to EXHIBIT D of this Agreement.

“Proceeds” means the amount of proceeds of any insurance claim or condemnation award with respect to the Equipment as provided in SECTION 5.3 of this Agreement.

“Renewal Term” or “Renewal Term of this Agreement” means any Fiscal Year for which Lessee shall renew the Term of this Agreement as provided in SECTION 4.1 of this Agreement, the last such Fiscal Year being the Fiscal Year in which the last Rental Payment listed in the Schedule of Rental Payments and Optional Purchase Prices attached hereto as EXHIBIT D occurs.

“Rental Payments” means the rentals payable by Lessee pursuant to this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then Initial or Renewal Term. The Rental Payments shall be payable by Lessee to First State Bank Of Cheyenne, 500 W. 18<sup>th</sup> Street, Cheyenne, Wyoming 82001, Attn: Chris Allred, Sr. Vice

President, or Lessor's assignee in the amounts and on the dates as set forth in EXHIBIT D attached hereto.

"Security Documents" means the Financing and Continuation Statements and any other instruments or documents securing the obligations hereunder.

"State" means the State of Wyoming.

"Vendor" means the manufacturer or manufacturers of each item of the Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa and the words "hereof" and "herein" shall be construed to refer to the entirety of this Agreement and shall not be restricted to the particular Article, Section, subsection or paragraph in which they appear.

\* \* \* \* \*

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**SECTION 2.1.** Of Lessee. Lessee makes the following representations, warranties and covenants:

A. Lessee is an incorporated municipality of the State of Wyoming, duly organized and validly existing under the constitution and laws of the State of Wyoming, with full power and legal right to enter into this Agreement and perform its obligations hereunder. Lessee's actions in making and performing this Agreement have been duly authorized by its governing body or other appropriate official approval and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which Lessee or its properties are bound. Lessee further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Agreement and Lessee has complied with all public bidding and other statutory requirements as may be applicable to Lessee in the authorization, execution, delivery and performance of this Agreement;

B. Lessee has obtained all necessary licenses, permits and approvals, if any, required by all governing bodies or agencies having jurisdiction over the acquisition, installation and operation of the Equipment;

C. During the Term of this Agreement, Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence;

D. During the Term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee; Lessee does not intend to sell said Equipment or said Agreement or to otherwise dispose of said Equipment during the term of the Agreement; and Lessee will not receive any monies, funds, or other "proceeds" as a result of the Agreement;

E. The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the initial Term and all Renewal Terms;

F. The Equipment is, and during the Initial Term and all Renewal Terms will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become a fixture;

G. By all proper action Lessee has appropriated moneys sufficient to pay all Rental Payments payable during the Initial Term. During the Initial Term and any Renewal Terms, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the



ability of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee;

H. The execution and delivery of this Agreement, and compliance with the provisions hereof, will not conflict with or constitute on the part of Lessee a violation of, breach of, or default under any constitutional provision, statute, resolution, bond indenture or other financing agreement or any other agreement or instrument to which Lessee is a party or by which Lessee is bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Lessee or any of its activities or properties;

I. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened against or affecting Lessee, wherein an unfavorable decision, ruling or finding would materially and adversely affect the transactions contemplated hereunder or which in any way would adversely affect the validity or enforceability of this Agreement;

J. The Governing Body of Lessee represents that the reasonably anticipated amount of qualified tax-exempt obligations which have been and will be issued by Lessee does not exceed \$10,000,000 for the 2021 calendar year and designates the Agreement to be a “qualified tax-exempt obligation” pursuant to Section 265 (b) (3) of the Internal Revenue Code of 1986, as amended.

K. During the Term of this Agreement, Lessee will not make or permit any use of the Equipment or the proceeds under this Agreement which if such use had been reasonably expected on the date of the Agreement would have caused the Agreement to be an “arbitrage bond” within the meaning of Section 148 of the Code, and applicable regulations promulgated thereunder, and further covenants that it will observe and not violate the requirements of Code Section 148 and any applicable regulations.

