



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

Municipal Equipment Lease/Purchase Agreement

Number 773455508-012 dated as of July 28, 2022

THIS MUNICIPAL EQUIPMENT LEASE/PURCHASE AGREEMENT (this "Agreement") dated as of July 28, 2022 by and between CITY OF BOERNE, TEXAS ("Purchaser") having its principal place of business at 447 N. Main, Boerne, Texas 78006 (said state being referred to throughout this Agreement as the "State") and FROST BANK ("Bank").

WITNESSETH

WHEREAS, with regard to any Equipment (hereinafter defined) not owned by Purchaser, Bank owns or can acquire such Equipment and Purchaser desires to lease/purchase said Equipment through the financing herein provided;

WHEREAS, Purchaser may desire to lease/purchase equipment under this Agreement from time to time whereby this Agreement shall apply to all such additional lease/purchases.

NOW, THEREFORE, in consideration of the covenants herein, the parties agree by entering into this Agreement, including all related Acceptance Certificates (as hereinafter defined), as amended from time to time, as follows:

I. Assignment to Bank; Sale to Purchaser; Term; Security Interest; Tax Certifications.

Section 1.1. **Assignment to Bank.** Purchaser assigns to Bank all rights, if any, which Purchaser has or may hereafter acquire in the personal property (the "Equipment") identified specifically in any Exhibit marked as an Exhibit "B" hereto as dated from time to time (the "Installment Payment Schedule") which exhibits set forth various matters related to such Equipment and related purchase orders (the "Purchase Orders"), as issued to any supplier of Equipment (a "Vendor") reserving to Purchaser, however, so long as Purchaser is entitled to possess the Equipment, all rights to property (other than the Equipment itself) and service that Vendors are obligated to provide. Purchaser irrevocably constitutes Bank its true and lawful attorney-in-fact with full power to demand, receive, and give acquittance for all moneys and claims with respect to Purchase Orders, to endorse any related instruments and to institute any proceedings which Bank deems advisable.

Section 1.2. **Delivery Acceptance.** Bank shall cause the Equipment to be delivered to Purchaser at the Equipment Location (as specified in the applicable Exhibit "B"), and Purchaser shall accept the Equipment as soon as it has met the acceptance criteria specified in the applicable purchase documents. Purchaser shall irrevocably accept the Equipment under lease and shall evidence the commencement of the lease with respect thereto by executing and delivering to Bank an acceptance certificate in the form attached as Exhibit "A" (an "Acceptance Certificate").

Section 1.3. **Sale to Purchaser.** Subject to the terms hereof, Bank will sell each item (an "Item") of Equipment to Purchaser, and Purchaser will purchase each Item from Bank by making the installment purchase payments (the "Installment Payments") according to the Installment Payment Schedule. The cost of each Item, delivery and installation charges, Bank's legal expenses, origination fees, and all other related costs will be included in the total cost of the Item as shown in each Exhibit "B."

Section 1.4. **Term.** This Agreement will be effective on the date hereof. With respect to any Item, except as may be otherwise specifically provided in this Agreement, the obligation to make the Installment Payments provided for in this Agreement and as set forth in each Installment Payment Schedule hereto will begin on the execution of an Acceptance Certificate and expire or terminate upon the first to occur of: (a) the end of the fiscal year of Purchaser ("Fiscal Year") during which an Event of Nonappropriation (as defined in Section 2.6 below) occurs; (b) an optional payment date as specified in Exhibit "B" hereto ("Optional Payment Date") upon which date the Purchaser may prepay the price of an Item (the "Option Price"); (c) an event of default, as defined in Article V below ("Event of Default"), and a termination of Purchaser's possession

of the Item; or (d) the later of the last installment payment date ("Installment Payment Date") specified in Exhibit "B" or the date on which all Installment Payments are paid. Expiration or termination of this Agreement will terminate all obligations of Purchaser with respect to such Item (except to the extent moneys have theretofore been appropriated for such purpose). Upon termination described in clause (a) or (c) above, title to the Item shall thereupon be deemed transferred to Bank.

Section 1.5. Title. Title to each Item will pass to Purchaser upon the execution and delivery of an Acceptance Certificate subject to the Bank's rights hereunder. Purchaser will keep each Item free of all encumbrances except Bank's purchase money security interest.

Section 1.6. Security Interest. To secure payment of all amounts due under this Agreement and to secure the performance and observance by Purchaser of all the covenants expressed or implied herein, Purchaser hereby grants a purchase money security interest in the Equipment to Bank in accordance with the Uniform Commercial Code or other applicable code of the State, said security interest to also cover all of Purchaser's interest (whether ownership or otherwise, and whether presently existing or hereafter acquired) in and to any and all the following: (i) future replacements, betterments, substitutions and additions to any of the Equipment; (ii) rentals, deposits, and other sums as may become due Purchaser as lessor under any and all leases of any Equipment, whether written or oral; (iii) purchase contracts or similar agreements (and all rights of Purchaser thereunder) executed by Purchaser and any other individual or entity pursuant to the terms of which such individual or entity has contracted to purchase from Purchaser the Equipment or any part thereof; and (iv) proceeds of the Equipment or any of the foregoing, including, without limitation, all condemnation or insurance proceeds arising out of or with respect to the Equipment or any of the foregoing.

Section 1.7. Tax Certification and Indemnification.

(a) Purchaser agrees and certifies as follows: (1) Moneys on deposit in any fund or account related to this Agreement will not be used in a way that will cause the interest component of any Installment Payment to be includable in Bank's gross income for federal tax purposes; (2) No use will be made of proceeds of this Agreement, or any funds or accounts of Purchaser which may be deemed to be such proceeds, which would cause this Agreement to be an "arbitrage bond" under section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder (the "Code"). Purchaser will comply with the requirements of section 148 of the Code; (3) Purchaser will not take, cause to be taken or fail to take any action, the result of which would cause the interest component of any Installment Payment to be ineligible for exclusion from Bank's gross income under section 103 of the Code or would cause this Agreement to be a "private activity bond" or to fail to meet any applicable requirement of section 149 of the Code; (4) Purchaser will timely file the information report required by section 149(e) of the Code (Form 8038-G or 8038-GC), and promptly provide to Bank evidence of Purchaser's filing of all necessary documents with the Internal Revenue Service; (5) This Agreement will not at any time be a "private activity bond" (as defined in section 141 of the Code); (6) the reasonably anticipated amount of tax exempt obligations as described in section 103(a) of the Code ("Tax Exempt Obligations") (including this Agreement and qualified 501(c)(3) bonds and excluding other private activity bonds) that will be issued by Purchaser and its subordinate entities during any calendar year in which an Acceptance Certificate is delivered will not exceed \$30,000,000. Not more than \$30,000,000 of obligations issued by Purchaser during any calendar year in which an Acceptance Certificate is delivered will be designated by Purchaser as a "qualified tax exempt obligation" for purposes of section 265(b)(3) of the Code. This Agreement has been entered into on the basis that Bank will be entitled to the exception contained in section 265(b)(3) of the Code (the "Exception") with respect to the deduction of interest expense allocable to tax-exempt interest. The Purchaser hereby designates this Agreement as a "qualified tax exempt obligation" for purposes of Section 265(b)(3) of the Code. If, as a result of the falsity or breach of Purchaser's representations or agreements in this Section 1.7, Bank will not have or will lose the right to claim the Exception, upon thirty (30) days' written notice to Purchaser by Bank, Purchaser shall, to the extent permitted by this Agreement and by applicable law, pay Bank an amount which, in the reasonable opinion of Bank and after deduction of all taxes required to be paid by Bank with respect to receipt of such amount, will cause Bank's net after-tax return over the term of this Agreement to equal the net after-tax return that would have been available if Bank had been entitled to the Exception.

(b) Purchaser is exempt from the arbitrage rebate requirements of section 148(f) of the Code because: (1) Under section 148(f)(4)(D) of the Code (i) it is a political subdivision of the State with general taxing powers and is not a subordinate entity of any other political subdivision, (ii) this Agreement will not at any time be a "private activity bond" (as defined in section 141 of the Code), (iii) 95% or more of the net proceeds of this Agreement will be used for local governmental activities of Purchaser within the meaning of section 148(f)(4)(D)(i)(III) of the Code, (iv) Purchaser has not issued any Tax Exempt Obligations in the current calendar year other than this Agreement and those referenced in Section 1.7(a) above, (v) the aggregate face amount of all Tax Exempt Obligations (other than private activity bonds), including this Agreement, which

will be issued by Purchaser and its subordinate entities during the calendar year in which an Item is delivered will not exceed \$5,000,000; or (2) Purchaser is entitled to the exception under section 148(f)(4)(B)(1) of the Code because the gross proceeds (as defined in section 148(f)(6)(B) of the Code) of this Agreement (including costs of issuance) will be expended for and allocated to the governmental purposes of this Agreement within six months after the date hereof.

(c) To the extent Purchaser fails to qualify for either of the above rebate exceptions, it will (i) timely pay to the United States any payments necessary to preserve the tax-exempt status of the interest component of the Installment Payments (provided, that this Section is not intended to create a debt for purposes of the Constitution of the State) and (ii) take all such actions that may be necessary to comply with the rebate requirements of section 148(f) of the Code.

(d) Bank, on behalf of Purchaser, will pay the proceeds of this Agreement to the Vendor of the Equipment no later than five (5) business days after execution of an Acceptance Certificate. Purchaser therefore reasonably expects that such proceeds will be spent within the three-year temporary period provided in the Treasury Regulations issued or proposed under the Code including amendments and successor provisions thereto (the "Regulations").

(e) Purchaser has investigated the facts, estimates and circumstances in existence on the date hereof, together with Purchaser's exceptions as to future events. These are true and are complete in all material respects, and on the basis of such, it is not expected that the use of the sale proceeds hereof or any other moneys or property will be used in a manner which will cause this Agreement to be an arbitrage bond within the meaning of section 148 of the Code. Such expectations are reasonable, and there are no other facts, estimates or circumstances that would materially change such expectations.

(f) None of the proceeds hereof will be used, directly or indirectly, in any trade or business carried on by any person other than a governmental unit, which is defined to include any state of the United States and any political subdivision, agency, instrumentality or entity acting by or on behalf of a state, but not including the United States or any agency or instrumentality thereof, no more than 10% of the Equipment will be used directly or indirectly in a trade or business carried on by any such person, and no more than 5% of the Equipment will be used directly or indirectly in trade or business carried on by any such person that is not related to any government use of such Equipment.

(g) The payment of the Installment Payments will not be directly or indirectly (i) secured by any interest in property used or to be used for a private business use or payments in respect thereof, or (ii) derived from payments in respect of property or borrowed money used or to be used for private business.

(h) None of the proceeds hereof will be used, directly or indirectly, to make or finance loans to persons other than a governmental unit.