\* \* \* \* \*

## ARTICLE III

### ACQUISITION AND LEASE OF EQUIPMENT

**SECTION 3.1.** Equipment Acquisition. Lessee agrees that it has been and will continue to be responsible for the preparation of the specifications for, the initiation of the bidding procedures with respect to and the letting of contracts for the purchase of the Equipment and for the acceptance of the Equipment pursuant to the provisions of the Purchase Orders, copies of which are attached to this Agreement as EXHIBIT C. As of the date of this Agreement, Lessor shall pay the amount of FIVE HUNDRED TWENTY ONE THOUSAND, THREE HUNDRED THIRTY FIVE (\$521,335.00) to Lessee, which amount Lessee shall use to pay the cost of the purchase of the Equipment to the Vendors in accordance with the terms of the Purchase Orders. Upon making final payment under the Purchase Orders, Lessee shall present to Lessor a Certificate of Acceptance signed by an Authorized Official of Lessee. Failure by the Vendors to perform under the Purchase Orders shall not affect Lessee's obligation to make Rental Payments under this Agreement.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, ADEQUACY, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. Lessee acknowledges that Lessor is not the Vendor or a manufacturer or dealer of the Equipment and that Lessee leases the Equipment hereunder "as is", it being acknowledged and agreed that no risk as to the value, condition, usefulness or fitness of the Equipment shall be borne by Lessor nor shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

**SECTION 3.2.** Lease of Equipment. Lessor hereby demises, leases, and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Initial Term and any Renewal Term entered into at the option and in the sole discretion of Lessee pursuant to SECTION 4.1 of this Agreement. Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment and Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Equipment, except as set forth in this Agreement. Lessor and its agents, employees, servants and representatives shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

**SECTION 3.3.** Title. Lessor shall hold title to the Equipment during the Lease Term. The Equipment shall become the property of Lessee only upon Lessee's exercise of the purchase option granted in SECTION 4.7 hereof and the payment by Lessee of the Optional Purchase Price of the Equipment and performance by Lessee of all of its other obligations under this Agreement during the Lease Term. In such event, Lessor agrees to execute and deliver all such instruments and take such other actions as Lessee reasonably requests in order to effectuate

transfer of ownership of the Equipment to Lessee. Upon the occurrence and continuance of an Event of Default as provided in SECTION 6.1 hereof, title to the Equipment shall revert to Lessor.

**SECTION 3.4.**      Security Interest. This Lease is intended to be a true lease whereby Lessor retains title to the Equipment. Notwithstanding the foregoing, to the extent this Lease is deemed to be a sale of the Equipment to Lessee, to secure the payment of all of Lessee's obligations under this Agreement, Lessee grants to Lessor a first and prior security interest in the Equipment, whether presently owned or hereafter acquired, and in all substitutions therefor and any proceeds thereof and therefrom. The security interest described in this Section 3.4 is intended to be a "purchase-money security interest" within the meaning of Section 9-103 of the Uniform Commercial Code, and the Equipment is intended to be "purchase-money collateral" secured by such purchase-money security interest. Lessee hereby authorizes Lessor to file the Financing Statement attached hereto as EXHIBIT E and further agrees to execute such additional documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignee of Lessor, in the Equipment.

**SECTION 3.5.**      Vendors' Warranties. Lessor and Lessee agree that Lessee, during the Lease Term so long as Lessee shall not be in Default hereunder, may assert from time to time whatever claims and rights including warranties of the Equipment which Lessor may have against the Vendors, and not against Lessor, and no breach of any such warranty shall have any effect whatsoever on the right and obligations of Lessor or Lessee under this Agreement, including the obligations of Lessee to make full and timely payment of the Rental Payments due hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendors of the Equipment.

**SECTION 3.6.**      Liens. During the Term of this Agreement Lessee shall not, directly or indirectly, create, incur, assume, suffer to exist or acquiesce in the creation of any mortgage, security interest, pledge, lien, charge, encumbrance or other claim on or with respect to the Equipment, other than the respective rights of Lessee and Lessor as herein provided, and except as set forth in the Purchase Agreement.