(i) No person, other than Purchaser or another governmental unit, will use the Equipment on any basis other than the same basis as the general public; and no person other than a governmental unit will be a user of the Equipment as a result of (i) ownership, or (ii) actual or beneficial use pursuant to a lease or a management or incentive payment contract, or (iii) any other similar arrangement.

(j) Within fifteen (15) days before the date hereof, Purchaser has not sold (nor will it deliver within fifteen (15) days after the date hereof) any other obligations pursuant to the same plan of financing that will be paid from substantially the same source of funds (or which will have substantially the same claim to be paid from substantially the same source of funds), without regard to guarantees from unrelated parties, as this Agreement or which will be paid directly or indirectly from the proceeds hereof.

(k) No Item is expected to be sold or otherwise disposed of prior to the expiration of this Agreement.

(l) The certifications and representations made herein are intended, and may be relied upon, as a certification described in Section 1.148-2(b)(2) of the Regulations.

(m) Bank represents that it is entering into this Agreement for investment and not for assignment to others. The amount Bank funds pursuant hereto is the issue price hereof and does not exceed the fair market value of this Agreement as of the date hereof.

(n) Should the interest component of payments hereunder be deemed by the federal government or determined by the Internal Revenue Service or a court of competent jurisdiction or an opinion of nationally recognized bond counsel not to be

exempt from gross income, subject to the provisions of Section 2.6 hereof, Purchaser will pay as additional sums hereunder sufficient funds to adjust the interest to be paid hereunder to an amount equivalent to the after-tax interest rate contemplated hereunder as a tax exempt transaction. Said adjustment will be retroactive and apply to any installments already paid by Purchaser to Bank to the extent that any ruling by any such taxing authority requires the payment of additional tax on payments already received by Bank. This obligation will survive the expiration of this Agreement.

II. Payment of Purchase Price; Warranty Disclaimers.

Section 2.1. Agreement to Pay. Subject to the limitation of Section 2.5 of this Agreement, Purchaser will pay the Installment Payments to Bank from funds appropriated therefor and any other moneys legally available for that purpose, at the place set forth in Exhibit "B" or such other place as Bank may designate, in such amounts, including principal and interest, and on such date as called for in each Supplement hereto along with the reasonable expenses of Bank related hereto, except expenses included in the cost of the Equipment pursuant to Section 1.3, and any other payment required under this Agreement. If any amount payable hereunder is not paid within ten (10) days after it is due, Purchaser will pay to Bank an amount equal to five percent (5%) of such overdue payment as a delinquency charge. Purchaser agrees with Bank that such a delinquency charge is reasonable compensation to Bank for the handling of such late payments. Purchaser's payment obligation hereunder is not subject to any defense, right of setoff or counterclaim arising out of any breach by Bank, hereunder or otherwise, or out of any indebtedness or any liability at any time owing by Bank. BANK HAS NO RIGHT TO COMPEL PURCHASER TO LEVY OR COLLECT TAXES TO MAKE ANY PAYMENTS REQUIRED HEREUNDER, OR TO EXPEND FUNDS BEYOND THE AMOUNT APPROPRIATED THEREFOR IN THE THEN CURRENT FISCAL YEAR OF PURCHASER.

Section 2.2. Warranties. BANK MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING THE EXTENT OF OR ENFORCEABILITY OF ANY CLAIM, WARRANTY, AGREEMENT OR REPRESENTATION ASSIGNED TO PURCHASER UNDER ARTICLE III BELOW. NO DEFECT OR UNFITNESS OF ANY ITEM WILL RELIEVE PURCHASER OF ITS OBLIGATIONS HEREUNDER. BANK MAKES NO REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, OR ITS DELIVERY, INSTALLATION, DESIGN, PERFORMANCE, SPECIFICATIONS, CONDITION, DURABILITY, SUITABILITY, FITNESS FOR USE OR MERCHANTABILITY. AS BETWEEN BANK AND PURCHASER, ALL EQUIPMENT IS ACCEPTED AND PURCHASED HEREUNDER BY PURCHASER "AS IS," "WHERE-IS," AND "WITH ALL FAULTS," AND BANK WILL NOT BE RESPONSIBLE FOR ANY PATENT OR LATENT DEFECTS THEREIN, OR ANY DAMAGES, WHETHER ACTUAL, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, ARISING THEREFROM. Under no circumstances will Bank be liable for actual, special, incidental, consequential or other damages of or to Purchaser, or any other entity arising out of or in connection with the maintenance, use or performance of the Equipment.

Section 2.3. Prepayment. If no Event of Default, or event which with notice or lapse of time, could become an Event of Default, exists, upon thirty (30) days prior written notice, Purchaser may prepay the purchase price of all, but not less than all, Items on any Optional Payment Date by paying the applicable Option Price in the specific Exhibit "B" applicable to the Item(s) plus the Installment Payment due on such date, whereupon Bank will release its purchase money security interest in the Item(s).

Section 2.4. Appropriations. (a) Purchaser, by entering into this Agreement, acknowledges its current intention to make all payments due under this Agreement during its current Fiscal Year on the dates such payments are then due, but does not commit to a legal or other obligation to make other payments due under this Agreement or to incur any liability or debt beyond the revenue and income provided during its then current Fiscal Year. The liability and obligations of Purchaser during each Fiscal Year and remedies of Bank will be limited to recovery only of funds appropriated for payments for such Fiscal Year. (b) Purchaser agrees (i) that the governing body of Purchaser shall, for each ensuing Fiscal Year in which the payments are scheduled to be made, to the extent funds have been appropriated for such Fiscal Year, make all such payments as and when due; and (ii) that if sufficient funds are appropriated and budgeted for the next Fiscal Year for the sale and lease of the Equipment, then this Agreement will continue during such Fiscal Year.