**SECTION 3.7.**      Personal Property. Lessor and Lessee agree that the Equipment is and shall at all times during the Term of this Agreement remain "goods" within the meaning of the Uniform Commercial Code and shall remain personal property, notwithstanding the fact that the Equipment or any part thereof may be or become, in any manner affixed or attached to, embedded in or permanently resting upon real property or any improvement thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real property or improvement.

**SECTION 3.8.**      Assignment by Lessor. Subject to the provisions of the second paragraph of this Section, Lessor's obligations and rights under this Agreement, including the right to receive payments from Lessee hereunder, may be assigned and reassigned in whole or

in part to one or more assignees or subassignees by Lessor at any time subsequent to this execution, without the necessity of obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (ii) in the event that such assignment or reassignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to reflect in a book entry the assignee designated in such notice of assignment, and subject to any claim, defense, set-off or counterclaim that Lessee may from time to time have against Lessor, or the assignee, arising from a breach of this Agreement only (not including the Purchase Agreement), to make all payments to the assignee designated in the notice of assignment. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or Financing and Continuation Statements which may be reasonably requested by Lessor or its assignee to protect its interests in the Equipment and in this Agreement.

This Agreement may be assigned and reassigned only to banks, savings and loan and other thrift associations and insurance companies, corporations having assets in excess of \$10 million, investment companies, and accredited investors as defined in the Securities Act of 1933, as amended from time to time.

**SECTION 3.9.**        No Sale, Assignment or Subleasing by Lessee. Neither this Agreement nor the interest of Lessee in the Equipment or any portion thereof may be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

**SECTION 3.10.**     Agreement as to Payments. Lessee agrees not to withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns or infirmities of the Equipment.

\* \* \* \* \*

## ARTICLE IV

### TERM; RENT; NONAPPROPRIATION; PURCHASE OPTION

**SECTION 4.1.** Initial-Term; Renewal Term. The Initial Term of this Agreement shall commence on July 12, 2021 and shall terminate the last day of Lessee's current Fiscal Year. The Lease Term may be continued, solely at the option of Lessee at the end of the Initial Term or any Renewal Term for an additional one year, up to a Maximum Lease Term not to exceed four (4) fiscal years (the "Maximum Lease Term"). At the end of the Initial Term and at the end of each Renewal Term, unless Lessee has terminated this Agreement pursuant to SECTION 4.5 of this Agreement, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term until the Maximum Lease Term has been completed. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Initial Term, except that the Rental Payments shall be as provided in EXHIBIT D to this Agreement.

**SECTION 4.2.** Rental Payments to be Unconditional. The obligations of Lessee to make payment of the Rental Payments, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee, any Vendor or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Initial Term or the then current Renewal Term shall not be abated through accident or unforeseen circumstances.

**SECTION 4.3.** Continuation of Lease Term by Lessee. Lessee intends, subject to SECTION 4.4 of this Agreement, to continue the Lease Term through the Initial Term and all Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Initial Term and each of the Renewal Terms can be obtained. Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each Budget or appropriation request submitted to Lessee's governing body for adoption in accordance with applicable provisions of law, and to cause its budget officer to use his best efforts to have such portion of the Budget or appropriation request approved by Lessee's governing body.

**SECTION 4.4.** Nonappropriation. Lessee is obligated only to pay periodic payments under this Agreement as may lawfully be made from funds budgeted and appropriated for the purpose during Lessee's then current Fiscal Year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Initial or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Initial or Renewal Term. Lessee shall give notice to Lessor of any such failure not less than thirty (30) days

prior to the termination of the then current Initial or Renewal Term, but failure to give such notice shall not extend the term beyond such Initial Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees peaceably to deliver the Equipment to Lessor at a location to be mutually agreed upon by the Lessor and the Lessee.

**SECTION 4.5.**        Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

A.        The expiration of the Initial Term or any Renewal Term (other than the final Renewal Term) of this Agreement without the authorization of a subsequent Renewal Term as provided in SECTION 4.1 of this Agreement and the payment by Lessee of all Rental Payments payable by Lessee during such Initial Term or Renewal Term, as the case may be;

B.        The expiration of the final Renewal Term and the payment by Lessee of all Rental Payments required and the non-exercise by Lessee of its option to purchase the Equipment under SECTION 4.7 of this Agreement;

C.        The expiration of the final Renewal Term and the payment by Lessee of all Rental Payments required and the exercise by Lessee of its option to purchase the Equipment under SECTION 4.7 of this Agreement; or

D.        A Default by Lessee and the exercise by Lessor of its election to terminate this Agreement under SECTION 6.2 of this Agreement.

In the event of the termination of the Lease Term as described in (A) , (B) , or (D) above, Lessee, at Lessee's expense, shall immediately return the Equipment to Lessor at the location mutually agreed upon by the Lessor and the Lessee, in a state of good repair and working order to the reasonable satisfaction of Lessor, which satisfaction shall not be unreasonably withheld and shall be indicated by letter to the Lessee. Lessee shall be liable for the payment of any damages to the Equipment not occurring in the ordinary course of business and not constituting normal wear and tear for equipment and machinery of such type and design for the use to which Lessee has covenanted and agreed the Equipment will be put. If Lessee has not delivered possession of the Equipment to Lessor, the termination of the Term of this Agreement shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments which, calculated on a daily basis, have accrued during the period in which Lessee has failed to deliver possession of the Equipment to Lessor in accordance with the terms hereof plus any actual damages resulting from any damages to the Equipment that may occur prior to delivery of possession of the Equipment to Lessor or resulting from the failure of Lessee to deliver the Equipment to Lessor in accordance with the terms hereof.

**SECTION 4.6.**        Rent. Lessee agrees to pay directly to Lessor Rental Payments during the Initial Term and any Renewal Term in the amounts and on the dates as set forth in EXHIBIT E attached hereto. Any payments received later than the tenth (10th) day following the Due Date shall bear interest from the Due Date at the rate of 3.50% per annum until

paid. Lessor and Lessee acknowledge and agree that the obligation of Lessee to pay the Rental Payments shall constitute a current expense of Lessee payable by Lessee from funds budgeted and appropriated in accordance with law for the then current Fiscal Year, and that such obligation shall not in any manner be construed to be a debt of Lessee in contravention of any constitutional or statutory limitations or requirements concerning indebtedness of Lessee and nothing contained herein shall constitute a pledge or encumbrance upon any tax or other revenues of Lessee. Notwithstanding any loss of use resulting from any defect in the Equipment or dispute between Lessee and Vendors or any other person, Lessee shall make all payments of Rental Payments when due and shall not assert against Lessor any right of set-off or counterclaim arising from that loss of use against its obligation to make such payments.

**SECTION 4.7.**     Purchase Option.     Provided Lessee is not in Default hereunder, Lessee shall have the right to terminate this Agreement and purchase all the Equipment on any Due Date as set forth in EXHIBIT D upon payment directly to Lessor of all Rental Payments coming due on or before said Due Date plus the then applicable Optional Purchase Price as set forth in EXHIBIT D. In order to exercise such option, Lessee shall give at least sixty (60) days prior written notice to Lessor of Lessee' intent to exercise its option to purchase the Equipment pursuant to this Section.

In the event that Lessee has made all of the rental payments required to be made pursuant to the terms of this Agreement and has failed to exercise its option as provided for herein, then Lessor shall notify Lessee of its intent to take possession of the Equipment as a result of Lessee's failure to exercise its option and Lessee shall thereafter have five (5) additional days in which to exercise its option.