Section 2.5. Funding Intent. Purchaser reasonably believes that sufficient funds can be obtained to make all Installment Payments and other payments during the term of this Agreement. Purchaser affirms that funds to pay Installment Payments and other payments under this Agreement are available for Purchaser's current Fiscal Year. Purchaser and Bank agree that Purchaser's obligation to make Installment Payments under this Agreement will be Purchaser's current expense and will not be interpreted to be a debt in violation of applicable law or constitutional limitations or requirements. Nothing contained in this Agreement will be interpreted as a pledge of Purchaser's general tax revenues, funds or moneys.

Section 2.6. Nonappropriation. If, during a Fiscal Year (the "Current Fiscal Year") the governing body of Purchaser fails to specifically include in its proposed budget or related documents, or to appropriate sufficient funds to make the Installment Payments and other amounts due under this Agreement in the next succeeding Fiscal Year with regard to any specific Item, then Purchaser will immediately (but in no event later than 90 days prior to the end of the Current Fiscal Year) notify Bank or its assignee of such occurrence. In such event, an event of nonappropriation ("Event of Nonappropriation") will be deemed to have occurred, and this Agreement will be terminated as it applies to said specific Item to which such Event of Nonappropriation applies at the end of the Current Fiscal Year, whereupon Purchaser will be obligated to pay all amounts then due under this Agreement subject to the provisions herein. At the end of the Current Fiscal Year, Bank will have the right to take possession of such Item and title to such Item shall vest in Bank, and all rights of Purchaser in and to such Item including rights to possession, shall terminate. Nothing in this Section or elsewhere in this Agreement will be deemed in any way to obligate Purchaser or create a debt of Purchaser beyond its Current Fiscal Year. If Purchaser makes all payments due under this Agreement through the end of the Current Fiscal Year and relinquishes such Item as provided elsewhere in this Agreement, then Purchaser will have no further liability under this Agreement as it relates to the specific Item as to which such Act of Nonappropriation has occurred and the Item has been surrendered to Bank.

III. Duties of Bank.

So long as no Event of Default or Event of Nonappropriation has occurred, Bank assigns to Purchaser all of Bank's rights to suppliers' and manufacturers' warranties and service agreements with respect to the Equipment, and Bank agrees to cooperate with Purchaser, at Purchaser's expense, in asserting such rights, provided that Purchaser shall, to the extent permitted by law, indemnify and hold harmless Bank from and against all related claims, costs, damages, losses and liabilities. If no Event of Default or Event of Nonappropriation has occurred, Purchaser's use of the Equipment will not be interrupted by Bank or anyone claiming solely through or under Bank.

IV. Duties of Purchaser.

Section 4.1. Use and Maintenance of Equipment. Purchaser agrees that the Equipment will be used solely in the conduct of its business at its principal place of business unless Bank is otherwise notified in writing of an alternate location and Bank first agrees to such alternate location in writing. Purchaser will maintain the Equipment in good repair and working order, reasonable wear and tear accepted, but in any event, to the same extent that Purchaser would, in the prudent management of its properties, maintain comparable equipment. Purchaser will comply with all laws, rules and regulations with respect to the use, maintenance and operation of the Equipment, and if any additional improvement to or replacement of any Item is required, Purchaser will do so at its own expense. Purchaser may add parts or accessories to any Item if it does not impair the value, utility or warranties of such Item and is readily removable without causing material damage.

Section 4.2. Sale and Encumbrance. Purchaser will not sell, lease or encumber the Equipment and will continue to own and use it for the public purposes of Purchaser.

Section 4.3. Inspection and Tags. At any time during Purchaser's normal working hours, Bank may inspect the Equipment where it is located and inspect all related records of Purchaser. Bank may attach tags to any Item showing that Bank retains a purchase money security interest in it. Purchaser will not allow any other name to be placed on any Item that might be interpreted as a claim to a lien thereon.

Section 4.4. Insurance; Damage or Destruction. Purchaser will provide public liability insurance and physical damage and loss acceptable to Bank with respect to the Equipment in amounts not less than those specified in Exhibit "B" with either a responsible insurance company authorized to do business in the State or an actuarially sound self-insurance program. Each policy will name Bank as an additional insured and loss payee and provide that it may be altered or canceled only after thirty (30) days' prior written notice to Bank. On demand, Purchaser will deliver to Bank evidence satisfactory to Bank showing the existence of such insurance, and will deliver to Bank evidence satisfactory to Bank showing renewal or replacement of such insurance within thirty (30) days prior to expiration or cancellation. If Purchaser fails to maintain such insurance, Bank may obtain such insurance as Bank deems necessary, and Purchaser will reimburse Bank for all premiums therefor, together with interest at the maximum rate permitted pursuant to Chapter 1204, Government Code, as amended, or other applicable law then in effect. Purchaser assumes all risk of loss to the Equipment. Purchaser will immediately notify Bank of any loss for which an insurance claim may be made, and shall, at Purchaser's option: (a) Exercise its option to prepay under Section 2.3; or (b) Place any damaged Items in as good a condition as before such damage, and replace any missing Items with similar equipment of at least equal value. Any such replacement will be subject to this Agreement, and Purchaser hereby grants to Bank a security interest therein free of all liens.