\* \* \* \* \*

## ARTICLE V

### CERTAIN COVENANTS OF LESSEE

**SECTION 5.1.** Use of the Equipment. Lessee has represented and hereby covenants and affirms that the Equipment is essential to the functioning of Lessee, that Lessee has an immediate need for and expects to make immediate use of the Equipment and that the Equipment will be used only in the performance of one or more of the governmental or proprietary functions of Lessee. Lessee will use, operate and maintain the Equipment only in accordance with methods prescribed by the Vendors and only for the purpose intended by the Vendors. Lessee will not use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all laws, regulations, rules, orders and decrees of the State, and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over Lessee or the operation of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation, rule, order, or decree if Lessee shall first give prior written notice of any such proposed contest to Lessor and provide any assurances as may be reasonably requested by Lessor that such contest will not adversely affect the interest of Lessor in the Equipment or the rights of Lessor under this Agreement.

**SECTION 5.2.** Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term, Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order in full and complete accordance with the Vendors I specifications. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. Lessor and its agents, employees, servants and representatives shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment to insure compliance by Lessee with the provisions of this SECTION 5.2.

**SECTION 5.3.** Insurance. At its own expense, Lessee shall cause property insurance on the Equipment to be carried and maintained with an insurer(s) of recognized responsibility, licensed or otherwise authorized to write such insurance under the laws of the State, in an amount equal to the Full Insurable Value of the Equipment. Within thirty (30) days of commencement of any Lease Term, Lessee shall furnish to Lessor certificates evidencing such insurance coverage, a copy of which is attached hereto as EXHIBIT F. Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other equipment and properties of Lessee as well, as well as a program of self-insurance, the terms and conditions of which are satisfactory to Lessor. Each such policy shall contain a provision to the effect that the insurance company providing coverage shall not cancel the policy or modify it materially and adversely to the interests of Lessor without first giving written notice thereof to Lessor at least ten (10) days in advance of such cancellation or modification.



If prior to the termination of this Agreement (a) the Equipment is stolen, destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee will apply the proceeds of any property insurance claim or condemnation award to the prompt replacement, restoration or repair of the Equipment.

If the Proceeds are insufficient to pay in full the cost of any replacement, restoration or repair of the Equipment, Lessee shall at its option either (a) promptly complete such replacement, restoration or repair of the Equipment to a good state of condition and pay any costs thereof in excess of the amount of the Proceeds and continue the then current Term of this Agreement, it being recognized that in such event Lessee will not be entitled to any reduction of Rental Payments, or (b) pay to Lessor the amount of the then applicable Optional Purchase Price for the Equipment and upon such payment, the Term of this Agreement shall terminate and the amount of the Proceeds in excess of the then applicable Optional Purchase Price, if any, shall be paid to Lessee.

Lessee shall carry worker's compensation insurance and any similar liability insurance as Lessee shall be authorized at any time and from time to time during the Lease Term covering all employees working on, in, near or about the Equipment, and shall carry general accident and public liability insurance in amounts typical for entities engaged in a business similar to Lessee with assets and liability comparable to those of Lessee, or demonstrate to the satisfaction of Lessor, that self-insurance is provided, and shall require any other person or entity working on, in, near or about the Equipment to carry such coverage. Within thirty (30) days of commencement of any Lease Term, Lessee shall furnish Lessor certificates evidencing such insurance coverage.

**SECTION 5.4.**     Annual Budget. Lessee covenants and agrees that, if requested, it shall file with Lessor a copy of its Budget certified by its Authorized official (or an excerpt or extract from its Budget similarly certified) for any Fiscal Year during the Initial Term or any Renewal Term of this Agreement together with a certificate signed by an Authorized official stating that Lessee has made provision in its Budget for the payment to Lessor of the Rental Payments payable by Lessee during such Fiscal Year. Lessee covenants and agrees that it shall present in its draft or proposed Budget for the Fiscal Year next succeeding the then current Term of this Agreement the provision in such Budget of the payment of Rental Payments for the lease of the Equipment for such Fiscal Year. Lessee also covenants and agrees that it shall file with Lessor such other financial information relating to the ability of Lessee to continue to meet its obligations to pay Rental Payments during the then current Term of this Agreement as reasonably may be requested by Lessor.

**SECTION 5.5.**     Records. Lessee will keep proper records with respect to the Equipment which shall at all reasonable times be subject to inspection by Lessor, and its agents, employees, servants and representatives.

\* \* \* \* \*

## ARTICLE VI

### DEFAULT AND REMEDIES

**SECTION 6.1.** Events of Default. The term “Event of Default”, as used herein, means the occurrence of any one or more of the following events:

A. Failure by Lessee to make any Rental Payment as it becomes due in accordance with the terms of this Agreement, and any such failure continues for thirty (30) days after written notice thereof;

B. Failure by Lessee to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within thirty (30) days after written notice thereof unless Lessor shall agree in writing to an extension of such time; provided, however, if the failure stated in such notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the failure is corrected;

C. The discovery by Lessor that any material statement, representation or warranty made by Lessee in this Agreement is false, misleading or erroneous in any material respect; or

D. Lessee files a voluntary petition in bankruptcy, or Lessee fails to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to perform its obligations hereunder or to carry on its operations, or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under any bankruptcy, insolvency, debt moratorium or similar law or any other event or circumstance that renders Lessee incapable of fulfilling its obligations hereunder.

The foregoing provisions of (B) above are subject to the proviso that if, by reason of Force Majeure, Lessee is unable in whole or in part to carry out its covenants and agreements, Lessee shall not be deemed in Default during the continuance of such inability.

**SECTION 6.2.** Remedies. Whenever any Event of Default shall have happened and be continuing Lessor shall have the right, at its sole option without further demand or notice, subject to the provisions of SECTION 6.1 hereof, to take any one or any combination of the following remedial steps:

A. By written notice to Lessee, declare an amount equal to all Rental Payments then due during the then current Initial Term or Renewal Term, plus all other amounts then due

under this Agreement, to be immediately due and payable, whereupon the same shall become immediately due and payable;

B. With or without terminating this Agreement, by written notice to Lessee, require Lessee to, at Lessee's expense, immediately return the Equipment in a good state of condition to Lessor at a location mutually agreed upon by Lessor and Lessee, or Lessor may enter the location in which the Equipment is then situated and take immediate possession of and remove the Equipment at Lessee's expense, and sell or release the Equipment or, for the account of Lessee, sublease the Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Initial Term or Renewal Term and (ii) the net proceeds of any such sale, leasing or subleasing; and

C. Exercise any other right, remedy or privilege which may be available to Lessor under applicable laws of the State or proceed by appropriate court action to enforce the terms of this Agreement or to rescind this Agreement.

The proceeds of the exercise of any or all rights and remedies hereunder shall be applied: first, to the payment of court costs and the reasonable expenses of retaking, holding, securing, transporting, preparing for sale or lease, selling, leasing and other expenses related to the recovery and disposition of the Equipment including the reasonable fees and expenses incurred by Lessor and its legal counsel, advisors and other agents, employees, servants and representatives; second, to the payment of the Rental Payments and all other amounts then due; and lastly, to the payment of any damages to the Equipment caused by the negligence of Lessee and not occurring in the ordinary course of business and not constituting normal wear and tear for equipment of such type and design for the use to which Lessee has covenanted and agreed the Equipment will be put.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and in addition to every other remedy under this Agreement or 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 power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

\* \* \* \* \*

## ARTICLE VII

### MISCELLANEOUS

**SECTION 7.1.** Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement or course of dealing shall bind either party unless pursuant to an instrument in writing signed by Lessor and Lessee and then effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein.

**SECTION 7.2.** Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by Lessor and Lessee, nor shall any such amendment that affects the rights of Lessor=s assignee be effective without such assignee=s consent.

**SECTION 7.3.** Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 7.4.** Severability. In the event any provision of this Agreement 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 7.5.** Notices. All notices, certificates or other communications hereunder 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.