Section 4.5. [RESERVED].

Section 4.6. Indemnification. To the extent permitted by applicable law, Purchaser will indemnify, protect, and hold harmless Bank or any assignee or transferee of Bank and their respective agents and servants from and against all claims, causes of action, damages, liability (including strict liability in tort), costs, fees, penalties or expenses (including attorney's fees) incurred in any manner by or for the account of any of them relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment as a result of the use, maintenance, repair, replacement, operation or condition thereof (whether defects are latent or discoverable by Bank or by Purchaser) except such as may result from the gross negligence or willful misconduct of Bank, or assignee or transferee thereof and their respective agents and servants. This Section will be effective from the date the first Item of Equipment is ordered. Purchaser agrees to give Bank prompt notice of any claim or liability hereby indemnified against. Bank agrees to cooperate with Purchaser in any defense or other action which Purchaser is obligated to undertake.

Section 4.7. Mortgages, Liens, Etc. Purchaser will not directly or indirectly create, incur, assume, or permit the existence of any mortgage, security interest, pledge, lien, charge, encumbrance, or claim on or with respect to the Equipment, title thereto or any interest therein except the respective rights of Bank and Purchaser as herein provided and liens for taxes either not yet due or being contested in good faith and by appropriate proceedings. Purchaser will promptly, at its own expense, take such actions as may be necessary duly to discharge any such mortgage, security interest, pledge, lien, charge, encumbrance, or claim not specifically excepted above.

V. Events of Default and Remedies.

Section 5.1. Events of Default. The following will be Events of Default: (a) Purchaser's failure to pay any payment hereunder within 10 days after it is due; (b) Purchaser's failure to maintain the insurance required under Section 4.4; (c) Purchaser's failure to perform any covenant, condition or agreement under this Agreement within 30 days after written notice from Bank requesting that such failure be remedied; (d) Any representation or warranty made by Purchaser to Bank is materially false or misleading when made; (e) Purchaser becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or consents to the appointment of a trustee or receiver, or a trustee or a receiver is appointed for Purchaser for a substantial part of its property without its consent and is not dismissed within a period of sixty (60) days, or bankruptcy, reorganization or insolvency proceedings are instituted by Purchaser; (f) Purchaser defaults in any other material agreement to which Purchaser is a party with third parties resulting in a right by such third parties to accelerate the maturity of Purchaser's obligations under such other agreement, and such obligations materially impair Purchaser's ability to pay its obligations to Bank under this Agreement; and (g) Purchaser fails to comply with its obligations under Section 2.6 following an Event of Nonappropriation.

Section 5.2. Remedies. Whenever an Event of Default has occurred, Bank may, subject to the limitation of Section 2.4 of this Agreement, exercise any one or more of the following remedies: (a) By written notice to Purchaser, declare all amounts coming due during the current Fiscal Year for all Equipment to be immediately due and payable; (b) Take possession of the Equipment wherever the Equipment is located, without demand or notice, without any court order or other process of law, sell or lease it and retain the proceeds, holding Purchaser liable for an amount equal to (i) all amounts payable hereunder to the end of the then current Fiscal Year less (ii) the proceeds of such sale or lease; provided however, if the proceeds of such sale or lease exceed the amount required to compensate Bank for all payments contemplated under this Agreement plus any expenses related to said sale or lease, any costs to repair or replace the Equipment and any other expenses related thereto, then such excess proceeds will be paid to Purchaser; (c) Require Purchaser to deliver the Equipment to a location designated by Bank; (d) Proceed by court action to enforce performance by Purchaser of any terms of this Agreement and/or to recover all damages and expenses incurred by Bank by reason of any Event of Default; and (e) Exercise any other right or remedy available to Bank at law or in equity. Also, Purchaser shall pay Bank all costs and expenses (including reasonable legal fees and costs) incurred by Bank in enforcing any of the terms, conditions or provisions of this Agreement. Upon repossession or surrender of any Equipment, Bank shall lease, sell or otherwise dispose of the Equipment in a commercially reasonable manner, with or without notice and at public or private sale, and apply the net proceeds thereof (after deducting all expenses (including reasonable legal fees and costs) incurred in connection therewith) to the amounts owed to Bank hereunder; provided, however, that subject to the provisions of Section 2.6, Purchaser shall remain liable to Bank for any deficiency that remains after any sale or lease of such Equipment to the extent permitted by law. These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

Section 5.3. **No Remedy Exclusive; Repossession.** (a) No remedy herein is exclusive, and every remedy is in addition to every other remedy at law or in equity. No delay in exercising or failure to exercise any right or power will be a waiver thereof. No notice will be necessary to entitle Bank to exercise any remedy, except as required in this Article. To the extent permitted by law, Purchaser waives any requirements of law, now or hereafter in effect, that might limit or modify Bank's remedies; (b) If Bank is entitled to repossess the Equipment, Purchaser shall, if Bank requests, make it available at a reasonable place designated by Bank and execute and deliver such documents as may be required to establish clear title to the Equipment in Bank. Purchaser will bear all costs of removal and delivery of the Equipment and repairs to Purchaser's property.

VI. Representations, Covenants and Warranties of Purchaser.

Section 6.1. **Representations, Covenants and Warranties of Purchaser.** (a) Purchaser represents, covenants and warrants for the benefit of Bank that Purchaser is a political subdivision of the State with statutory authority to enter into this Agreement, and has been duly authorized to execute, deliver and carry out its obligations under this Agreement and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body politic and corporate. Purchaser is not subject to any legal or contractual provision that restricts or prevents it from entering into and performing its obligations under this Agreement, except laws affecting creditors' rights generally. There is no known pending or threatened action, proceeding, or investigation affecting Purchaser, nor to the best knowledge of Purchaser, is there any basis therefor, wherein an unfavorable result would adversely affect this Agreement; and (b) The Equipment is and will remain personal property, and not fixtures. The execution and performance of this Agreement will not violate any judgment, order, law or regulation, constitute a default under any instrument binding upon Purchaser, or create any encumbrance upon any assets of Purchaser or the Equipment, except as herein provided. Purchaser has never non-appropriated or defaulted under any of its obligations under any lease-purchaser contract, bond, or other debt obligation. Purchaser has been duly authorized to execute and deliver this Agreement under the terms and provisions of its duly adopted resolution and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the due authorization of this Agreement. No approval, consent, or withholding of objection is required from any governmental authority other than Purchaser with respect to the entering into or performance by Purchaser of this Agreement. The balance sheet of Purchaser for its most recent Fiscal Year and the related earnings statement of Purchaser for such Fiscal Year have been furnished to Bank and fairly present Purchaser's financial condition as of such date and the results of its operations for such fiscal year in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations.

Section 6.2. **Opinion of Counsel.** Upon Bank's request, Purchaser will deliver to Bank an opinion of Purchaser's legal counsel on and as of the date of this Agreement or any time deemed reasonably appropriate by Bank, with respect to the matters in Section 6.1 and such other matters as Bank reasonably requests. In addition, Purchaser agrees to provide Bank with any other documents reasonably requested by Bank prior to Bank's funding of this Agreement.

Section 6.3. **Financial Statements.** Purchaser shall keep its books and records in accordance with generally accepted accounting principles. Purchaser agrees that it will furnish Bank Purchaser's current audited financial statements within 120 days of each Fiscal Year end including (i) a balance sheet, (ii) statement of revenues, expenses and changes in fund balances, (iii) statement of cash flows, (iv) operating fund budget analysis, and (v) appropriate notes, schedules and attachments to the financial statements; and permit Bank or its agents and representatives to inspect Purchaser's books and records and make extracts therefrom. Purchaser represents and warrants to Bank that all financial statements which have been delivered to Bank fairly and accurately reflect Purchaser's financial condition and there has been no material adverse change in Purchaser's financial condition as reflected in the financial statements since the date thereof.

VII. Representations, Covenants and Warranties of Bank. As of the date of this Agreement, Bank represents, covenants and warrants for the benefit of Purchaser the following:

Section 7.1. **Verification of Non-Discrimination of Firearms Entity or Firearms Trade Association.** To the extent this Agreement represents a contract for goods or services within the meaning of Chapter 2274 of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session) and solely for the purposes of Chapter 2271 of the Texas Government Code, Bank verifies that that subject to and except as otherwise required by federal law, it is not a Company that has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and agrees it will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The terms "discriminates against a firearm entity or firearm trade association" and "discriminate against a firearm entity or firearm trade association" have the meaning assigned to the term "discriminate against a firearm entity or firearm

trade association" in Section 2274.001(3) of the Texas Government Code. For purposes of this paragraph, the term "Company" has the meaning assigned to the term "Company" in Section 809.001 of the Texas Government Code.

Section 7.2. Verification of Non-Boycott of Energy Companies. To the extent this Agreement represents a contract for goods or services within the meaning of Chapter 2274 of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) and solely for purposes of Chapter 2271 of the Texas Government Code, Bank hereby verifies that subject to and except as otherwise required by federal law, it is not a Company that boycotts energy companies and agrees it will not boycott energy companies during the term of this Agreement. The terms "boycotts energy companies," "boycott energy companies," and "Company" have the meaning assigned to the terms "boycott energy company" and "Company" in Section 809.001 of the Texas Government Code.

Section 7.3. Verification of No Business with Sudan, Iran or Foreign Terrorist Organizations.

(a) Pursuant to Section 2252.152 of the Texas Government Code, Bank hereby verifies that it is not engaged in active business operations with Sudan or Iran in violation of U.S. law, or a foreign terrorist organization. For purposes of this Agreement, the phrase "foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

(b) Neither Bank nor any of its affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>; <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>; or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

Section 7.4. Verification Non-Boycott of Israel. As required by Section 2271.002 of the Texas Government Code, Bank hereby verifies that subject to and except as otherwise required by federal law, including, without limitation, 50 U.S.C. Section 4607, it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the phrase "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

VIII. Assignments.

Bank may assign and grant a security interest in any of its rights or interests in this Agreement or the Equipment. Bank or any future assignee will notify Purchaser of the assignment and provide the name and address of the assignee to Purchaser. PURCHASER WILL NOT ASSIGN OR GRANT A SECURITY INTEREST IN THIS AGREEMENT OR THE EQUIPMENT, IN WHOLE OR IN PART.

IX. Bank's Rights to Perform for Purchaser.

(a) Subject to the limitations set forth within this Agreement, if Purchaser fails to perform or comply with any of its agreements contained herein, Bank may, but will not be required to, make any payment or perform or comply with any covenant or agreement contained herein, and all reasonable expenses of Bank incurred in connection therewith will be payable by Purchaser upon demand, together with interest at the maximum rate of interest allowed under Chapter 1204, Government Code, as amended, or other applicable law then in effect from the date of payment to the date of reimbursement; (b) Purchaser will promptly and duly (i) execute and deliver to Bank such further documents or instruments of further assurance and take such further action as Bank may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Bank hereunder, at the expense of Purchaser; or (ii) authorize Bank to file financing statements describing the Equipment.