**SECTION 7.6.** Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming.

**SECTION 7.7.** Section Headings Not Controlling. The headings of the several Articles and Sections of this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provisions of this Agreement.

**SECTION 7.8.** Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

**SECTION 7.9.** Indemnification. Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

**SECTION 7.10.** Sovereign Immunity. City does not waive its sovereign

immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

**SECTION 7.11.** Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

**SECTION 7.12.** Fiscal Year Obligation. No provision of this Agreement shall be construed as creating or constituting a general obligation or other indebtedness of Lessee or a mandatory payment obligation of Lessee in any ensuing Fiscal Year beyond the current Fiscal Year.

\* \* \* \* \*

IN WITNESS WHEREOF, Lessee and Lessor have caused these presents to be signed by their respective officers hereunto duly authorized and have caused their seals to be hereunto affixed, and Lessee and Lessor have caused this Agreement to be dated as of the day and year first above written.

( S E A L )

LESSEE: CITY OF LARAMIE, WYOMING

By:  
Title: Paul Weaver, Mayor

ATTESTED:

By:  
Title: \_\_\_\_\_

STATE OF WYOMING        )  
  ) ss.  
COUNTY OF ALBANY        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Paul Weaver, as Mayor on behalf of Lessee.

Notary Public

My commission expires

( S E A L )

LESSOR: FIRST STATE BANK OF CHEYENNE  
CHEYENNE, WYOMING

By:  
Title: Sr. Vice President

ATTESTED

By:  
Title:

STATE OF WYOMING                    )  
  ) ss.  
COUNTY OF LARAMIE                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Chris Allred, as Sr. Vice President on behalf of Lessor.

Notary Public

My commission expires

**EXHIBIT A**

**CERTIFICATE AS TO ARBITRAGE**

I, the undersigned officer of the City of Laramie, Wyoming (the "Lessee") being the person duly charged, with others, with responsibility for issuing Lessee's obligation in the form of that certain agreement entitled "Lease and Option To Purchase Agreement", dated as of July 12, 2021 (the "Agreement"), HEREBY CERTIFY that:

1. The Agreement was issued by Lessee under and pursuant to Wyoming law to finance the acquisition of certain Equipment described therein.

2. Pursuant to the Agreement, Lessee is entitled to receive said Equipment in consideration for the obligation of Lessee under the Agreement. Said Equipment will be used in furtherance of the public purposes of Lessee. Lessee does not intend to sell said Equipment or said Agreement or to otherwise dispose of said Equipment during the term of the Agreement. Lessee will not receive any monies, funds, or other "proceeds" as a result of the Agreement.

3. Lessee expects to make payments under the Agreement from its general funds on the basis of annual appropriations in amounts equal to the required payments under the Agreement. The remaining general funds of Lessee are not reasonably expected to be used to make such payments and no other monies are pledged to the Agreement or reasonably expected to be used to pay principal and interest on the Agreement.

4. Lessee has not received notice that its Certificate may not be relied upon with respect to its own issues nor has it been advised that any adverse action by the Commissioner of Internal Revenue is contemplated.

To the best of my knowledge, information and belief the expectations herein expressed are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

( S E A L )

LESSEE: CITY OF LARAMIE, WYOMING

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021



**EXHIBIT B**

**CERTIFICATE OF ACCEPTANCE OF EQUIPMENT**

The undersigned as Lessee under the Lease and Option To Purchase Agreement (the "Agreement") dated as of July 12, 2021, with First State Bank Of Cheyenne, Cheyenne, Wyoming (the "Lessor"), acknowledges receipt in good condition all of the Equipment described in the Agreement and in EXHIBIT C thereto as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, and certifies that Lessee has fully and satisfactorily performed all of its covenants and payment obligations required under SECTION 3.1 of the Agreement.

The undersigned officer of Lessee hereby reaffirms in all respects the Certificate as to Arbitrage attached as EXHIBIT A to the Agreement, and represents that, to the best of his knowledge, information and belief, the expectations therein expressed were reasonable as of the date on which they were made, and that there were, and are as of the aforementioned date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

( S E A L )

LESSEE: CITY OF LARAMIE, WYOMING

By:

Title:

Date:

\_\_\_\_\_  
\_\_\_\_\_, 2021

**EXHIBIT C**

**DESCRIPTION OF EQUIPMENT**

The Equipment which is the subject of the attached Lease and Option To Purchase Agreement is as follows:

Item A :	2021 Caterpillar 627K 24 Cu. Yard Tractor/Scraper	<u>\$521,335.00</u>
TOTAL		\$521,335.00

\* See Attached Purchase Order

Together with all additions, accessions, and replacements thereto.

Lessee hereby certifies that the description of the property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Lease and Option To Purchase Agreement.

( S E A L )

LESSEE: CITY OF LARAMIE, WYOMING

By:

Title:

Date: \_\_\_\_\_, 2021

Location of Equipment:

Landfill: 162 Roger Canyon Rd., Laramie, Wyoming 82070

**EXHIBIT D**  
**\$521,335.00**

**SCHEDULE OF RENTAL PAYMENTS AND OPTIONAL PURCHASE PRICES**

Date	Principal	Rate	Interest	Total Debt Service	Option Price(1)
7/12/2021					\$521,335.00
9/15/2021	\$ 65,736.00	1.60%	\$ 1,459.73	\$ 67,195.73	458,188.08
3/15/2022	\$ 63,540.11	1.60%	\$ 3,644.77	\$ 67,184.88	394,286.88
9/15/2022	\$ 64,048.43	1.60%	\$ 3,136.46	\$ 67,184.89	329,874.48
3/15/2023	\$ 64,560.82	1.60%	\$ 2,624.07	\$ 67,184.89	264,946.77
9/15/2023	\$ 65,077.31	1.60%	\$ 2,107.59	\$ 67,184.90	199,499.64
3/15/2024	\$ 65,597.93	1.60%	\$ 1,586.97	\$ 67,184.90	133,528.93
9/15/2024	\$ 66,122.71	1.60%	\$ 1,062.19	\$ 67,184.90	67,030.46
3/15/2025	<u>\$ 66,651.69</u>	1.60%	<u>\$ 533.21</u>	<u>\$ 67,184.90</u>	-
Total	\$521,335.00		\$16,154.99	\$537,489.99	

(1) The Lease Option Price is the dollar amount required to terminate the Lease after the then due Lease Payment has been made for the same period.

**EXHIBIT E**  
**FORM OF U.C.C. FINANCIAL STATEMENT**

**EXHIBIT F**

**CERTIFICATE OF INSURANCE**

TO: First State Bank Of Cheyenne  
500 W. 18<sup>th</sup> Street  
Cheyenne, Wyoming 82001

FROM: LESSEE

SUBJECT: INSURANCE COVERAGE REQUIREMENTS

1. In accordance with SECTION 5.3 of the Agreement, we have instructed the insurance agent named below:

Accident and liability insurance are self-insured through the Wyoming Association of Risk Management (W.A.R.M.)

to issue:

- a. All Risk Physical Damage Insurance on the Equipment evidenced by a Certificate of Insurance and Property Floater for each piece of equipment to Policy No. \_\_\_\_\_ (\_\_\_\_\_) naming "First State Bank Of Cheyenne/or its assigns" as Loss Payee.

Coverage Required: Full Replacement Value; AND

2. Pursuant to SECTION 5.3 of the Agreement, Worker's Compensation is provided by Wyoming Worker's Compensation Division. Accident and liability insurance are self-insured through the Wyoming Association of Risk Management (W.A.R.M.)
3. Proof of insurance coverage will be provided to First State Bank Of Cheyenne, 500 West 18<sup>th</sup> Street, Cheyenne, Wyoming 82001, within thirty (30) days of the commencement of any Lease Term.

( S E A L )

LESSEE: CITY OF LARAMIE, WYOMING

By:

Title:

Date: \_\_\_\_\_, 2021