X. Miscellaneous.

This Agreement will be governed by the laws of the State. In connection with any dispute arising hereunder, Bank and Purchaser hereby consent to the non-exclusive jurisdiction of a state or federal court situated in Kendall County, TX. Bank and Purchaser hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum. Bank and Purchaser each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement. If a provision of this Agreement is invalid or unenforceable, the remainder may be enforced to the fullest extent permitted by

law. This Agreement and each Acceptance Certificate may be executed in multiple original counterparts. This Agreement will bind and inure to the benefit of the parties' permitted successors and assigns. The headings herein will not in any way affect this Agreement. This Agreement is the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter hereof. This Agreement may not be amended, changed or modified except by written agreement executed by both parties hereto. Any waiver by Bank, implied or written, shall not constitute consent for any other breach of the same or other provision. All representations, warranties and covenants made by Purchaser shall survive termination of this Agreement. Upon demand, Purchaser will promptly reimburse Bank for any filing or recordation fees or expenses (including reasonable legal fees and costs) incurred by Purchaser in perfecting or protecting its interests in the Equipment and under this Agreement. Purchaser shall promptly execute and deliver to Bank such documents and take such further action as Bank may from time to time reasonably request to carry out the intent and purpose of this Agreement and to protect the rights and remedies of Bank created or intended to be created hereunder. Service of all notices under this Agreement shall be sufficient if mailed to the respective party at its address set forth herein or at such other address as the parties may provide to each other in writing from time to time. Any such notice mailed to said address shall be effective when deposited in the United States mail, duly addressed with first class postage prepaid. Notwithstanding anything contained in this Agreement to the contrary, in no event shall interest contracted for, charged or received hereunder, plus any other charges in connection herewith that constitute interest on this Agreement under applicable law, result in a "net effective interest rate" as defined in Section 271.003(6) of the Local Government Code, as amended, in excess of the net effective rate at which public securities may be issued in accordance with Chapter 1204, Government Code, as amended. The amounts of such interest or other charges previously paid to Bank in excess of the amounts permitted by the preceding sentence shall be applied by Bank to reduce the principal of the indebtedness incurred by Purchaser pursuant to this Agreement, or, at the option of Bank, be refunded. To the extent permitted by Chapter 1204, Government Code, as amended, or other applicable law then in effect, determination of the maximum net effective interest rate shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of this Agreement and such indebtedness, all interest at any time contracted for, charged or received from Purchaser hereof in connection with the indebtedness evidenced hereby, so that the actual rate of interest on such indebtedness is uniform throughout the term hereof. Interest on the unpaid amounts under this Agreement shall be computed as simple interest.

IN WITNESS WHEREOF, Purchaser and Bank have executed this Agreement as of the date first above written.

CITY OF BOERNE, TEXAS

(S E A L)

By: BEN THATCHER, City Manager

Attested and Countersigned:

Clerk/ Recorder/ Secretary of Lessee

Notice address:

City of Boerne, Texas
447 N. Main St.
Boerne, TX 78006

FROST BANK

By: Authorized Officer of Frost Leasing

Notice address:

Frost Bank

P.O. Box 59

San Antonio, Texas 78291-0059

Attention: Leasing Department



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

Exhibit "A"

Acceptance Certificate

Number 773455508-012 dated as of July 28, 2022

The undersigned Purchaser, having entered into a Municipal Equipment Lease/Purchase Agreement dated July 28, 2022, (the "Agreement"), with FROST BANK ("Bank"), does hereby certify to Bank that:

1. The equipment listed in the attached Exhibit B (the "Equipment") dated July 28, 2022 is of a size, design, capacity, and manufacture selected by Purchaser, is in good condition and has been satisfactorily delivered and installed. Purchaser hereby expressly assumes all responsibilities in connection with the delivery and installation thereof;
2. Purchaser is satisfied that the Equipment is suitable for Purchaser's purposes;
3. The Purchaser has complied with all applicable competitive bidding requirements in connection with the lease/purchase acquisition of the Equipment;
4. Unless otherwise indicated on Exhibit B, the Equipment is new and unused on the date hereof except for routine testing and inspection;
5. Upon payment of the purchase price to the Vendors indicated in Exhibit B, there will be no liens, security interests, or encumbrances against the Equipment except the interest of Bank under the Agreement;
6. The Equipment is personal property and will not become either real property, fixtures or inventory;
7. Purchaser authorizes Bank to pay the Vendors indicated in Exhibit B for the Equipment;
8. The representations and warranties of Purchaser contained in the Agreement are true and correct in all material respects as of the date of this certificate;
9. There exists no Event of Nonappropriation as of the date of this certificate;
10. There exists no Event of Default or condition which, but for the passing of time or giving of notice or both, would constitute an Event of Default under the Agreement nor has there been any material change or difference in the Purchaser's covenants, representations or ability to meet its obligations under the Agreement; and
11. The lease/purchase of the Equipment as shown on the attached Exhibit B has been duly authorized by the governing body of the Purchaser.

Dated: _____

CITY OF BOERNE, TEXAS

(SEAL)

By: BEN THATCHER, City Manager



FROST BANK
c/o Frost Leasing
 3838 Rogers Road
 San Antonio, Texas 78251

Exhibit "B"

Number 773455508-012 dated as of July 28, 2022

1. ITEMS OF EQUIPMENT COVERED BY THIS AGREEMENT:

Quantity	Description	Serial Number	Cost
1	2022 Asphalt Zipper 480Xi-260H	S/N AZ-0657	\$224,370.00
1	2022 Custom Wheel Assist Williamson Ocean Trailer	Vin 109FS2020NU021854	\$22,300.00

Vendor Name:	Asphalt Zipper	Contact:	Patrick Duke
Address:	831 East 340 South, Suite 250	Phone:	888-947-7378
City, State & Zip:	American Fork, UT 84003	Fax:	801-847-3250

Equipment Location:

447 N. Main St.
 Boerne, Texas 78006

2. PAYMENT AUTHORIZATION SCHEDULE:

Equipment Cost (per vendors invoice)	\$246,670.00
Less Trade-In Allowance	\$ 0.00
Less Down Payment	\$ 0.00
Equals Amount Financed	\$246,670.00

Purchaser will pay 4 periodic payments of \$66,006.00 each on an annual basis starting on August ____, 2022. Each due date is an Optional Payment Date.

SEE ATTACHED PAYMENT AMORTIZATION REPORT, which is incorporated into this Exhibit "B" as if fully set forth herein.

3. THIS OBLIGATION EARNS INTEREST AT AN ANNUAL PERCENTAGE RATE OF 4.73%.

The Installment Payments herein will be composed of principal and interest. In the event of changes in the Annual Percentage Rate due to events as outlined in Section 1.7 of this Agreement (Tax Certification and Indemnification), this payment and amortization schedule will be modified to Bank's equivalent taxable annual percentage rate in order to preserve Bank's anticipated after tax yield, subject to the limitations set forth in Article IX of this Agreement.

4. The minimum amount of insurance to be provided by Purchaser with respect hereto is as follows:

- a. The lesser of (i) \$1,000,000.00 Comprehensive General Liability or (ii) the maximum limits of liability of Purchaser under applicable law, as amended from time to time.
- b. Physical Damage and Loss: \$246,670.00
- c. Additional riders, exclusions or special terms required by Bank:
Frost Bank, its successors and assigns shall be named as "Loss Payee" on the Physical Damage and Loss coverage and named as "Additional Insured" on the General Liability coverage.
In the event that Purchaser self-insures for Physical Damage and Loss Insurance required, Purchaser shall maintain Umbrella Liability Maximum Damage coverage.

5. PURCHASER'S BILLING ADDRESS:

Name: City of Boerne, Texas
Address: 447 N. Main St.
City, State & Zip: Boerne, Texas 78006

6. ADDRESS PAYMENTS TO (Place of Payment):

Frost Bank
P.O. Box 59
San Antonio, Texas 78291-0059
Attention: Leasing Department

7. PREPAYMENT – OPTION PRICE:

The Option Price will be determined by taking the remaining Principal Balance in 2. above and multiplying that amount by 102.50% and adding any interest accrued through the date said Option Price is paid.

Dated: _____

CITY OF BOERNE, TEXAS

(S E A L)

By: BEN THATCHER, City Manager

LESSEE TO COMPLETE THE FOLLOWING:

Property Insurance

Insurance Co.		Policy #
Effective Date	Expiration	Limit \$
Agency Name		Agent
Agency Address		
Phone Number _____		Fax Number _____

Liability Insurance (if different than Property Insurance)

Insurance Co.		Policy #
Effective Date	Expiration	Limit \$
Agency Name		Agent
Agency Address		
Phone Number _____		Fax Number _____



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

Advance Payment Billing Invoice

Master Lease Number 773455508 dated as of March 6, 2007
Supplement Number 773455508-012 dated as of July 28, 2022

Date of Invoice: July 28, 2022

CITY OF BOERNE, TEXAS
447 N. Main
Boerne, TX 78006

Description	Payment	Sales/Use Tax	Other Charges	Amount Due
Lease Processing Fee			\$400.00	\$400.00
Lease Payment due in Advance	\$66,006.00			\$66,006.00
Total Due				\$66,406.00

INVOICE - AUTHORIZATION TO DEBIT

Lessee hereby **AUTHORIZES LESSOR TO DEDUCT FROM LESSEE'S FROST BANK** checking account number _____ the "Total Due" **on this invoice only.**

X) _____
Authorized Signer on account designated to be charged.

OR INCLUDE YOUR CHECK FOR THIS INVOICE AMOUNT & RETURN WITH YOUR EXECUTED DOCUMENTS.



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

Instructions to Pay Proceeds

Master Lease Number 773455508 dated as of March 6, 2007
Supplement Number 773455508-012 dated as of July 28, 2022

In the above referenced Supplement Number, Frost Bank is irrevocably instructed to disburse payment as follows:

Payee	Invoice Number	Amount
Asphalt Zipper	AZ-0657	\$246,670.00
Total Disbursed		\$246,670.00

The undersigned hereby acknowledges and agrees as follows: Payments will be made in the currency billed. If payment to a payee is to be made in U.S. dollars, the invoice or enclosure will be scheduled for payment in U.S. dollars. If the invoice or enclosure indicates payment in foreign currency, the invoice or enclosure will be scheduled for payment in foreign currency. If the invoice or enclosure allows payment in either U.S. dollars or foreign currency, the invoice will be scheduled for payment in U.S. dollars.

Dated: JULY 28, 2022.

CITY OF BOERNE, TEXAS

By: BEN THATCHER, City Manager